



FEDERAL REGISTER

Vol. 78

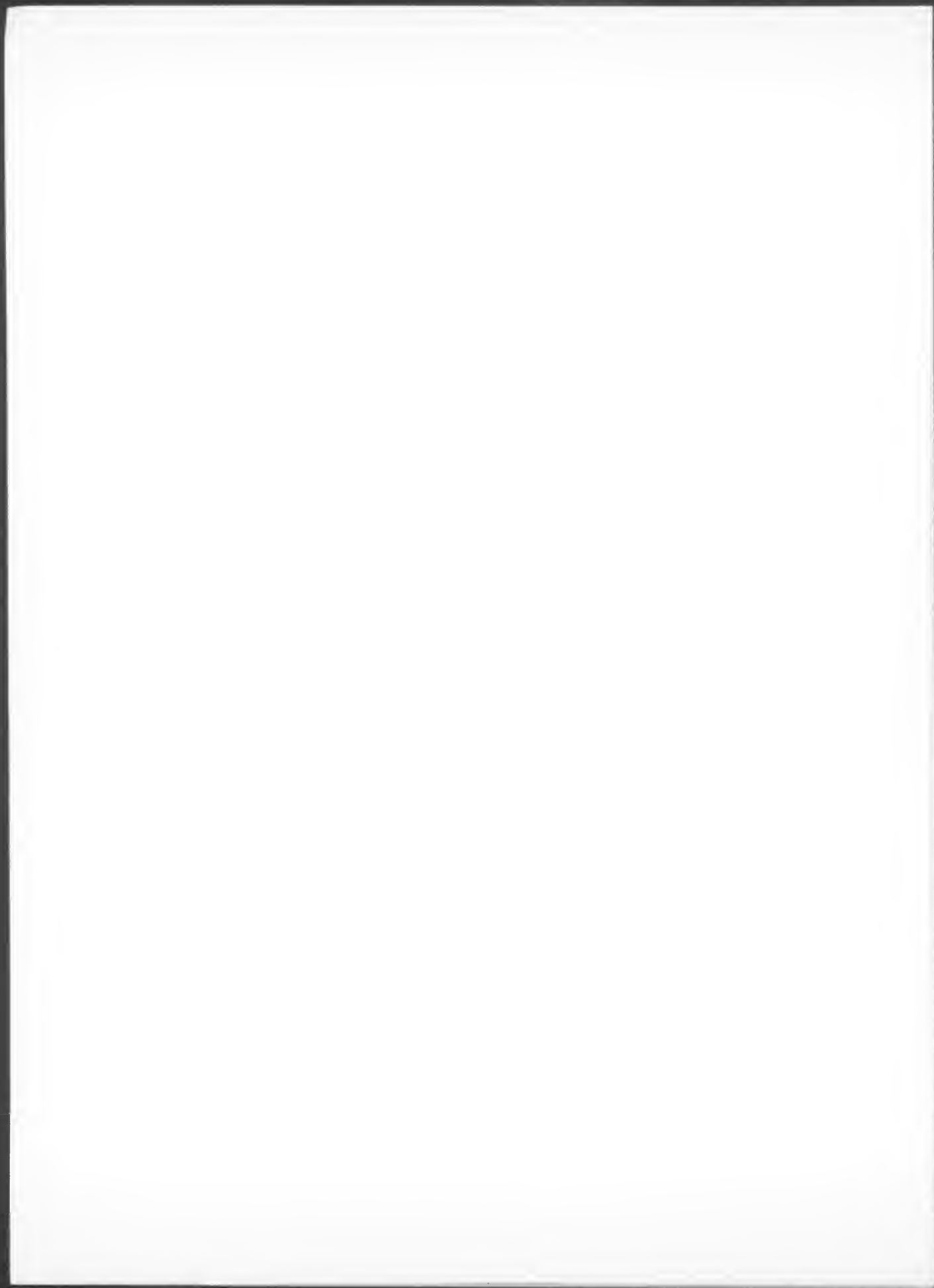
Monday

No. 165

August 26, 2013

OFFICE OF THE FEDERAL REGISTER

UNITED STATES GOVERNMENT PRINTING OFFICE





FEDERAL REGISTER

Vol. 78

Monday,

No. 165

August 26, 2013

Pages 52679–52826

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, September 17, 2013
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741-6008



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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1210

Safety Standard for Cigarette Lighters; Adjusted Customs Value for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission has a safety standard requiring that disposable and novelty lighters meet specified requirements for child resistance. The standard defines "disposable lighters," in part, as refillable lighters that use butane or similar fuels and have a Customs Value or ex-factory price below a threshold value (initially set at \$2.00 in 1993). The standard provides that the initial \$2.00 value adjusts every 5 years for inflation, as measured by the percentage change since June 1993, in the monthly Producer Price Index (PPI) for Miscellaneous Fabricated Products. The adjustment is rounded to the nearest \$0.25 increment. The price adjusted in November 2003, when changes in the PPI from June 1993 to June 2003 indicated a revised Customs Value or ex-factory price of \$2.25. Due to an increase in the PPI, the Customs Value or ex-factory price has recently adjusted to \$2.50. This rule revises the cigarette lighter standard to state that the import value has adjusted to \$2.50 based on the change to the PPI.

DATES: This rule is effective August 26, 2013.

FOR FURTHER INFORMATION CONTACT: Julio Alvarado, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-7418; email: jalvarado@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1993, the Commission issued a standard that required disposable and novelty lighters to meet certain requirements for child resistance. The standard, as originally written, defines "disposable lighters" as those that are either: (1) Non-refillable, or (2) use butane or similar fuels and have "a Customs Valuation or ex-factory price under \$2.00, as adjusted every 5 years, to the nearest \$0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993." 58 FR 37584 (July 12, 1993). The name of the Wholesale Price Index has changed to the Producer Price Index (PPI). The specific PPI that includes cigarette lighters is the PPI for "Miscellaneous Fabricated Products."

Thus, the standard provides for the \$2.00 threshold to adjust in accordance with inflation and for the adjustment to be rounded to the nearest 25 cents. Adjustment did not occur in 1998 because the change in the PPI since June 1993 was not sufficient to warrant an adjustment. Adjustment did occur in 2003 (to \$2.25). Accordingly, the Commission revised the cigarette standard to state the adjusted amount. 69 FR 19763 (April 14, 2004). At that time, we also revised the reference to the Wholesale Price Index to refer instead to the Producer Price Index. No adjustment was made in 2008.

CPSC staff has calculated that the PPI for Miscellaneous Fabricated Products increased by approximately 29 percent from June 1993 to June 2013, as finalized in July 2013. Under section 1210.2(b)(2)(ii), this increase in the PPI merits an adjustment in the Customs Value or ex-factory price to \$2.50 as the threshold for determining whether refillable lighters are within the scope of the cigarette lighter standard. The approximately 29 percent increase in the PPI (from 124.7 in June 1993 to 160.9 in June 2013) yielded an adjustment to \$2.58 per lighter, which rounds to \$2.50. Thus, refillable lighters with a Customs Value or ex-factory price under \$2.50 are subject to the standard.

As the cigarette lighter standard is written, the Customs Value or ex-factory price adjusts automatically based on the PPI, and no change in the language of the rule is required to implement this change. However, we are revising the standard so that the CFR will state the

appropriately adjusted \$2.50 [c]ustoms [v]alue and the public will have notice of the adjustment.

The Administrative Procedure Act

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with notice and comment procedures when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." This amendment informs the public of an adjustment to the cigarette lighter regulatory standard that has occurred automatically according to the terms of the cigarette lighter regulation. Because the adjustment occurs by terms of the regulation, the Commission could not alter the adjustment based on any public comments the Commission received. Accordingly, the Commission finds that notice and comment is unnecessary.

The APA also authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. 5 U.S.C. 553(d)(3). The Commission hereby finds that a 30-day delay of the effective date is unnecessary because this amendment informs the public of an adjustment that already has occurred in accordance with the existing regulatory requirements of the cigarette lighter standard.

List of Subjects in 16 CFR Part 1210

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 1210 is amended as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

■ 1. The authority citation for part 1210 continues to read as follows:

Authority: 15 U.S.C. 2056, 2058, 2079(d).

■ 2. Revise § 1210.2(b)(2)(ii) to read as follows:

§ 1210.2 Definitions.

* * * * *

(b) * * *

(2) * * *

(ii) It has a Customs Valuation or ex-factory price under \$2.00, as adjusted every 5 years, to the nearest \$0.25, in accordance with the percentage changes in the appropriate monthly Producer Price Index (Producer Price Index for Miscellaneous Fabricated Products) from June 1993. The adjusted figure, based on the change in that Index since June 1993, as finalized July 2013, is \$2.50.

* * * * *

Dated: August 21, 2013.

Todd A. Stevenson,
Secretary, Consumer Product Safety
Commission.

[FR Doc. 2013-20747 Filed 8-23-13; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 126, 127, 128,
and 129

RIN 1400-AC37

[Public Notice 8437]

Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: The Department of State is issuing this interim final rule amending the International Traffic in Arms Regulations (ITAR) relating to brokers and brokering activities and to related provisions of the ITAR. These amendments clarify registration requirements, the scope of brokering activities, prior approval requirements and exemptions, procedures for obtaining prior approval and guidance, and reporting and recordkeeping of such activities. Conforming and technical changes are made to other parts of the ITAR that affect export as well as brokering activities. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011.

DATES: This rule is effective October 25, 2013. Interested parties may submit comments on this rule by October 10, 2013. The Department will publish a final rule notifying of any changes to the rule pursuant to public comment assessment.

ADDRESSES: Interested parties may submit comments within 45 days of the date of publication by one of the following methods:

• **Email:** DDTCResponseTeam@state.gov with the subject line, "Brokering Rule."

• **Internet:** At www.regulations.gov, search for this document by using this document's RIN (1400-AC37).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at www.pmddtc.state.gov. Parties who wish to comment anonymously may do so by submitting their comments via www.regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via www.regulations.gov are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah J. Heidemia, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663-2809, or email DDTCResponseTeam@state.gov. ATTN: Brokering Rule. The Department of State's full retrospective plan can be accessed at <http://www.state.gov/documents/organization/181028.pdf>.

SUPPLEMENTARY INFORMATION: This rule makes changes to part 129 and related sections of the ITAR that regulate brokers and brokering activities and implement the brokering amendment to the Arms Export Control Act (AECA) (section 38(b)(1)(A)(ii) of the AECA, 22 U.S.C. 2778(b)(1)(A)(ii)).

The AECA was amended in 1996 (Pub. L. 104-164) to provide for the regulation of brokering activities. The following year, implementing regulations were added to the ITAR in part 129. These regulations have remained unchanged except for two minor technical changes.

In 2003, in a report to Congress, the Department of State noted that it was beginning a review of the brokering regulations. The purpose of the review was to assess the need to modify the regulations in light of the experience gained in administering them. Based on this experience as well as comments received from other agencies and industry, including the Defense Trade Advisory Group, a Department of State Federal advisory committee, the

Department published a proposed rule on December 19, 2011 (see "Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions," 76 FR 78578) modifying the provisions relating to brokering and brokering activities. The comment period ended February 17, 2012. Thirty-one parties filed comments recommending changes, which were reviewed and considered by the Department and other agencies. The Department's evaluation of the written comments and recommendations follows.

The Department received numerous comments and recommendations regarding the definitions for terms and provisions set forth in ITAR part 129. The Department reviewed and considered these comments, and where the recommendations were in conformance with the requirements for brokering as set forth in the AECA, and clarified the regulation, the Department has made amendments accordingly.

Twenty-seven commenting parties expressed concerns regarding the scope of "broker" and "brokering activities," and that the revised definition of "broker" in conjunction with the revised definition of "brokering activities" would result in a greatly increased number of persons requiring to register as brokers. In conformance with the statutory requirements for the brokering of defense articles and services, the Department has revised the proposed changes to these definitions to clarify their scope. In particular, the Department has clarified that foreign persons that are required to register as brokers are those that are in the United States and those foreign persons outside the United States that are owned/controlled by a U.S. person. And the Department has removed from the definition of "brokering activities" the activities of any foreign person located outside the United States acting on behalf of a U.S. person.

One commenting party requested clarification on whether the addition of "or are otherwise charged" to ITAR § 120.1(c)(2) would preclude any person charged with any export violation from applying for, obtaining, or using export control documents, and recommended the Department identify such ineligible parties to prevent applicants from including the ineligible parties on export license applications and other submissions. The Department confirms that any person charged with a violation of the U.S. criminal statutes enumerated in ITAR § 120.27 is generally ineligible

to be involved in ITAR-regulated activities.

One commenting party noted that the addition of "source or manufacturer" to the list of ineligible persons in ITAR § 120.1(d) could add a significant burden to applicants. The Department notes that applicants already should be screening all parties to their transaction, including screening the source or manufacturer. The addition of the phrase "source or manufacturer" is not a new requirement, but a clarification of requirements.

Two commenting parties recommended reconsideration of the inclusion of reference to "foreign criminal statutes dealing with subject matter similar to that in the U.S. criminal statutes enumerated in ITAR § 120.27," as the reference is imprecise and may lead to confusion and misapplication, and that it would be an undue burden to supply this information. The Department has revised this provision to apply to the more specific circumstances of a person violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than one year.

One commenting party recommended that the Department allow U.S. exporters registered pursuant to ITAR part 122 to include U.S. and foreign person third parties to be listed and identified as brokers in their Statements of Registration. The new ITAR § 129.3(d) allows U.S. and foreign subsidiaries and affiliates owned or otherwise controlled by a registrant to be listed as brokers on the registrant's manufacturer/exporter registration. The Department notes that while these entities, under these circumstances, are not required to submit a separate broker registration or pay a separate broker registration fee, all other requirements of ITAR part 129 apply to such brokers and their brokering activities.

One commenting party recommended that revised ITAR § 122.2 be changed to impose notification requirements on foreign brokers, and not on the registrants. The inclusion of foreign affiliates or brokers in a registrant's Statement of Registration may occur where the registrant owns or otherwise controls such foreign subsidiaries and affiliates who may be listed as brokers. As the registrant is the responsible party in this regard, the Department did not accept this recommendation.

Several parties commented that the brokering prior approval requirement effectively results in multiple authorizations for the same transaction. These parties recommended that the

logic of the removal of the former ITAR § 126.8 requirement for prior approval of certain export activities be adopted in this instance, and require prior brokering approval only when no other U.S. export authorization would be applicable for regulation. Because the export or retransfer of U.S. origin defense articles, defense services, and technical data stemming from brokering activities still requires prior written authorization, the Department's review or enforcement authority will not be diminished. The Department agrees with this assessment in part. Rather than requiring prior approval for brokering activities related to all U.S. Munitions List (USML) items, the new ITAR § 129.4 specifies which of these items requires prior approval for brokering generally consistent with U.S. international commitments or obligations.

Seven parties expressed concerns regarding the proposed requirement in ITAR § 126.13 to identify brokers and brokering activities in all authorization requests. The parties stated this requirement would be burdensome, would supersede any prior approval exemption, would result in registrant liability for the actions of non-employee brokers, and could result in multiple license requirements for the same activity. The Department has removed this provision from the revised regulation.

Two commenting parties recommended that the Department remove the proposed inclusion of brokers and brokering activities from the liabilities of the registrant in ITAR § 127.1. The Department notes that this is not a new provision, but a clarification of existing requirements.

One commenting party recommended the Department clarify that activities undertaken within the corporate family of a single registrant do not qualify as brokering under ITAR part 129. Section 129.2 provides that brokering activity does not include activities performed by an affiliate on behalf of another affiliate.

Two commenting parties recommended reconsideration of including "financing, insuring, transporting, and freight forwarding" and "soliciting" and "promoting" within the scope of "brokering activities." The Department has provided an exemption for persons whose business is exclusively financing, insuring, transporting, or freight forwarding, as distinct from those who engage in these activities as part of their direct involvement in arranging transactions for defense articles or defense services or hold title to defense articles, even when no physical custody

of defense articles is involved. In addition, the Department believes that "soliciting" or "promoting" the purchase, sale, transfer, loan, or lease of a defense article or defense service is an integral aspect of a broker's brokering activities, and therefore did not accept the recommendation to remove these activities from the definition of "brokering activities."

Three commenting parties recommended clarification of the services a broker may receive from an attorney, to specifically provide that any kind of legal advice or any export compliance services provided by an attorney to a client is not within the definition of "brokering activities." The Department has clarified that "activities by an attorney that do not extend beyond the provision of legal advice to clients" is not within the definition, and notes that "legal advice" includes the provision of export compliance advice by an attorney to a client.

One commenting party recommended the removal of the requirement to provide information on what if any consideration is expected to be received with regard to a brokering activity, as it would be a duplication of reporting given the requirement to provide similar information pursuant to ITAR part 130. While the Department has removed this provision with regard to procedures for obtaining prior approval, it has not removed this requirement from the annual reporting of brokering activities. The part 130 requirement has reporting limitations that the brokering requirement does not have.

One commenting party recommended the provision of an exhaustive list for the definition of brokering activities, which would obviate the need for the regulatory provision enabling Department guidance to industry upon request. The Department does not believe it is practicable to provide such a listing, and therefore did not accept this recommendation.

While the Department agrees with one commenting party that the new reporting provision of the regulation does expand the list of required elements to report to the Department, it disagrees that this would be an undue burden on industry, as the requested information should be readily available to the broker, and would assist the Department in its statutory requirement to monitor this activity.

One commenting party requested an expanded implementation period (12 months) for the new brokering regulation, given the numerous changes involved. The Department notes that the proposed rule was published in December 2011, and an updated version

of the regulation has been available on the Department's Directorate of Defense Trade Controls Web site since November 2012. The Department believes the affected public has had the opportunity to become informed of the impending changes, and therefore does not agree that a prolonged implementation period is necessary.

One commenting party recommended the Department adopt a form DS-2032 amendment process to enable persons to add brokering to their existing registrations once the new rule is implemented. The Department has added a provision to the regulations instructing registrants to apply for a consolidated registration covering manufacturers/exporters and brokers, as applicable, during their registration renewal rather than upon the effective date of this rule. The Department has added a similar provision to the regulations regarding the listing of firms on a Statement of Registration that are wholly owned or otherwise controlled, providing that registrants should notify the Department of these changes during their registration renewal, rather than within five days of the effective date of this rule (see ITAR § 129.8(d) and note to paragraph (d)).

Other Changes

Section 120.1 is amended to revise the section heading and make editorial changes in all paragraphs. Section 120.20 is revised to provide a definition for "other approval." Section 120.25(a)(4) is revised to include "brokering activity." Section 120.27 is revised to update and clarify the definition for "U.S. criminal statutes." Section 120.40 is added to provide a definition for "affiliate." Section 120.44 is added to provide a definition for "foreign defense article or defense service."

Section 122.1 is revised to provide clarifications and editorial changes. Section 122.2 is revised by removing provisions regarding submission of registration fee payment, adding a provision regarding the reporting of affiliates on the Statement of Registration, and providing other clarifications and editorial changes. Section 122.3(a) is revised by removing the paragraphs describing the registration fee, and providing a reference to the DDTC Web site for this information. Section 122.4(a) is revised to provide clarifications and editorial changes, and to add provisions instructing registrants to apply for a consolidated registration covering manufacturers/exporters and brokers, as applicable, and to notify the Department of changes to their registrations

regarding the listing of firms that are wholly owned or otherwise controlled, during their registration renewal rather than upon the effective date of this rule.

Section 126.1 is revised to provide clarification and editorial changes, and to provide a definition for terms used in paragraph (e). Section 126.13 is revised to provide updated process information, as well clarifications and editorial changes.

Part 127 is revised to reorganize, clarify, and provide editorial changes to sections 1, 2, and 7, and remove section 8 (regarding interim suspensions). Additionally, ITAR §§ 127.9, 128.2, 128.3, 128.15, and 128.17 are amended to remove references to interim suspension, given removal of ITAR § 127.8.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department has published this rule as a proposed rule (76 FR 78578) with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export, and brokering thereof, of defense articles and defense services is a foreign affairs function.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

Based on the criteria of 5 U.S.C. 804(2), the Department does not believe this rulemaking will have an annual

effect on the economy of \$100,000,000 or more. The Department estimates that approximately 1,300 of the currently-registered brokers will not need to maintain registration following implementation of this rule, and that approximately 300 brokers will be eligible to consolidate into their manufacturer/exporter registration and no longer be required to pay a broker registration fee. This estimate is based on internal data on the number of foreign person brokers who are now registered but will not need to be so after implementation of the revised brokering regulation in the first instance, and the number of registered manufacturers/exporters who are also registered as brokers in the second instance. The submission of 1,600 fewer brokering-only registration applications would result in an annual time burden reduction of 3,200 hours for the public, based on the revised burden of two hours to complete a Statement of Registration. In addition, this would result in the elimination of approximately \$3,600,000 in registration fees that otherwise would have been collected by the Department.

A rule is also considered "major" if it will result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The Department does not anticipate major increases in any of those categories. As described in the preceding paragraph, this rule, among other things, clarifies who is required to register as a broker of defense articles and services. The clarification will result in fewer persons registering as brokers. These brokers will no longer have the expense of registering as brokers with the Department.

Finally, a rule is considered major if it will have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and foreign markets. To the extent that a clarification of regulatory scope that leads to the decrease in the types of regulated persons and types of regulated activities results in an economic competitive advantage, the Department anticipates that this rule will not have an adverse effect in these categories.

This rulemaking has been found not to be a major rule within the meaning of the 5 U.S.C. 804.

Executive Orders 13132 and 12372

This rulemaking will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rulemaking does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, this rule has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act ("PRA," 44 U.S.C. 3501 *et seq.*) requires all Federal agencies to analyze proposed regulations for potential burdens on the regulated community created by provisions in the proposed regulations that require the submission or retention of information. As part of its continuing effort to reduce paperwork and respondent burden, and to conform with

the requirements as set forth in this rule, the Department of State has submitted the following approved information collections to the Office of Management and Budget (OMB) for re-approval, in light of the changes to these collections: DS-2032, Statement of Registration (approved by OMB under control number 1405-0002); the Annual Brokering Report (OMB control number 1405-0141); and Brokering Prior Approval (OMB control number 1405-0142).

Information Collection

- Title of Information Collection: *DS-2032 Statement of Registration*
- OMB Control Number: *1405-0002*
- Type of Request: *Revision of Currently Approved Collection*
- Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
- Form Number: *DS-2032*
- Respondents: *Business and Nonprofit Organizations*
- Estimated Number of Respondents: 11,500
- Estimated Number of Responses: 11,500
- Average Hours per Response: 2 hours
- Total Estimated Burden: 23,000 hours
- Frequency: *Annually and On Occasion*
- Obligation to Respond: *Mandatory*
- Title of Information Collection: *Annual Brokering Report*
- OMB Control Number: *1405-0141*
- Type of Request: *Revision of Currently Approved Collection*
- Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
- Form Number: *None*
- Respondents: *Business and Nonprofit Organizations*
- Estimated Number of Respondents: 760
- Estimated Number of Responses: 760
- Average Hours per Response: 2 hours
- Total Estimated Burden: 1,520 hours
- Frequency: *Annually*
- Obligation to Respond: *Mandatory*
- Title of Information Collection: *Brokering Prior Approval (License)*
- OMB Control Number: *1405-0142*
- Type of Request: *Revision of Currently Approved Collection*
- Originating Office: *Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC*
- Form Number: *None*
- Respondents: *Business and Nonprofit Organizations*
- Estimated Number of Respondents: 760
- Estimated Number of Responses: 150
- Average Hours Per Response: 2 hours

- Total Estimated Burden: 300 hours
- Frequency: *On Occasion*
- Obligation to Respond: *Required to Obtain Benefits*

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collections of information is necessary for the proper functions of the Department.
 - Evaluate the accuracy of our estimate of the burden of the proposed collections, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.
- Please note that comments submitted in response to this document are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Submit comments on these information collections (and not the rule within which notice of these collections is provided) to OMB up to 30 days from date of publication in the **Federal Register**.

Direct comments on these information collections to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oirq_submission@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax: 202-395-5806*. Attention: Desk Officer for Department of State.

Comments and questions regarding the collections listed in this document should be directed to Daniel L. Cook, Chief, Compliance and Registration Division, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Department of State, 12th Floor, SA-1, 2401 E Street NW., Washington, DC 20037; or email DDTCResponseTeam@state.gov, with the subject line "Brokering Rule Information Collections."

Abstract of Proposed Collections: The export, temporary import, temporary export, and brokering of defense articles, defense services, and related technical data are licensed by the Department of State in accordance with the International Traffic in Arms Regulations (22 CFR parts 120-130) and

Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporters must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via email, regular mail, or personal delivery.

Summary of Proposed Changes to the Information Collections: The proposed changes to the DS-2032, Statement of Registration, follow the changes to ITAR parts 122 and 129. One change would allow manufacturers/exporters to register as brokers on the same form, with one registration fee. In addition, the form asks for more information regarding company structure, specifically for information on intermediary and ultimate parents of the registering party, if applicable. Finally, the form requests further clarification when the registrant is foreign (non-U.S.) owned or controlled.

As a result of the changes to the brokering regulations, the Department estimates there will be time burden and cost reductions to the public with regard to the Statement of Registration collection. The Department estimates that approximately 1,300 of the currently-registered brokers will not need to maintain registration following implementation of this rule, and that approximately 300 brokers will be eligible to consolidate into their manufacturer/exporter registration and no longer be required to pay a broker registration fee. This estimate is based on Department data on the number of foreign person brokers who are now registered but will not need to be so after implementation of the revised brokering regulation in the first instance, and the number of registered exporters who are also registered as brokers in the second instance. The submission of 1,600 fewer brokering-only registration applications would result in an annual time burden reduction of 3,200 hours for the public, based on the revised burden of two hours to complete a Statement of

Registration. In addition, this would result in the elimination of approximately \$3,600,000 in registration fees that otherwise would have been collected by the Department.

The revised regulations provide that the Annual Brokering Report collection be submitted with the DS-2032, as an attachment. New information that is required on the report includes the following: Brokering registration code; signature and certification of the report by an empowered official; identification of all parties involved in the brokering transaction (formerly, the regulations required only the identification of purchasers and recipients); and identification of the source of any consideration paid for the brokering transaction.

As a result of the changes to the brokering regulations, the Department estimates there will be time burden reductions to the public with regard to the Annual Brokering Report collection. The Department estimates that the reduction in the number of responses and the annual time burden for this collection will reflect the reduction in the number of brokers who need to register: 1,300 fewer responses, with a burden reduction of 2,600 hours annually. Those who would no longer need to register as brokers as a result of the changes to the brokering regulation will no longer be required to submit a brokering report.

Clarification of the requirements for obtaining Brokering Prior Approval result in the applicant providing additional information, to include the following: categorization of the types of defense articles and services to be brokered, including whether the defense articles are significant military equipment; identification of the type of sale that is to be brokered (commercial or under the Foreign Military Sales program); listing of any consideration expected to be received; and signature of an empowered official certifying the information provided is complete and accurate. The Department does not anticipate any time burden changes or change in number of responses for this information collection at this time.

List of Subjects

22 CFR Part 120

Arms and munitions, Classified information, Exports.

22 CFR Part 122

Arms and munitions, Exports, Reporting and recordkeeping requirements.

22 CFR Part 126

Arms and munitions, Exports.

22 CFR Part 127

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

22 CFR Part 128

Administrative practice and procedure, Arms and munitions, Exports.

22 CFR Part 129

Arms and munitions, Brokers, Exports, Technical assistance.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 122, 126, 127, 128, and 129 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Sections 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105-261, 112 Stat. 1920; Pub. L. 111-266; Section 1261, Pub. L. 112-239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.1 is revised to read as follows:

§ 120.1 General authorities, receipt of licenses, and ineligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services is delegated to the Secretary of State by Executive Order 13637. This subchapter implements that authority, as well as other relevant authorities in the Arms Export Control Act (22 U.S.C. 2751 *et seq.*). By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade Controls and the Managing Director of the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

(b)(1) *Authorized officials.* All authorities conferred upon the Deputy Assistant Secretary of State for Defense Trade Controls or the Managing Director for the Directorate of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for Arms Control and International Security or the Assistant Secretary of State for Political-Military Affairs unless the Legal Adviser or the Assistant Legal Adviser for Political-Military Affairs of the Department of State determines that any specific

exercise of this authority under this paragraph may be inappropriate.

(2) In the Bureau of Political-Military Affairs, there is a Deputy Assistant Secretary of State for Defense Trade Controls and a Managing Director for the Directorate of Defense Trade Controls. The Deputy Assistant Secretary of State for Defense Trade Controls and Managing Director for the Directorate of Defense Trade Controls are responsible for exercising the authorities conferred under this subchapter. The Deputy Assistant Secretary of State for Defense Trade Controls is responsible for oversight of the defense trade controls function. The Managing Director for the Directorate of Defense Trade Controls is responsible for the Directorate of Defense Trade Controls, which oversees the subordinate offices described in paragraphs (b)(2)(ii) through (b)(2)(iv) of this section.

(i) The Managing Director will have responsibilities related to the management of defense trade controls operations, to include the exercise of general authorities in this part 120, and the design, development, and refinement of processes, activities, and functional tools for the export licensing regime and to effect export compliance/enforcement activities.

(ii) The Office of Defense Trade Controls Licensing and the Director, Office of Defense Trade Controls Licensing, which have responsibilities related to licensing or other authorization of defense trade, including references under parts 120, 123, 124, 125, 126, 129, and 130 of this subchapter.

(iii) The Office of Defense Trade Controls Compliance and the Director, Office of Defense Trade Controls Compliance, which have responsibilities related to violations of law or regulation and compliance therewith, including references contained in parts 122, 126, 127, 128, and 130 of this subchapter, and that portion under part 129 of this subchapter pertaining to registration.

(iv) The Office of Defense Trade Controls Policy and the Director, Office of Defense Trade Controls Policy, which have responsibilities related to the general policies of defense trade, including references under this part 120 and part 126 of this subchapter, and the commodity jurisdiction procedure under this subchapter, including under this part 120.

(c) Receipt of licenses and eligibility.

(1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not

receive such a license or other approval, except as follows:

(i) A foreign governmental entity in the U.S. may receive a license or other approval;

(ii) A foreign person may receive a reexport or retransfer approval; or

(iii) A foreign person may receive a prior approval for brokering activities.

A request for a license or other approval by a U.S. person or by a person referred to in paragraphs (c)(1)(i) and (c)(1)(iii) of this section will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., charged by criminal information in lieu of indictment) with violating the U.S. criminal statutes enumerated in § 120.27, who are ineligible to contract with or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension, or revocation under § 126.7(a) of this subchapter, are generally ineligible to be involved in activities regulated under the subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (see § 126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth in paragraph (c)(2) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

■ 3. Section 120.20 is revised to read as follows:

§ 120.20 License or other approval.

License means a document bearing the word "license" issued by the Managing Director, Directorate of Defense Trade Controls, or his authorized designee that permits the export, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.

Other approval means a document issued by the Managing Director, Directorate of Defense Trade Controls, or his authorized designee, that

approves an activity regulated by this subchapter (e.g., approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

■ 4. Section 120.25 is amended by revising paragraph (a)(4)(i) and adding paragraph (b), to read as follows:

§ 120.25 Empowered official.

(a) * * *

(4) * * *

(i) Inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant;

* * * * *

(b) For the purposes of a broker who is a foreign person, the empowered official may be a foreign person who otherwise meets the criteria for an empowered official in paragraph (a) of this section.

■ 5. Section 120.27 is amended by revising paragraphs (a)(3), (a)(6), (a)(8), (a)(12), and (a)(13), removing and reserving paragraph (a)(11), and adding paragraphs (a)(14) through (a)(18), to read as follows:

§ 120.27 U.S. criminal statutes.

(a) * * *

(3) Section 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information) or section 2332d, 2339A, 2339B, 2339C, or 2339D of such title (relating to financial transactions with the government of a country designated as a country supporting international terrorism, providing material support to terrorists or terrorist organizations, financing of terrorism, or receiving military-type training from a foreign terrorist organization);

* * * * *

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2 or 78dd-3);

* * * * *

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(a));

* * * * *

(11) [Reserved]

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the statutes listed in this section);

(13) Sections 3, 4, 5, and 6 of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108-458 sections 6903-6906, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions

governing atomic weapons (42 U.S.C. 2122), radiological dispersal services (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175c);

(14) Sections 2779 and 2780 of title 22, United States Code (relating to fees of military sales agents and other payments, and transactions with countries supporting acts of international terrorism);

(15) Section 542 of title 18, United States Code (relating to the entry of goods by means of false statements), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations;

(16) Section 545 of title 18, United States Code (relating to smuggling goods into the United States), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations;

(17) Section 554 of title 18, United States Code (relating to smuggling goods from the United States), where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations; and

(18) Section 1001 of title 18, United States Code (relating to false statements or entries generally), Section 1831 of title 18, United States Code (relating to economic espionage), and Section 1832 of title 18, United States Code (relating to theft of trade secrets) where the underlying offense involves a defense article, including technical data, or violations related to the Arms Export Control Act or International Traffic in Arms Regulations.

* * * * *

■ 6. Section 120.40 is added to read as follows:

§ 120.40 Affiliate.

An *affiliate* of a registrant is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such registrant.

Note to § 120.40: For purposes of this section, "control" means having the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is rebuttably presumed to exist where there is ownership of 25 percent or more of the outstanding voting securities if no other person controls an equal or larger percentage.

■ 7. Section 120.43 is added and reserved, as follows:

§ 120.43 [Reserved]

■ 8. Section 120.44 is added to read as follows:

§ 120.44 Foreign defense article or defense service.

Foreign defense article or defense service means any article or service described on the U.S. Munitions List of non-U.S. origin. Unless otherwise provided in this subchapter, the terms *defense article* and *defense service* refer to both U.S. and foreign origin defense articles and defense services described on the U.S. Munitions List. A defense article or defense service is determined exclusively in accordance with the Arms Export Control Act and this subchapter, regardless of any designation (either affirming or contrary) that may be attributed to the same article or service by any foreign government or international organization.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

■ 9. The authority citation for part 122 is revised to read as follows:

Authority: Sections 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); 22 U.S.C. 2651a; E.O. 13637, 78 FR 16129.

■ 10. Section 122.1 is revised to read as follows:

§ 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls under § 122.2. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service. A manufacturer who does not engage in exporting must nevertheless register. (See part 129 of this subchapter for requirements for registration of persons who engage in brokering activities.)

(b) *Exemptions.* The registration requirements of paragraph (a) of this section do not apply to:

(1) Officers and employees of the U.S. Government acting in an official capacity;

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only;

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended; or

(4) Persons who engage in the fabrication of articles solely for experimental or scientific purposes, including research and development.

Note to paragraph (b): Persons who qualify for the exemptions in paragraphs (b)(2) or (b)(4) of this section remain subject to the requirements for licenses or other approvals for exports of defense articles and defense services and may not receive an export license or approval unless registered under § 122.2.

(c) *Purpose.* Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter, unless an exception is granted by the Directorate of Defense Trade Controls.

■ 11. Section 122.2 is amended by revising paragraphs (a), (b)(1), and (b)(2), to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* An intended registrant must submit a Statement of Registration (Department of State form DS-2032) to the Office of Defense Trade Controls Compliance by following the submission guidelines available on the Directorate of Defense Trade Controls Web site at www.pmdtcc.state.gov. The Statement of Registration must be signed by a U.S. person senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel) who has been empowered by the intended registrant to sign such documents. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.40 of this subchapter). The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the U.S. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) * * *

(1) Whether the intended registrant or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers,

presidents, vice presidents, secretaries, partners, members, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in § 120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

■ 12. Section 122.3 is amended by revising paragraph (a) to read as follows:

§ 122.3 Registration fees.

(a) *Frequency of registration and fee.* A person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS-2032) and payment of a fee following the payment guidelines available on the Directorate of Defense Trade Controls Web site at www.pmdt.state.gov. For those renewing a registration, notice of the fee due for the next year's registration will be sent to the registrant of record at least 60 days prior to its expiration date.

■ 13. Section 122.4 is amended by revising paragraph (a), and adding notes to paragraph (a), to read as follows:

§ 122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, provide to the Directorate of Defense Trade Controls a written

notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel), if:

(1) Any of the persons referred to in § 122.2(b) is indicted or otherwise charged (e.g., by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year, or becomes ineligible to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. Government; or

(2) There is a change in the following information contained in the Statement of Registration:

(i) Registrant's name; .

(ii) Registrant's address;

(iii) Registrant's legal organization structure;

(iv) Ownership or control;

(v) The establishment, acquisition, or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in manufacturing defense articles, exporting defense articles or defense services; or

(vi) Board of directors, senior officers, partners, or owners.

Note 1 to paragraph (a): All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (a): For one year from the effective date of the rule, "Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions," RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: Pursuant to § 129.3(d) of this subchapter, changes to combine an existing broker registration with an existing manufacturer/exporter registration; and pursuant to § 122.2(a) of this subchapter, changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

■ 14. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR,

1994 Comp., p. 899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117; Pub. L. 111-266; Sections 7045 and 7046, Pub. L. 112-74; E.O. 13637, 78 FR 16129.

* * * * *

■ 15. Section 126.1 is amended by revising paragraphs (a), (b), and (e), and adding a note to paragraph (e), to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

(a) *General.* It is the policy of the United States to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, and the Republic of the Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a Department of State notice published in the **Federal Register**. The exemptions provided in this subchapter, except §§ 123.17, 126.4, and 126.6 of this subchapter or when the recipient is a U.S. Government department or agency, do not apply with respect to defense articles or defense services originating in or for export to any proscribed countries, areas, or persons identified in this section or to brokering activities involving such countries, areas, or persons. (See § 129.7 of this subchapter, which imposes restrictions on brokering activities similar to those in this section.)

(b) *Shipments.* A defense article licensed or otherwise authorized for export, temporary import, reexport, or retransfer under this subchapter may not be shipped on a vessel, aircraft, spacecraft, or other means of conveyance that is owned by, operated by, leased to, or leased from any of the proscribed countries, areas, or other persons referred to in this section.

* * * * *

(e)(1) *Proposed and final sales.* No sale, export, transfer, reexport, or retransfer of, and no proposal or presentation to sell, export, transfer, reexport, or retransfer, any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person

acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

(2) *Duty to notify.* Any person who knows or has reason to know of a proposed, final, or actual sale, export, transfer, reexport, or retransfer of articles, services, or data as described in paragraph (e)(1) of this section must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

Note to paragraph (e): "Proposal" and "presentation" mean the communication of information in sufficient detail that it would permit an intended purchaser to decide to acquire the article in question or to enter into an agreement as described in part 124 of this subchapter. For example, communicating information on the equipment's performance characteristics, price, and probable availability for delivery would be a proposal or presentation requiring a license or other approval.

* * * * *

■ 16. Section 126.13 is amended by revising paragraphs (a)(1) through (a)(4), (b), and (c), to read as follows:

§ 126.13 Required information.

(a) * * *

(1) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter;

(2) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this

subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. government; and

(4) The natural person signing the application, notification, or other request for approval (including the statement required by this subchapter) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(20), 66 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

(b) In addition, all applications for licenses must include the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. Port Directors of U.S. Customs and Border Protection and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license to make shipments under the license, and only to those foreign consignees and foreign intermediate consignees listed on the license. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees and foreign intermediate consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when natural foreign persons are employed at or assigned to security-cleared facilities, provision by the applicant of a technology control plan will facilitate processing.

PART 127—VIOLATIONS AND PENALTIES

■ 17. The authority citation for part 127 is revised to read as follows:

Authority: Sections 2, 38, and 42, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; E.O. 13637, 78 FR 16129.

■ 18. Section 127.1 is amended by adding paragraph (a)(5), and revising paragraphs (a)(3), (a)(4), (c), (d), and (e), to read as follows:

§ 127.1 Violations.

(a) * * *

(3) To import or attempt to import any defense article whenever a license is required by this subchapter;

(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported, imported, reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter; or

(5) To possess or attempt to possess any defense article with intent to export or transfer such defense article in violation of 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

* * * * *

(c) Any person who is granted a license or other approval or acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, brokers, and all authorized persons to whom possession of the defense article, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article abroad. All persons abroad subject to U.S. jurisdiction who obtain custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and regardless of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(d) A person who is ineligible pursuant to § 120.1(c)(2) of this subchapter, or a person with knowledge that another person is ineligible pursuant to § 120.1(c)(2) of this subchapter, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to and written authorization from the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any manner in any transaction that may involve any defense article, which includes technical data, defense services, or brokering activities subject to this subchapter, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully attempt, solicit, cause, or aid, abet, counsel, demand, induce, procure,

or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

■ 19. Section 127.2 is amended by revising paragraph (b)(13) to read as follows:

§ 127.2 Misrepresentation and omission of facts.

* * * * *

(b) * * *

(13) Any other document used in the regulation or control of a defense article, defense service, or brokering activity regulated by this subchapter.

* * * * *

■ 20. Section 127.7 is revised to read as follows:

§ 127.7 Debarment.

(a) *Administrative debarment.* In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may debar and thereby prohibit any person from participating directly or indirectly in any activities that are subject to this subchapter for any of the reasons listed below. Any such prohibition is referred to as an administrative debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for administrative debarment, which generally shall be for a period of three years. Reinstatement is not automatic, however, and in all cases the debarred persons must submit a request for reinstatement and be approved for reinstatement before engaging in any activities subject to this subchapter. (See part 128 of this subchapter for administrative procedures.)

(b) *Statutory debarment.* Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in section 38(g)(1) of the Arms Export Control Act. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are statutorily debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason

shall be published periodically in the **Federal Register**. Statutory debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(c) *Grounds.* (1) The basis for statutory debarment, as described in paragraph (b) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, as described in paragraph (a) of this section and in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (b) of this section may appeal to the Under Secretary of State for Arms Control and International Security for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter will be used in submitting a reconsideration appeal.

■ 21. Section 127.8 is removed and reserved, as follows:

§ 127.8 [Reserved]

■ 22. Section 127.9 is revised to read as follows:

§ 127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Political-Military Affairs debarring a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to the basis for the suspension will be given.

PART 128—ADMINISTRATIVE PROCEDURES

■ 23. The authority citation for part 128 is revised to read as follows:

Authority: Sections. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22

U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; E.O. 12291, 46 FR 1981; E.O. 13637, 78 FR 16129.

■ 24. Section 128.2 is revised to read as follows:

§ 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7 and 128.3 through 128.16 of this subchapter.

■ 25. Section 128.3 is amended by revising paragraph (a) to read as follows:

§ 128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Deputy Assistant Secretary of State for Defense Trade Controls or the Director, Office of Defense Trade Controls Compliance, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter, respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provision involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

■ 26. Section 128.15 is amended by revising paragraph (a) to read as follows:

§ 128.15 Orders containing probationary periods.

(a) *Revocation of probationary periods.* A debarment order may set a probationary period during which the order may be held in abeyance for all or part of the debarment period, subject to the conditions stated therein. The Managing Director, Directorate of Defense Trade Controls, may apply, without notice to any person to be affected thereby, to the Administrative Law Judge for a recommendation on the appropriateness of revoking probation when it appears that the conditions of

the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary of State for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order. The party affected by this action may request the Assistant Secretary of State for Political-Military Affairs to reconsider the decision by submitting a request within 10 days of the date of the order.

* * * * *

■ 27. Section 128.17 is revised to read as follows:

§ 128.17 Availability of orders.

All charging letters, debarment orders, and orders imposing civil penalties and probationary periods are available for public inspection in the Public Reading Room of the Department of State.

PART 129—REGISTRATION AND LICENSING OF BROKERS

■ 28. The authority citation for part 129 is revised to read as follows:

Authority: Section 38, Pub. L. 104-164, 110 Stat. 1437, (22 U.S.C. 2778); E.O. 13637, 78 FR 16129.

■ 29. The table of contents for part 129 is revised to read as follows:

- 129.1 Purpose.
- 129.2 Definitions.
- 129.3 Requirement to register.
- 129.4 Requirement for approval.
- 129.5 Exemption from requirement for approval.
- 129.6 Procedures for obtaining approval.
- 129.7 Policy on embargoes and other proscriptions.
- 129.8 Submission of Statement of Registration, registration fees, and notification of changes in information furnished by registrants.
- 129.9 Guidance.
- 129.10 Reports.
- 129.11 Maintenance of brokering records by registrants.

■ 30. Section 129.1 is revised to read as follows:

§ 129.1 Purpose.

(a) Section 38(b)(1)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.

(b) The brokering activities identified in this subchapter apply to those defense articles and defense services

controlled for purposes of export on the U.S. Munitions List (see part 121 of this subchapter) or for purposes of permanent import on the U.S. Munitions Import List (see 27 CFR part 447).

■ 31. Section 129.2 is revised to read as follows:

§ 129.2 Definitions.

As used in this part:

(a) *Broker* means any person (see § 120.14 of this subchapter) described below who engages in the business of brokering activities:

- (1) Any U.S. person (see § 120.15 of this subchapter) wherever located;
- (2) Any foreign person (see § 120.16 of this subchapter) located in the United States; or
- (3) Any foreign person located outside the United States where the foreign person is owned or controlled by a U.S. person.

Note to paragraph (a)(3): For purposes of this paragraph, "owned by a U.S. person" means more than 50 percent of the outstanding voting securities of the firm are owned by a U.S. person, and "controlled by a U.S. person" means one or more U.S. persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. U.S. person control is rebuttably presumed to exist where U.S. persons own 25 percent or more of the outstanding voting securities unless one foreign person controls an equal or larger percentage.

(b) *Brokering activities* means any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.

(1) Such action includes, but is not limited to:

- (i) Financing, insuring, transporting, or freight forwarding defense articles and defense services; or
- (ii) Soliciting, promoting, negotiating, contracting for, arranging, or otherwise assisting in the purchase, sale, transfer, loan, or lease of a defense article or defense service.

(2) Such action does not include:

- (i) Activities by a U.S. person in the United States that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export);
- (ii) Activities by employees of the U.S. Government acting in an official capacity;
- (iii) Activities by regular employees (see § 120.39 of this subchapter) acting on behalf of their employer, including those regular employees who are dual nationals or third-country nationals that satisfy the requirements of § 126.18 of this subchapter;

Note to paragraph (b)(2)(iii): The exclusion does not apply to persons subject to U.S. jurisdiction with respect to activities involving a defense article or defense service originating in or destined for any proscribed country, area, or person identified in § 126.1 of this subchapter.

(iv) Activities that do not extend beyond administrative services, such as providing or arranging office space and equipment, hospitality, advertising, or clerical, visa, or translation services, collecting product and pricing information to prepare a response to Request for Proposal, generally promoting company goodwill at trade shows, or activities by an attorney that do not extend beyond the provision of legal advice to clients;

(v) Activities performed by an affiliate, as defined in § 120.40 of this subchapter, on behalf of another affiliate; or

(vi) Activities by persons, including their regular employees (see § 120.39 of this subchapter), that do not extend beyond acting as an end-user of a defense article or defense service exported pursuant to a license or other approval under parts 123, 124, or 125 of this subchapter, or subsequently acting as a reexporter or retransferor of such article or service under such license or other approval, or under an approval pursuant to § 123.9 of this subchapter.

(c) For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of brokering as described in paragraph (b) of this section.

■ 32. Section 129.3 is revised to read as follows:

§ 129.3 Requirement to register.

(a) Except as provided in paragraph (b) of this section, any person who engages in brokering activities (see § 129.2) is required to register with the Directorate of Defense Trade Controls. Registration under this section is generally a precondition for the issuance of approval for brokering activities required under this part 129 or the use of exemptions.

(b) *Exemptions.* Registration, approval, recordkeeping, and reporting under this section are not required for:

- (1) Foreign governments or international organizations, including their employees, acting in an official capacity; or
- (2) Persons exclusively in the business of financing, insuring, transporting, customs brokering, or freight forwarding, whose activities do not extend beyond financing, insuring, transporting, customs brokering, or freight forwarding. Examples include air carriers or freight forwarders that merely

transport or arrange transportation for licensed defense articles, and banks or credit companies who merely provide commercially available lines or letters of credit to persons registered or required to register in accordance with parts 122 or 129 of this subchapter. However, banks, firms, or other persons providing financing for defense articles or defense services are required to register under certain circumstances, such as when the bank or its employees are directly involved in arranging transactions involving defense articles or defense services or hold title to defense articles, even when no physical custody of defense articles is involved. In such circumstances, the banks, firms, or other persons providing financing for defense articles or defense services are not exempt.

(c) Persons exempt from registration, approval, recordkeeping, and reporting as provided in § 129.3(b) are subject to the policy on embargoes and other proscriptions as outlined in § 129.7.

(d) U.S. persons who are registered as a manufacturer or exporter in accordance with part 122 of this subchapter, including their U.S. or foreign subsidiaries and other affiliates listed on their Statement of Registration who are required to register under this part, are not required to submit a separate broker registration or pay a separate broker registration fee when more than 50 percent of the voting securities are owned by the registrant or such subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.40 of this subchapter), and they are listed and identified as brokers within their manufacturer or exporter Statement of Registration. All other requirements of this part apply to such brokers and their brokering activities.

(e) Registration under this section is a precondition for the issuance of approval for brokering activities required under this section or the use of exemptions, unless an exception is granted by the Directorate of Defense Trade Controls.

■ 33. Sections 129.6, 129.7, 129.8, 129.5, 129.4, 129.10, and 129.9 are redesignated as §§ 129.4, 129.5, 129.6, 129.7, 129.8, 129.9, and 129.10 respectively.

■ 34. Newly redesignated § 129.4 is revised to read as follows:

§ 129.4 Requirement for approval.

(a) Except as provided in § 129.5, no person who is required to register as a broker pursuant to § 129.3 of this subchapter may engage in the business of brokering activities pursuant to § 129.2(b) without first obtaining the

approval of the Directorate of Defense Trade Controls for the brokering of any of the following:

(1) Any foreign defense article or defense service (see § 120.44 of this subchapter, and § 129.5 for exemptions); or

(2) Any of the following U.S. origin defense articles or defense services:

(i) Firearms and other weapons of a nature described by Category II(a) through (d), Category II(a) and (d), and Category III(a) of § 121.1 of this subchapter;

(ii) Rockets, bombs, and grenades as well as launchers for such defense articles of a nature described by Category IV(a), and launch vehicles and missile and anti-missile systems of a nature described by Category IV(b) of § 121.1 of this subchapter (including man-portable air-defense systems);

(iii) Vessels of war described by Category VI of § 121.1 of this subchapter;

(iv) Tanks and military vehicles described by Category VII of § 121.1 of this subchapter;

(v) Aircraft and unmanned aerial vehicles described by Category VIII of § 121.1 of this subchapter;

(vi) Night vision-related defense articles and inertial platform, sensor, and guidance-related systems of a nature described by Category XII(c) and (d) of § 121.1 of this subchapter;

(vii) Chemical agents and precursors described by Category XIV(a), (c), and (e) of § 121.1 of this subchapter, biological agents and biologically derived substances described by Category XIV(b) of § 121.1 of this subchapter, and equipment described by Category XIV(f) of § 121.1 of this subchapter for dissemination of the chemical agents and biological agents described by Category XIV(a), (b), and (e) of § 121.1 of this subchapter;

(viii) Submersible vessels described by Category XX of § 121.1 of this subchapter; and

(ix) Miscellaneous articles of a nature described by Category XXI of § 121.1 of this subchapter.

■ 35. Newly redesignated § 129.5 is revised to read as follows:

§ 129.5 Exemption from requirement for approval.

(a) Unless paragraph (c) of this section applies, brokering activities undertaken for an agency of the U.S. Government pursuant to a contract between the broker and that agency are exempt from the requirement for approval provided that:

(1) The brokering activities concern defense articles or defense services solely for the use of the agency; or

(2) The brokering activities are undertaken for carrying out a foreign assistance or sales program authorized by law and subject to control by the President by other means, as demonstrated by one of the following conditions being met:

(i) The U.S. Government agency contract with the broker contains an explicit provision stating the contract supports a foreign assistance or sales program authorized by law and the contracting agency has established control of the activity covered by the contract by other means equivalent to that established under this subchapter; or

(ii) The Directorate of Defense Trade Controls provides written concurrence in advance that the condition is met.

(b) Unless paragraph (c) of this section applies, brokering activities regarding a foreign defense article or defense service (see § 120.44 of this subchapter) are exempt from the requirement for approval when arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.4(a)(2), for which approval is required.

(c) Brokers engaging in brokering activities described in paragraph (a) or (b) of this section are not exempt from obtaining approval from the Directorate of Defense Trade Controls if:

(1) The broker is not registered as required by § 129.3;

(2) The broker or any person who has a direct or indirect interest in or may benefit from the brokering activities, including any related defense article or defense service transaction, is ineligible as defined in § 120.1(c)(2) of this subchapter; or

(3) A country or person referred to in § 126.1 of this subchapter is involved in the brokering activities or such activities are otherwise subject to § 129.7.

(d) Brokers who use the exemptions in this section must comply with all other provisions of this part 129.

■ 36. Newly redesignated § 129.6 is revised to read as follows:

§ 129.6 Procedures for obtaining approval.

(a) All requests for approval of brokering activities must be made to the Directorate of Defense Trade Controls, be signed by an empowered official, and include the following information:

(1) The applicant's name, address and registration code;

(2) A certification on whether:

(i) The applicant or the chief executive officer, president, vice

presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter;

(ii) The applicant or the chief executive officer, president, vice presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(iii) To the best of the applicant's knowledge, any other person involved in the brokering activities enumerated in the request for approval as defined in § 129.2 is the subject of an indictment or has been otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(b) The request for approval shall describe fully the brokering activities that will be undertaken, including:

(1) The action to be taken by the applicant to facilitate the manufacture, export, import, or transfer of a defense article or defense service (which may be referred to as a "defense article or defense service transaction");

(2) The name, nationality, address, and place of business of all persons who may participate in the brokering activities;

(3) A description of each defense article or defense service that may be involved, including:

(i) The U.S. Munitions List category and sub-category for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(v) Estimated U.S. dollar value of defense articles and defense services;

(vi) Security classification; and

(vii) End-user and end-use; and

(4) A statement whether the brokering activities are related to a sale through

direct commercial sale or under the U.S. Foreign Military Sales program or other activity in support of the U.S. Government.

(c) The empowered official signing the request for approval shall include a certification that the request is complete and accurate.

(d) If at the time of submission certain information required by paragraph (b) of this section is not yet available, this fact must be stated and explained in the certification required by paragraph (c) of this section. The Directorate of Defense Trade Controls will take any such explanation into account in deciding whether to approve the request.

(e) The period of validity for an approval may not exceed four years.

■ 37. Newly redesignated § 129.7 is revised to read as follows:

§ 129.7 Policy on embargoes and other proscriptions.

(a) This section applies to brokering activities defined in § 129.2, regardless of whether the person involved in such activities has registered or is exempt from registration under § 129.3. The exemptions in § 129.5 from the requirement for approval are not applicable to brokering activities subject to this section.

(b) No person may engage in or make a proposal to engage in brokering activities that involve any country, area, or person referred to in § 126.1 of this subchapter without first obtaining the approval of the Directorate of Defense Trade Controls.

(c) No person may engage in or make a proposal to engage in brokering activities without first obtaining approval of the Directorate of Defense Trade Controls if such activities involve countries or persons identified by the Department of State through notice in the **Federal Register**, with respect to which certain limitations on defense articles or defense services are imposed for reasons of U.S. national security, foreign policy, or law enforcement interests (e.g., an individual subject to debarment pursuant to § 127.7 of this subchapter). (See § 127.1(c) of this subchapter for additional disclosure and approval requirements applicable to brokering activities.)

(d) It is the policy of the Department of State to deny requests for approval of brokering activities or proposals to engage in brokering activities involving the countries or persons referred to in paragraph (b) or (c) of this section. Any person who knows or has reason to know of brokering activities involving such countries or persons must immediately inform the Directorate of Defense Trade Controls.

■ 38. Section 129.4 is redesignated as § 129.8 revised to read as follows:

§ 129.8 Submission of Statement of Registration, registration fees, and notification of changes in information furnished by registrants.

(a) An intended registrant must submit a Department of State form DS-2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by following the submission guidelines available on the Directorate of Defense Trade Controls Web site at www.pmdtcc.state.gov. The Statement of Registration must be signed by a U.S. person senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel) who has been empowered by the intended registrant to sign such documents, with the exception that a foreign senior officer may sign the Statement of Registration if the intended registrant seeks only to register as a foreign broker. The Statement of Registration may include subsidiaries and affiliates when more than 50 percent of the voting securities are owned by the registrant or the subsidiaries and affiliates are otherwise controlled by the registrant (see § 120.40 of this subchapter). The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (e.g., foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration (form DS-2032) is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package.

(b)(1) *Frequency of registration and fee.* A person who is required to register must do so on an annual basis by submitting a completed Statement of Registration (form DS-2032) and a fee following the fee guidelines available on the Directorate of Defense Trade Controls Web site at www.pmdtcc.state.gov. Registrants are not required to submit a separate statement of registration and pay an additional fee when provisions in § 129.3(d) are met.

(2) *Expiration of registration.* A registrant must submit its request for registration renewal at least 30 days, but no earlier than 60 days, prior to the expiration date.

(3) *Lapse in registration.* A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of brokering defense articles or defense services.

(c) *Statement of Registration Certification.* The Statement of Registration (form DS-2032) of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant or its parent, subsidiary, or other affiliate listed in the Statement of Registration, or any of its chief executive officers, presidents, vice presidents, secretaries, partners, members, other senior officers or officials (e.g., comptroller, treasurer, general counsel), or any member of the board of directors of the intended registrant, or of any parent, subsidiary, or other affiliate listed in the Statement of Registration:

(i) Has ever been indicted or otherwise charged (e.g., charged by criminal information in lieu of indictment) for or has been convicted of violating any U.S. criminal statutes enumerated in § 120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government; and

(2) Whether the intended registrant is foreign owned or foreign controlled (see § 120.37 of this subchapter). If the intended registrant is foreign owned or foreign controlled, the certification shall include an explanation of such ownership or control, including the identities of the foreign person or persons who ultimately own or control the registrant. This requirement applies to a registrant who is a U.S. person and is owned or controlled by a foreign person. It also applies to a registrant who is a foreign person and is owned or controlled by a foreign person from the same country or a foreign person from another country.

(d) A registrant must, within five days of the event, provide to the Directorate of Defense Trade Controls a written notification, signed by a senior officer (e.g., chief executive officer, president, secretary, partner, member, treasurer, general counsel), if:

(1) Any of the persons referred to in § 129.8(c) is indicted or otherwise

charged (e.g., charged by criminal information in lieu of indictment) for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or violating a foreign criminal law on exportation of defense articles where conviction of such law carries a minimum term of imprisonment of greater than 1 year; or becomes ineligible to contract with, or to receive a license or other approval to export or import defense articles or defense services from, any agency of the U.S. government; or

(2) There is a change in the following information contained in the Statement of Registration (form DS-2032):

- (i) Registrant's name;
- (ii) Registrant's address;
- (iii) Registrant's legal organization structure;
- (iv) Ownership or control;
- (v) The establishment, acquisition or divestment of a U.S. or foreign subsidiary or other affiliate who is engaged in brokering activities or otherwise required to be listed in registrant's Statement of Registration; or
- (vi) Board of directors, senior officers, partners and owners.

Note 1 to paragraph (d): All other changes in the Statement of Registration must be provided as part of annual registration renewal.

Note 2 to paragraph (d): For one year from October 25, 2013, "Amendment to the International Traffic in Arms Regulations: Registration and Licensing of Brokers, Brokering Activities, and Related Provisions," RIN 1400-AC37, the following changes must be provided as part of the annual registration renewal: pursuant to § 129.3(d), changes to combine an existing broker registration with an existing manufacturer/exporter registration, and pursuant to § 129.8(a), changes to an existing registration to remove partially owned and not otherwise controlled subsidiaries or affiliates, which are not the subject of an internal reorganization, merger, acquisition, or divestiture.

(e) A U.S. or foreign registrant must provide written notification to the Directorate of Defense Trade Controls at least sixty (60) days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any parent, subsidiary, or other affiliate listed and covered in its Statement of Registration. Such notice does not relieve the registrant from obtaining any prior approval required under this subchapter.

(f) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company, shall advise the Directorate of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names;

(2) The registration number that will continue and those that are to be discontinued (if any); and

(3) The numbers of all approvals for brokering activities under the continuing registration number, since any approval not the subject of notification will be considered invalid.

(g) A registrant whose registration lapses because of failure to renew and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of brokering activities.

■ 39. Newly redesignated § 129.9 is revised to read as follows:

§ 129.9 Guidance.

(a) Any person desiring guidance on whether an activity constitutes a brokering activity within the scope of this part 129 may request in writing guidance from the Directorate of Defense Trade Controls. The request for guidance shall identify the applicant and registrant code (if applicable) and describe fully the activities that will be undertaken, including:

(1) The specific activities to be undertaken by the applicant and any other U.S. or foreign person;

(2) The name, nationality, and geographic location of all U.S. and foreign persons who may participate in the activities;

(3) A description of each defense article or defense service that may be involved, including:

(i) The U.S. Munitions List category and sub-category for each article;

(ii) The name or military nomenclature of each defense article;

(iii) Whether the defense article is significant military equipment;

(iv) Estimated quantity of each defense article;

(v) Estimated U.S. dollar value of defense articles and defense services; and

(vi) Security classification;

(4) End-user and end-use; and

(5) A copy of any agreement or documentation, if available, between or among the requester and other persons who will be involved in the activity or related transactions that describes the activity to be taken by such persons.

(b) If at the time of submission certain information is not yet available, this circumstance must be stated and explained. The Directorate of Defense Trade Controls will take the completeness of the information into account in providing guidance on whether the activities constitute brokering activities. The guidance will

constitute an official determination by the Department of State. The guidance shall not substitute for approval when required under § 129.4.

(c) Persons desiring guidance on other aspects of this part may also request guidance from the Directorate of Defense Trade Controls in a similar manner by submitting a description of the relevant facts or copies of relevant documentation.

■ 40. Newly redesignated § 129.10 is revised to read as follows:

§ 129.10 Reports.

(a) Any person required to register under this part (including those registered in accordance with § 129.3(d)) shall provide to the Directorate of Defense Trade Controls on an annual basis a report of its brokering activities in the previous twelve months. Such report shall be submitted along with the registrant's annual renewal submission or, if not renewing, within 30 days after expiration of registration.

(b) The report shall include brokering activities that received or were exempt from approval as follows:

(1) The report shall identify the broker's name, address, and registration code and be signed by an empowered official who shall certify that the report is complete and accurate. The report shall describe each of the brokering activities, including the number assigned by the Directorate of Defense Trade Controls to the approval or the exemption claimed; and

(2) For each of the brokering activities, the report shall identify all persons who participated in the activities, including each person's name, address, nationality, and country where located and role or function; the quantity, description, and U.S. dollar value of the defense articles or defense services; the type and U.S. dollar value of any consideration received or expected to be received, directly or indirectly, by any person who participated in the brokering activities, and the source thereof.

(c) If there were no brokering activities, the report shall certify that there were no such activities.

■ 41. Section 129.11 is added to read as follows:

§ 129.11 Maintenance of brokering records by registrants.

A person who is required to register pursuant to this part (including those registered in accordance with § 129.3(d)) must maintain records concerning

brokering activities in accordance with § 122.5 of this subchapter.

Rose E. Gottemoeller,
Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2013-20743 Filed 8-23-13; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0771]

Drawbridge Operation Regulation; Trent River, New Bern, NC

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 US 70/Alfred C. Cunningham Bridge across the Trent River, mile 0.0, at New Bern, NC. The deviation is necessary to allow the annual Neuse River Bridge Run participants to safely complete their race without interruptions from bridge openings. This deviation allows the bridge draw span to remain in the closed-to-navigation position for three hours to accommodate the race.

DATES: This deviation is effective from 6:30 a.m. to 9:30 a.m. on October 19, 2013.

ADDRESSES: The docket for this deviation, [USCG-2013-0771] 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 Mrs. Jessica Shea, Coast Guard; telephone (757) 398-6422, email jessica.c.shea2@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION: The event director for the annual Neuse River Bridge Run, with approval from the

North Carolina Department of Transportation, owner of the drawbridge, has requested a temporary deviation from the operating schedule to accommodate the Neuse River Bridge Run.

The US 70/Alfred C. Cunningham Bridge operating regulations are set out in 33 CFR 117.843(a). The US 70/Alfred C. Cunningham Bridge across the Trent River, mile 0.0, a double bascule lift Bridge, in New Bern, NC, has a vertical clearance in the closed position of 14 feet above mean high water.

Under this temporary deviation, the drawbridge will be allowed to remain in the closed-to-navigation position from 6:30 a.m. to 9:30 a.m. on Saturday, October 19, 2013 while race participants are competing in the annual Neuse River Bridge Run.

Under the regular operating schedule where the bridge opens on signal during the timeframe for the race, the bridge opens several times every day for recreational vessels transiting to and from the local marinas located upstream. Although openings occur throughout the day, the morning hours have the fewest vessel transits.

Vessels able to pass through the bridge in the closed position may do so at anytime and are advised to proceed with caution. The bridge will be able to open for emergencies and there is no alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 12, 2013.

Waverly W. Gregory, Jr.,
Bridge Program Manager, Fifth Coast Guard District

[FR Doc. 2013-29673 Filed 8-23-13; 8:45 am]

BILLING CODE 9110-04-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2013-2; Order No. 1786]

Price Cap Rules for Certain Postal Rate Adjustments

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules addressing the price cap for market dominant price adjustments. Adoption of the rules follows a review of comments on proposed rules. In brief, proposed rules that generated no opposition have been adopted. Proposed rules that raised easily-resolved questions have been modified, as appropriate, and adopted. Action on proposals that generated significant opposition (such as the treatment of service reductions and promotional and incentive rates) has been deferred in the interest of additional research and analysis. Adoption of these rules will facilitate consideration of market dominant postal rate adjustments.

DATES: Effective September 25, 2013.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

72 FR 5230, February 5, 2007
72 FR 29284, May 25, 2007
72 FR 33261, June 15, 2007
72 FR 50744, September 4, 2007
72 FR 63622, November 9, 2007
73 FR 22490, April 16, 2013

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III. Changes Adopted In this Order
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I. Introduction

On March 22, 2013, the Commission issued a notice of proposed rulemaking relating to the Commission's price cap rules.¹ That notice was intended, in part, to clarify and improve the manner in which 39 CFR part 3010 implements statutory directives and policies previously expressed in Commission orders. See Order No. 1678 at 1.

The Commission received comments and reply comments from the Public Representative² and the Postal Service,³

¹ Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, March 22, 2013 (Order No. 1678). The Commission issued errata several days later. Notice of Errata, March 25, 2013 (Errata). See also 78 FR 22490, April 16, 2013.

² Public Representative Comments, May 17, 2013 (Public Representative Comments); Public Representative Reply Comments, May 31, 2013 (PR Reply Comments). The Public Representative Comments were accompanied by a motion for late acceptance asserting that no party is harmed by the delay in filing. Public Representative Motion for Late Acceptance, May 17, 2013. The motion is granted.

³ Initial Comments of the United States Postal Service, May 16, 2013 (Postal Service Comments); Reply Comments of the United States Postal

as well as the Association of Magazine Media (MPA),⁴ the Association for Postal Commerce (PostCom),⁵ the National Association of Presort Mailers (NAPM),⁶ Pitney Bowes Inc.,⁷ and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (Valpak).⁸ The National Postal Policy Council (NPPC) submitted reply comments.⁹

Some of the rules proposed in Order No. 1678 generated opposition. Others were relatively uncontroversial. The Commission finds that it will be beneficial to promptly adopt rules that were unopposed or raised issues that are easily resolved. The Commission will address the other proposed rules in later proceedings.

This order is organized as follows. First, proposed rules that generated no opposition are described and adopted. Next, proposed rules that raised questions that are easily resolved are described, modified as appropriate, and adopted. Finally, proposals concerning the treatment of service reductions and promotional and incentive rates that generated significant opposition requiring additional research and analysis are described. Action in these areas is deferred to a later date.

II. Uncontroversial Rules

No commenter objected to the reorganization of part 3010. Consequently, the Commission adopts the changes relating to the reorganization of part 3010, including changes to section numbers and cross-

Service, June 3, 2013 (Postal Service Reply Comments). The Postal Service's reply comments were accompanied by a motion for late acceptance of filing asserting that no party is prejudiced by the delay. Motion for Late Acceptance of Reply Comments, June 3, 2013. That motion is granted.

⁴ Comments of MPA—The Association of Magazine Media, May 16, 2013 (MPA Comments).

⁵ Comments of the Association for Postal Commerce, May 16, 2013 (PostCom Comments); Reply Comments of the Association for Postal Commerce, May 31, 2013 (PostCom Reply Comments).

⁶ Comments of the National Association of Presort Mailers, May 16, 2013 (NAPM Comments).

⁷ Comments of Pitney Bowes Inc., May 16, 2013 (Pitney Bowes Comments).

⁸ Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice of Proposed Rulemaking, May 16, 2013 (Valpak Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Notice of Proposed Rulemaking, May 31, 2013 (Valpak Reply Comments). Valpak also filed a reply to the late-filed reply comments of the United States Postal Service, along with a motion for leave to reply to the Postal Service's comments. Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Motion for Leave to File Response to Late-Filed Postal Service Reply Comments, June 4, 2013. This motion is granted.

⁹ Reply Comments of the National Postal Policy Council, May 31, 2013 (NPPC Reply Comments).

references. The balance of this order refers to provisions of part 3010 by the section and subpart numbers that appear in the final rules, as printed below the signature of this order.

Many of the rules proposed in Order No. 1678 generated either positive comments or no objections. In particular, commenters expressed approval of proposed §§ 3010.11(c) (providing for public comments on consistency with Commission orders and directives);¹⁰ 3010.12(e) (requiring that cost, avoided cost, volume, and revenue figures included in a notice be developed based on the most recent applicable analytical principles);¹¹ 3010.23(b), requiring that the percentage change in rates for a product be calculated in the same manner as the percentage change in rates for a class,¹² and 3010.43 (specifying that the Commission is interested in the change in net financial position resulting from an agreement).¹³

One of the substantive changes proposed by Order No. 1678 received no comment. Section 3010.11(g) reduces the comment period for remanded rates from 10 days to 7 days. This change reflects the Commission's experience in Docket No. R2013-1, in which a 7-day period was sufficient to solicit public comment concerning an amended notice of rate adjustment.¹⁴ The Commission adopts these changes.

Following is a section-by-section list of the changes the Commission finds to be uncontroversial. These changes are adopted and reflected in the final rules that appear below the signature of this order.

Section 3010.1 defines the terms "annual limitation," "maximum rate adjustment," "Type 1-A rate adjustment," "Type 1-B rate adjustment," "Type 2 rate adjustment," "Type 3 rate adjustment," and "unused rate adjustment authority." The definition of the term "class" is discussed in section III.A below.

Section 3010.2 reflects revisions that correct a statutory reference and ensure terms are used consistently.

Section 3010.3 reflects revisions that ensure terms are used consistently and move the requirement that the Postal Service maintain a schedule tracking unused rate adjustment authority to § 3010.26(f).

¹⁰ Valpak Comments at 2 ("Valpak supports this proposed rule change.").

¹¹ Pitney Bowes Comments at 2 ("The proposed change is a welcome improvement. . . .").

¹² Valpak Comments at 2.

¹³ *Id.* at 3 ("Valpak supports this proposed rule change.").

¹⁴ Order No. 1678 at 12.

Section 3010.4 reflects revisions that ensure terms are used consistently.

Section 3010.5 reflects revisions that strike duplicative provisions.

Section 3010.6 reflects revisions that ensure terms are used consistently.

Section 3010.7 reflects revisions that ensure terms are used consistently.

Section 3010.8(d) reflects revisions that strike an obsolete transition requirement.

Section 3010.8 reflects revisions that ensure terms are used consistently.

Section 3010.10 reflects revisions that ensure terms are used consistently and a revision to the heading to clarify the contents of the section.

The contents of former §§ 3010.11 and 3010.12 are included in §§ 3010.20, 3010.21, and 3010.22.

Section 3010.11 reflects revisions throughout that ensure cross-references are correct and terms are used consistently.

Section 3010.11(c) reflects revisions to clarify that comments on compliance with relevant statutory provisions and Commission orders and directives are permitted.

Section 3010.11(g) reflects revisions that change the comment period from 10 days to 7 days and provide that comments on amended notices may address subjects described in paragraph (c).

Section 3010.12 reflects revisions that strike paragraph headings and ensure terms are used consistently.

Section 3010.12 also reflects revisions that amend paragraph (b)(5) and add a paragraph (e) to require that cost, avoided cost, volume, and revenue figures be developed from the most recent approved analytical principles.

Changes to § 3010.12(c) relating to the filing of information concerning new discounts and surcharges are discussed in section III.B below.

Section 3010.20 incorporates provisions from former § 3010.11 and reflects revisions that ensure terms are used consistently.

Section 3010.22 reflects revisions that specify that it applies to rate adjustments filed less than 12 months apart, incorporate provisions from former § 3010.12, and ensures terms are used consistently.

Section 3010.23 reflects revisions throughout that ensure terms are used consistently. Further changes to this section are discussed in section III.D and IV.C.

Section 3010.23(b) reflects revisions that require the percentage change in rates for a product to be calculated in the same manner as for a class. The remainder of § 3010.23 is discussed at greater length below.

Section 3010.24 reflects revisions that specify that it applies to calculations under § 3010.23.

Section 3010.25 reflects revisions that clarify that unused rate adjustment authority may only be applied after applying the annual limitation.

Section 3010.26(c)(2) reflects revisions to correct cross-references.

Section 3010.27 reflects revisions that ensure terms are used consistently.

Section 3010.28 reflects a revision to the heading to clarify the contents of the section. An additional proposed change to this section is discussed in section III.F.

Former § 3010.29 is stricken as an obsolete transition provision.

Section 3010.41 reflects a revision to the heading to clarify the contents of the section.

Section 3010.42 reflects revisions that ensure consistent formatting and the consistent use of terms.

An additional comment concerning § 3010.42 is discussed in section III.G.

Section 3010.43 reflects revisions that specify that both a plan and a report are required and that the net financial position of the Postal Service should be reported.

Section 3010.44 reflects revisions that ensure terms are used consistently.

The heading of subpart E reflects revisions that ensure terms are used consistently.

Section 3010.60 reflects revisions that ensure terms are consistent with 39 U.S.C. 3622(d) and used consistently.

Section 3010.61 reflects revisions that ensure terms are consistent with 39 U.S.C. 3622(d) and used consistently.

Section 3010.62 reflects revisions that ensure terms are consistent with 39 U.S.C. 3622(d) and used consistently.

Section 3010.63 reflects revisions that are consistent with § 3010.12(b)(2) and ensure that terms are used consistently.

Section 3010.65 reflects revisions that ensure terms are used consistently.

Section 3010.66 reflects revisions that ensure terms are used consistently.

III. Changes Adopted in This Order

Interested parties submitted comments suggesting modifications to changes proposed in Order No. 1678 as well as additional changes to 39 CFR part 3010. The Commission has received sufficient information concerning several of these changes to address commenter concerns. This section discusses the changes that the Commission adopts, or declines to adopt, in this order. They are grouped by the section of 39 CFR part 3010 they affect or, if no single section of part 3010 is affected, by topic.

A. Section 3010.1(b)—Definition of “class”

One commenter suggests that the definition of the term “class” in § 3010.1(b) should be modified to more closely track the definition of the term “class” from 39 U.S.C. 3622(d)(2)(A). MPA Comments at 2. MPA argues that the proposed definition “is both circular and insufficiently precise.” *Id.* at 1. It asserts that applying the price cap rules at the class level is an essential requirement of the Postal Accountability and Enhancement Act (PAEA) that promotes rate stability and predictability. *Id.* at 2–3. MPA urges that the definition of “class” be modified to read that a class is a class of mail as defined in the Domestic Mail Classification Schedule in effect on the date of enactment of the Postal Accountability and Enhancement Act. *Id.* at 2.

Two commenters object to MPA’s proposed change. Valpak Reply Comments at 10–11; Postal Service Reply Comments at 5–6. Valpak objects to a definition of the term “class” that would apply to rate adjustments that are not subject to an annual limitation, such as negotiated service agreements and exigent rate adjustments. Valpak Comments at 10–11. It cautions that the proposed change has the potential to work against congressional intent when applied outside the context of 39 U.S.C. 3622(d). *Id.* at 11. Finally, it speculates that the proposed change is an attempt to protect mailpieces that were considered part of the Periodicals class at the time the PAEA was enacted from future reclassification to the First-Class Mail or Standard Mail class. *Id.* at 12. The Postal Service objects to MPA’s proposed change on the basis that it would require the Commission to ignore the effects of changes to the market dominant and competitive product lists made pursuant to 39 U.S.C. 3642. Postal Service Reply Comments at 5–6.

The Commission does not propose to apply the annual limitation under subpart B of part 3010 at anything other than the class level, consistent with the clear language of 39 U.S.C. 3622(d)(2)(A). However, the Commission does not intend to expand the annual limitation requirements to negotiated service agreements or exigent requests. Because the term “class” appears in the rules concerning exigent requests, particularly §§ 3010.61(a)(2) and 3010.63, the definition of that term for purposes of part 3010 should not be limited to the 39 U.S.C. 3622(d)(2)(A) definition. Additionally, the Commission does not intend to limit the ability of the Postal Service to seek

transfers of products between the market dominant and competitive product lists under 39 U.S.C. 3642 or to create, change, or remove products.

Rather, it seeks to use the definition of the term "class" to limit the scope of the part 3010 rules to market dominant postal products (as opposed to competitive products or nonpostal products). This approach is consistent with chapter 36 of title 39, United States Code, as a whole, not just 39 U.S.C. 3622(d)(2)(A). The revised § 3010.1(b) will read that a "class" means a class of market dominant postal products.

B. Section 3010.12(c)—Filing of Information for Discounts and Surcharges

Two commenters object to the proposed changes to § 3010.12(c) concerning information provided for workshare discounts and other discounts and surcharges. Valpak Comments at 6–7; NPPC Reply Comments at 8–9. Valpak argues that the proposed changes are "too broad" to address the workshare issues identified in Order No. 1678 and hints that the resulting requirement exceeds the Commission's statutory authority. Valpak Comments at 6. It also contends that the proposed rule would unnecessarily increase the administrative burden of the Postal Service in preparing notices of rate adjustments. *Id.* at 6–7. NPPC concurs with the Valpak Comments, arguing that Congress did not intend to impose the heightened standards for workshare discounts under 39 U.S.C. 3622(e)(4)(C) on other types of discounts or surcharges. NPPC Reply Comments at 6–7. NPPC goes further, though, positing that the proposed rule creates a substantive restriction on the Postal Service's ability to offer discounts, limiting it only to discounts that would not "adversely affect either the rates or the service levels" of postal users that do not use the discount." *Id.* at 8. NPPC suggests that the Commission should "simply defer, as an initial matter," to the Postal Service's judgment about what constitutes a workshare discount and then request supplemental information if necessary. *Id.* at 8–9.

The Commission, not the Postal Service, has the responsibility to determine what constitutes a workshare discount. See 39 U.S.C. 3622(e)(1); see also *U.S. Postal Service v. Postal Regulatory Commission*, 717 F.3d 209, 209 (D.C. Cir. 2013) citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 US 837 (1984). When faced with a Type 1–A or Type 1–B rate adjustment that must be approved or denied within 45 days, the Commission

may not be able to easily identify the discounts and surcharges that qualify as workshare discounts. On the other hand, the Commission has no desire to create an unnecessary administrative burden for the Postal Service.

Consistent with these goals, the Commission modifies proposed § 3010.12(c) to remove references to discounts and surcharges. It also adds a new paragraph (d) concerning the information that the Postal Service must file with respect to any discount or surcharge that it believes is not a workshare discount. Namely, the Postal Service must file an explanation of the basis for its belief that the discount or surcharge is not a workshare discount and a certification that its treatment of the discount or surcharge conforms with approved analytical principles. This information will enable the Commission to quickly determine whether it is necessary to request supplemental information concerning the discount in order to carry out the Commission's responsibilities under 39 U.S.C. 3622(e).

C. Sections 3010.21 and 3010.26—Calculation of Annual Limitation and Interim Unused Rate Adjustment Authority When Notices of Rate Adjustments Are 12 or More Months Apart

Commenters focused on two issues concerning the calculation of the annual limitation under § 3010.21. One of these issues, a proposal to incorporate reductions in service standards into the calculation of the annual limitation, is discussed in section IV.A below. The second issue concerns the appropriateness of using a 12-month period to calculate the annual limitation when notices of rate adjustment are more than 12 months apart. This issue is related to the questions of how and when interim unused rate adjustment authority that accrues between notices of rate adjustment may be used under § 3010.26.

The Postal Service requests that the Commission reconsider existing rules that require the annual limitation to be calculated using only the most recent 12 months of available data and interim unused rate adjustment authority to be calculated using data from the period preceding the most recent 12-month period. Postal Service Comments at 2. It argues that the proposed rules (as well as current Commission practices) create a "disincentive to waiting beyond twelve months to raise rates." *Id.* at 1. The Postal Service's objections seem to arise chiefly in two contexts: (1) in periods of deflation, or (2) in periods of high inflation. The Postal Service asserts that the Commission's reading of 39

U.S.C. 3622(d)(1)(A)—which requires that the annual limitation be equal to the change in the Consumer Price Index for All Urban Consumers (CPI-U) "over the most recent available 12-month period"—is "overly literal" and at odds with the Commission's rules allowing for calculation of a partial year limitation. *Id.* at 3. It proposes that the Commission use data from the entire period between notices of rate adjustment to calculate the annual limitation, not just from the most recent 12 months, and allow the Postal Service to decide whether to adjust rates to the full extent permissible consistent with the annual limitation. *Id.* at 3–4.

Two commenters object to proposed § 3010.26(d) and to the Postal Service's proposal to revisit the calculation of the annual limitation and interim unused rate adjustment authority.

The Public Representative argues that §§ 3010.21 and 3010.26 are contrary to both Order No. 606 and the requirement under 39 U.S.C. 3622(d)(2)(C)(iii)(III) that unused rate adjustment authority be used on a first-in, first-out (FIFO) basis. Public Representative Reply Comments at 2–4. He reads Order No. 606 to require that "interim [unused rate adjustment authority] be added to annual [unused rate adjustment authority], and both [. . .] become available for use by the Postal Service in future rate cases on a FIFO basis by the terms of 39 U.S.C. 3622(d)(2)(C)(iii)(III)." *Id.* at 3. He contends that proposed § 3010.26(d) allows the Postal Service to use interim unused rate adjustment authority immediately, a practice that he views as allowing the use of unused rate adjustment authority on a last-in, first-out basis. *Id.* at 4.

Valpak agrees that "it is not clear that the Commission's proposal is correct under PAEA." Valpak Reply Comments at 9. It argues that 39 U.S.C. 3622(d)(1)(D) prevents a rate adjustment that uses "more than 12 months of CPI-increase plus the earliest available banked authority," because the statute only allows rate adjustments that are "not in excess of the annual limitations." *Id.* (Emphasis in original). Valpak reads the plural "limitations" to refer to both the annual limitation (based on CPI-U) established under 39 U.S.C. 3622(d)(1)(A) and the limitation on the use of unused rate adjustment authority under 39 U.S.C. 3622(d)(2)(C). It argues that because section 3622(d)(2)(C)(iii)(III) specifies that unused rate adjustment authority may only be used on a first-in, first-out basis, interim unused rate adjustment authority may not be used in the same

case in which it is generated. *Id.* at 9–10.

The Commission agrees that section 3622(d)(2)(C)(iii)(III) requires the Postal Service to use unused rate adjustment authority on a first-in, first-out basis. However, Valpak's argument conflates the annual limitations under subparagraph (A) (*i.e.*, the annual limitations based on CPI-U) with the unused rate adjustment authority permitted under 39 U.S.C. 3622(d)(2)(C). Section 3622(d)(1)(D) clearly refers only to the CPI-U limitation established "under subparagraph (A)" (that is, under subparagraph (A) of § 3622(d)(1)). It would be a distortion of the statute to infer that the use of the plural "limitations" rather than the singular "limitation" in paragraph (1)(D) was meant to encompass both the annual limitation based on CPI-U and the unused rate adjustment authority calculated under paragraph (2)(C). That construction would require the Commission to ignore the modifiers surrounding the word "limitations" both "annual" that precedes it, and importantly, the "under subparagraph (A)" that follows.

Interim unused rate adjustment authority calculated pursuant to § 3010.26(c) is distinct from the annual unused rate adjustment authority calculated pursuant to § 3010.26(b). It allows the Postal Service to accrue some rate adjustment authority in the period between notices of rate adjustments that are more than 12 months apart while respecting the statutory directive that the annual limitation be calculated on a 12-month basis.

The plain language of section 3622(d)(1)(A) ("the most recent available 12-month period") prevents the Commission from accepting the Postal Service's request that it be allowed to include more than 12 months of data in the calculation of the annual limitation. Unused rate adjustment authority, on the other hand, is intended to take into consideration the amount of the rate adjustment that the Postal Service "actually makes" in a given year. 39 U.S.C. 3622(d)(2)(C)(i)(II). In instances where notices of rate adjustments are filed 12 or more months apart, the annual limitation does not allow the Postal Service to make a rate adjustment that would take into account the period in excess of 12 months.¹⁵ Interim unused rate adjustment authority is a means of addressing the difference between the period over which the statute allows the annual

limitation to be calculated and the actual period between notices of rate adjustment.

Section 3010.26(d) allows the Postal Service to use interim rate adjustment authority in the same case in which it is generated in order to take into consideration the economic events of the entire period between notices of rate adjustment. This authority is, of course, limited by the FIFO requirements of 39 U.S.C. 3622(d)(2)(C)(iii)(III) and 39 CFR 3010.27. In times of inflation, this practice has generally worked to the Postal Service's advantage, allowing it to use interim unused rate adjustment authority to increase prices consistent with the change in CPI-U over the entire period between notices of rate adjustment. Now, the Postal Service proposes that the Commission allow it to ignore periods of deflation (which can result in negative unused rate adjustment authority), but continue to calculate interim unused rate adjustment authority for periods of inflation. The Commission finds no legal basis for the Postal Service's proposed approach. Just as the Postal Service benefits from positive interim unused rate adjustment authority in periods of inflation, it must accept that in periods of deflation, interim unused rate adjustment authority will be negative.

The Commission does not find the use of interim unused rate adjustment authority to violate the FIFO principle of 39 U.S.C. 3622(d)(2)(C)(iii)(III). Contrary to the assertions of the Public Representative and Valpak, 39 CFR part 3010 does not permit the Postal Service to use interim unused rate adjustment authority before unused rate adjustment authority generated during the previous 5 years. When the Postal Service files a notice of rate adjustment more than 12 months after the previous notice of rate adjustment, the Commission immediately calculates both interim and annual unused rate adjustment authority under § 3010.26(c). The interim unused rate adjustment is immediately added to the schedule of unused rate adjustment authority described in § 3010.26(f) (commonly referred to as "the bank"). Section 3010.26(d) allows the Postal Service to use that interim unused rate adjustment authority in the same case in which it is generated, but only *after* it uses all unused rate adjustment authority from the previous 5 years.¹⁶ This is consistent

¹⁶ This is assuming the sum of the unused rate adjustment authority from the previous five years does not exceed 2 percentage points. If the sum of the unused rate adjustment authority from the previous five years exceeds 2 percentage points, the Postal Service could be prevented from using the

with the requirement under § 3010.27 that the unused rate adjustment authority used for a class to make a Type 1–B rate adjustment "shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice."

The Postal Service objects to this approach because it creates a "disincentive to waiting beyond twelve months to raise rates." Postal Service Comments at 1. The Commission's rules and past practice are based on 39 U.S.C. 3622, which was carefully crafted to foster the objective of predictable and stable rates. Increases are limited to the percentage change in CPI over the preceding 12 months plus up to 2 percent of previously unused authority. The Commission's current rules were designed to be consistent with this statutory scheme, as are the amendments approved in this order.

For these reasons, the Commission declines to alter its approach to the calculation and use of interim unused rate adjustment authority. However, the comments indicate that proposed § 3010.26(d) did not clearly convey the Commission's intent with respect to the use of interim unused rate adjustment authority. Accordingly, the Commission modifies § 3010.26(d).

D. Section 3010.23(d)—Anticipated Changes in Mailer Behavior

Two commenters suggest that § 3010.23(d) be altered to allow adjustments to billing determinants based on anticipated changes in mailer behavior. PostCom at 8–9; Postal Service Comments at 4–5. PostCom argues that a "complete prohibition on relying on anticipated changes in mailer behavior is too restrictive." PostCom Comments at 8. It points to Standard Mail Flats as an example of a product for which the Postal Service should be allowed to take into consideration the effect of potential mailer behavior on the ability of the product to cover costs. *Id.* Although it acknowledges that the Commission disapproved of this approach to Standard Mail Flats in Order No. 1541,¹⁷ it argues the Postal Service could "inadvertently drive volume to less profitable categories or out of the system entirely" if it does not take mailer behavior into consideration in setting rates. PostCom Comments at 8–9. PostCom advocates allowing the

interim unused rate adjustment authority generated in a case by operation of § 3010.28.

¹⁷ Docket No. R2013–1, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 16, 2012, at 39–41 (Order No. 1541).

¹⁵ For example, when notices of rate adjustment are filed 14 months apart, the "annual limitation" excludes the first 2 months of that period.

Postal Service to make adjustments to billing determinants based on anticipated changes in mailer behavior in particular cases if it can demonstrate that the changes are "reasonably likely to occur." *Id.* at 9.

The Postal Service proposes that the Commission establish a prohibition on the use of anticipated changes in mailer behavior to make adjustments to billing determinants as its "default approach" but also allow exceptions to the rules for "particular circumstances." Postal Service Comments at 4. The Postal Service points to two cases as examples of the Commission using anticipated changes in mailer behavior to make adjustments to billing determinants: the Full-Service Intelligent Mail barcode (IMb) discounts in Docket No. R2009-2 and the Mobile Barcode Promotion approved in Docket No. R2013-1. *Id.* at 4-5. It argues that these cases prove that the Commission should allow the Postal Service to use projections of mailer behavior "where it believes using historical volumes would either understate volumes or otherwise be inappropriate." *Id.* at 5.

Valpak opposes the use of anticipated changes in mailer behavior to make adjustments to billing determinants in any situation and supports the proposed rule as written. Valpak Reply Comments at 4-8. It quotes extensively from Order No. 1541 to support its contention that cost projections are not appropriate in a rate case. *Id.* at 4-6. It asserts that projections of mailer behavior are necessarily based on "assumptions, speculation, and uncertainty" that "should be open to challenge." *Id.* at 7. It further asserts that such challenges are not feasible under the "accelerated timetable" of a market dominant rate case. *Id.*

As the commenters point out, the Commission's experience with projections based on forecasts of anticipated mailer behavior has not been positive. As was the case with the Postal Service's projection of future volume changes associated with Standard Mail Flats, projections of mailer behavior carry the risk of relying on assumptions that are "unfounded," "unsupported," or "erroneous." See Order No. 1541 at 40. In Docket No. R2011-1, the Commission disapproved of the use of projections of mailer behavior.¹⁸

In contrast, the Commission found that the calculation of percentage change in rates for the Mobile Barcode

Promotion did not rely on "forecasts of expected volume." Order No. 1541 at 17. Rather, the Postal Service permissibly used "actual volumes . . ." from the promotion to make adjustments to billing determinants in Docket No. R2013-1. *Id.* The Commission does not intend for § 3010.23(d) to prevent adjustments to billing determinants similar to the adjustments made for the Mobile Barcode Promotion, "where historical volumes [were] available for the calculation of the effect of the price change resulting from the promotions on the price cap." *Id.* To the contrary: an adjustment that uses actual historical volumes to account for the effects of a classification change ameliorates the problems anticipated by Valpak.

A brief review of the development of § 3010.23(d) in Docket No. RM2007-1 demonstrates that the additional language is consistent with how the rule was originally intended to operate. In response to the Commission's initial advance notice of proposed rulemaking inviting comments on 39 U.S.C. 3622,¹⁹ the Postal Service outlined the basic concept that eventually formed the basis of § 3010.23(d).²⁰ The Postal Service proposed a method of calculating the average price change for each class using a fixed rate index of prices, where the prior year's billing determinants served as the weight for each rate cell that was proposed by the Postal Service, and allowing for adjustments to reflect changes in the rate design structure. *Id.*

To explore some of the important issues raised by commenters in the responses to Order No. 2, the Commission issued a second advance notice of proposed rulemaking, which asked parties to comment on several questions.²¹ The Commission specifically requested additional discussion about how adjustments to billing determinants might be developed in circumstances where historical billing determinants were not available. *Id.* at 5.

The Postal Service replied with an extended discussion of the issue.²² It distinguished between "mail

¹⁸ Docket No. RM2007-1, Order No. 2, Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, January 30, 2007 (Order No. 2).

¹⁹ Docket No. RM2007-1, Reply Comments of the United States Postal Service, May 7, 2007, Appendix C at 7-8.

²⁰ Docket No. RM2007-1, Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, May 17, 2007 (Order No. 15).

²¹ Docket No. RM2007-1, Initial Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking, June 18, 2007, at 7-10 (Postal Service Second Notice Comments).

characteristics which appear in the mailstream, but for which billing determinants are not available because those characteristics previously were not associated with distinct rate treatment" and "those characteristics which do not appear at all within the existing mailstream." *Id.* at 6-7. The Postal Service explained that in either case, "[t]o maintain consistency with historical billing determinants, of course, the focus must remain on the volume proportions as they exist without any rate distinction."²³ *Id.* at 8. It described the adjustments as a process whereby "the Postal Service would 'map' the historical volumes to the noticed price structure using the best data available. These data could include historical volume data (e.g., for shape distribution) that were not previously needed for postage calculation; the results of mail characteristics or market research studies; or, observed volume patterns for a recent period (shorter than a full year) for which the price structures were in effect." *Id.* at 9. The Postal Service anticipated that "all 'adjustments' to billing determinants would be explained . . . with the materials submitted with the Notice of Price Adjustment." *Id.*

PostCom initially expressed concern that the use of adjustments by the Postal Service might entangle the process in the difficulties of forecasting or rolling forward volumes.²⁴ The Alliance of Nonprofit Mailers (ANM) and the Magazine Publishers of America, Inc. (MPA) raised an additional concern that the Postal Service's approach would need to allow an exception to account for the price cap implications of "changes in mail preparation requirements" that require an adjustment "to reflect the impact of the rule change on rate eligibility."²⁵

The Postal Service explained that the concerns expressed by these commenters were founded on a

²³ The Postal Service further explained that estimating the volume change in response to new price incentives may be useful for other purposes, but that such an exercise should not be used "for purposes of calculating compliance with the cap." *Id.* at n.3.

²⁴ Docket No. RM2007-1, Comments of PostCom in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, June 18, 2007. After the Postal Service provided further clarification that forecasts and rollforwards would be unnecessary, PostCom found the approach "entirely reasonable". Docket No. RM2007-1, Reply Comments of PostCom in Response to Second Advance Notice of Proposed Rulemaking, July 3, 2007, at 4 (2007 PostCom Reply Comments).

²⁵ Docket No. RM2007-1, Initial Comments of Alliance of Nonprofit Mailers and Magazine Publishers of America, Inc. on Further Advance Notice of Proposed Rulemaking (Order No. 15), June 18, 2007, at 1-3.

¹⁸ Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010, at 19 (Order No. 606).

misunderstanding of both the Postal Service's intent and its proposed method of developing the billing determinant adjustments.²⁶ It emphasized that its approach represented "a sensible way to calculate compliance for new rate structures by the use of historical volumes, without the need for forecasts and rollforwards." *Id.* at 4 (footnote omitted). The Postal Service also described how billing determinant adjustments would be applied to ensure that a change in mail preparation requirements that shifts some mail into a different price category is fairly evaluated for compliance with the cap. *Id.* at 3.

Nearly all parties who commented on the issue in Docket No. RM2007-1 ultimately supported the Postal Service's proposed weighting system.

Many of the comments in support of this approach cited the fact that it would avoid "the complexity and practical difficulty of projected volume data" as an important element that would help ensure the speed³ and simplicity of the system of regulation envisioned by the PAEA.²⁷

With the broad support for the approach among commenters and the detailed explanations from the Postal Service of how it would be applied in various scenarios, the Commission's final rule adopted the concept of weighting the current and new rates by a fixed set of historical billing determinants, with adjustments based on additional historical mail characteristics data where necessary to reflect changes in the rate and classification structure.

Consistent with the original design of the rule and its past practice, the Commission finds that § 3010.23(d) should be modified to clarify that adjustments to billing determinants may not be based on forecasts of mailer

behavior. It is worth noting that, consistent with the discussion above, an adjustment that "maps" historical volume data to a noticed price structure, using the best available data, is not considered an adjustment based on forecasts of mailer behavior.²⁸ Paragraph (d) of § 3010.23 is revised accordingly.

E. Section 3010.26(f)—Clarify That Unused Rate Adjustment Authority Is a Series of Numbers Rather Than a Single Number

The Public Representative expressed concern that Order No. 1678 appears to refer to a single "calculation" of unused rate adjustment authority, rather than separate calculations for each class in each rate case. Public Representative Comments at 2. He notes, however, that proposed § 3010.26(f) properly reflects the complexity of unused rate adjustment authority calculations by requiring a table that tracks the establishment and subsequent use of unused rate adjustment authority by class.²⁹ The Public Representative is correct that unused rate adjustment is calculated for each class, in each rate case.

The Public Representative also expresses concern that the Commission "essentially treats [unused rate adjustment authority] for a class as a single, cumulative number—the sum of five years of [unused rate adjustment authority]." Public Representative Comments at 2. He correctly points out that 39 U.S.C. 3622(d)(2)(C) requires the Postal Service to use the oldest unused rate adjustment authority first, and does not require it to use the sum of the unused rate adjustment authority generated during the previous five years all at once. *Id.* at 2–3. The Commission finds that the proposed rules adequately express the nature of unused rate adjustment authority. Section 3010.20(d)(2) allows for a maximum rate adjustment that consists, in part, of "the unused rate adjustment authority for the class that the Postal Service elects to

use, subject to the limitation under § 3010.28." Section 3010.27 provides that the unused rate adjustment authority used in a case for a class "shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice." In combination, these rules allow the Postal Service to elect to use all, part, or none of its available unused rate adjustment authority, provided that it uses the oldest unused rate adjustment authority first.

Neither of the Public Representative's concerns appears to require a modification of the proposed rules.

F. Section 3010.28—Maximum Size of Unused Rate Adjustment Authority Rate Adjustment

One commenter argues that § 3010.28 "creates an ambiguity that arguably might allow the Postal Service to raise rates by two percent even when it lacks the unused rate authority necessary to do so." NPPC Reply Comments at 2. It suggests that § 3010.28 be revised.

The Commission finds this suggested change to be unnecessary. Section 3010.28 establishes the maximum amount of unused rate adjustment authority that may be used for a class in any one 12-month period. Nothing in the plain language of this section creates (or allows for the creation of) unused rate adjustment authority not generated pursuant to § 3010.26. A simple limitation on the amount of unused rate adjustment authority used in any one 12-month period is not enough to create additional authority.

G. Section 3010.42(f)—Projections of Changes in Net Financial Position Resulting From Market Dominant Negotiated Service Agreements

Valpak suggests that the Commission modify § 3010.42(f) to require that the Postal Service's projection of the change in net financial position resulting from a market dominant negotiated service agreement be based on "the Commission's methodology, including its choice of proxy." Valpak Comments at 11. In addition, Valpak proposes that the Commission detail how market dominant negotiated service agreements are reported in the Postal Service's Annual Compliance Report. *Id.* Valpak's concerns stem from the Postal Service's reporting concerning the Discover Financial Services 1 product. *Id.*

Requirements relating to the Annual Compliance Report are found in 39 CFR part 3050 and are outside the scope of this docket. The Commission will not address them here.

²⁶ Docket No. RM2007-1, Reply Comments of the United States Postal Service on the Second Advance Notice of Proposed Rulemaking, July 3, 2007, at 3–6.

²⁷ Docket No. RM2007-1, Reply Comments of Pitney Bowes Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, July 3, 2007, at 4; see also Initial Comments of Pitney Bowes Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, June 18, 2007, at 3–4; Comments of ADVO, Inc. in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, June 18, 2007, at 3; Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Regulations Establishing a System of Rate-making in Response to Commission Order No. 15, July 3, 2007, at 12–3; Initial Comments of the American Postal Workers Union AFL-CIO, in Response to Second Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Rate-making, June 18, 2007, at 3; 2007 PostCom Reply Comments at 4.

²⁸ The Postal Service indicated that it may wish to use "the results of mail characteristics or market research studies" to make adjustments to billing determinants. Postal Service Second Notice Comments at 9. If the Postal Service intends to use such studies to make adjustments to billing determinants in a particular rate case, the Commission encourages it to submit such studies to the Commission in advance of its notice of proposed rate adjustment, to provide the Commission and interested parties with additional time for review.

²⁹ *Id.* Section 3010.12(b)(2) also requires the Postal Service to submit with each notice of Type 1-A or Type 1-B rate adjustment a "schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years."

As for § 3010.42(f), the Commission reaffirmed its accepted analytical principle for the assessment of the financial effects of price incentives (including negotiated service agreements) designed to increase mail volume or shift mail volume between products in Docket No. RM2010-9.³⁰ In that docket, the Postal Service proposed a new methodology for calculating the financial impact of pricing incentive programs based on "trend analysis" to replace the Commission's elasticity-based methodology. *Id.* at 1. The Commission rejected the Postal Service's proposed methodology in favor of its accepted analytical principle that the financial effect of price incentive programs should be "based on the Postal Service's best estimate of the price elasticity of the discounted product." *Id.* at 3 (quotation marks omitted). However, the Commission also encouraged the Postal Service to continue to examine other methods for evaluating the financial impact of pricing incentive programs that would be based on "accurate and reliable data." *Id.* at 16.

Consistent with Order No. 738, the Commission finds that, although in many cases, the Commission's accepted analytical principles will provide the best available model for evaluating the net financial impact of a market dominant negotiated service agreement, part 3010 should not unnecessarily limit the Postal Service's ability to supplement its filing with an alternative analysis of the net financial impact. However, if the Postal Service elects to include a methodology that differs from the Commission's accepted analytical principles, it should include an explanation of why it believes its model produces a more accurate estimate than the Commission's. Including an alternative model does not remove the obligation to provide the Commission with a calculation of net financial impact that is based on the Commission's approved analytical principles. Finally, the Commission reminds the Postal Service that, as a general matter, if it develops improved methodologies it may propose them in a separate docket in accordance with 39 CFR 3050.11. Generally speaking, a petition under 39 CFR 3050.11 will provide the Commission and interested persons with a better opportunity to evaluate proposed methodologies thoroughly without delaying the consideration of a notice of a market dominant negotiated service agreement filed under 39 CFR 3010 subpart D.

³⁰ Docket No. RM2010-9, Order Terminating Proceeding, May 27, 2011 (Order No. 738).

In light of the foregoing considerations, the Commission modifies § 3010.42(f).

H. Library of Commission-Approved Cost Models

Two commenters support the establishment of an online, indexed library of the Commission's approved cost models. Pitney Bowes Comments at 2-3. Postal Service Reply Comments at 6. Pitney Bowes argues that such a library would be consistent with the goals of this docket, aid the Postal Service in complying with § 3010.12(e), and result in pricing decisions based on the most recent and accurate cost data. Pitney Bowes Comments at 3. It notes that the Postal Service previously requested similar information in connection with its FY 2012 Annual Compliance Report. *Id.* at 2. The Postal Service expresses its support for Pitney Bowes' recommendation. Postal Service Reply Comments at 6.

The development of rules to establish a library of Commission-approved cost models is beyond the scope of this rulemaking. Such regulation would more properly be considered in the context of 39 CFR part 3050 rules. The Commission will not address the ramifications of such rules here. However, the Commission agrees that such a library would be useful for the Postal Service and postal customers. It earlier made available on its Web site a chart identifying the most recent Commission-approved workshare cost avoidance models.³¹ The Commission will endeavor to provide additional and updated cost models as appropriate.

IV. Remaining Issues

Several of the proposed rules generated significant opposition or additional suggestions from commenters. The issues raised by the comments concerning these rules are discussed in this section. They include a proposal to include reductions in service quality in the calculation of the maximum rate adjustment, a proposal to alter the contents of notices concerning market dominant negotiated service agreements, and a number of proposals concerning the treatment of promotions and incentives. The Commission finds that these issues require additional research and analysis that exceed the scope of this docket and will defer consideration of them to a later date.

³¹ PRC Workshare Cost Avoidance Models. Last Update: 05/07/2013, available http://www.prc.gov/prc-docs/home/whatsnew/Directory%20of%20PRC%20Workshare%20Cost%20Avoidance%20Models_3155.pdf.

A. Reductions in Service

Two commenters support modifying 39 CFR part 3010 to take reductions in service quality into consideration when calculating the maximum rate adjustment for each notice. Valpak Comments at 7-11, NPPC Reply Comments at 9. Valpak alleges that "[u]ntil Commission rules state that some reductions in service, depending upon their severity or egregiousness, will be given consideration when determining the maximum price cap adjustment in any given year, the Postal Service each year will have unrestrained license to increase operating profitability by reducing the quality of service being provided to mailers and the public." Valpak Comments at 8. Both Valpak and NPPC assert that this is a problem common to price cap regimes generally. Valpak Comments at 7; NPPC Reply Comments at 9-12.

Valpak points to three actions by the Postal Service that it asserts have reduced (or have the potential to reduce) quality of service: Post office closings, reductions in hours of operation at post offices, and the proposal to eliminate Saturday delivery. Valpak Comments at 7. Valpak also uses the conversion to Full-Service IMb as an example of a change the Postal Service can make to "reduce its costs while increasing costs to mailers." *Id.* at 9. Valpak asserts that such changes should result in a reduction in the maximum rate adjustment that the Postal Service could make in a particular rate case. *Id.* In addition to echoing Valpak's concerns about network rationalization and Full-Service IMb, NPPC alleges that First-Class Mail service standards have already been reduced and that changes to Periodicals service standards are expected in the future. NPPC Reply Comments at 10.

This docket has not produced the information the Commission would need to amend its rules to include reductions in service quality in the calculation of the maximum rate adjustment. For instance, it is not clear whether such reductions can or should be considered when calculating the annual limitation under § 3010.21 or § 3010.22, when calculating the percentage change in rates under § 3010.23, or even when calculating the available amount of unused rate adjustment authority under § 3010.26. Although Valpak provides examples of changes, it believes reduce the quality of service provided by the Postal Service, it does not suggest a definition or other framework that the Commission could use to determine which changes result in a reduction in service quality that

would necessitate an adjustment to the maximum rate adjustment. NPPC proposes that adjustments to the maximum rate adjustment be made when "the Postal Service makes changes that reduce service quality, raise mailer costs, or force mailers into higher priced products" but does not specify how the Commission should determine when those conditions have been met. NPPC Reply Comments at 12. Additionally, as Valpak notes, its proposal does not address "the issue of what data to use when determining the extent" of a reduction in service quality. *Id.* at 10.

Finally, the Commission notes that neither Valpak nor NPPC discusses whether and how the price cap calculations might be adjusted to reflect improvements in service.

The Commission, therefore, does not proceed with these suggestions.

B. NSA Notice Contents

In addition to the change to § 3010.42(f) discussed in section III.G above, Valpak proposes two requirements relating to market dominant negotiated service agreements. Valpak Comments at 12–13. The first would be a requirement that the Postal Service identify the mailers it believes to be "similarly situated" to the mailer that is a party to the proposed negotiated service agreement. *Id.* at 12. This proposal is related to the Commission's consideration of the Valassis 1 product in Docket Nos. MC2012–14 and R2012–8. During that case, the Commission issued a Notice of Inquiry to obtain clarification concerning similarly situated mailers.

The second proposal is a requirement that the Postal Service explain why it would be "impracticable" to establish a niche classification instead of entering into a negotiated service agreement. *Id.* at 13. Valpak asserts that this requirement is similar to a regulation in effect before the enactment of the PAEA, and that it would address "systemic problems" with negotiated service agreements, including "preferences and discrimination." *Id.*

Both proposals present potential difficulties that are not fully explored in the Valpak Comments. For instance, the first proposal would require the Postal Service to make an initial complex determination about the universe of similarly situated mailers. Adding such a requirement could make the notice requirements under 39 CFR part 3010 subpart D unduly burdensome. Such a burden may be contrary to the goals of the PAEA, which requires the Commission to consider the desirability of the Postal Service entering into appropriate market dominant negotiated

service agreements. See 39 U.S.C. 3622(c)(10).

The second proposal, to require the Postal Service to justify its decision to enter into a negotiated service agreement rather than establish a niche classification, could infringe on the Postal Service's discretion with respect to the structure of its products. Nothing in 39 U.S.C. 3622(c)(10) requires the Postal Service to make "special classifications" generally available to mailers that are not similarly situated. Title 39 permits the Postal Service to make the reasonable business decision to use a negotiated service agreement rather than a niche classification in order to better understand the implications of new strategies before broadening those strategies to affect a wide range of customers. The choice to offer a negotiated service agreement instead of a niche classification is a reasonable way to limit the potential adverse effects of an unsuccessful initiative to the benefit of postal customers generally. Valpak fails to offer sufficient justification to support adding either of these requirements to the subpart D rules.

C. Promotions and Incentive Programs

Many of the comments filed in this docket concern the treatment of promotions and incentive programs. One commenter supported the rules as proposed. Several other commenters raised general objections to the idea of allowing the Postal Service to include temporary promotional rates in the calculation of the percentage change in rates.

Commenters also suggested a range of possible modifications to the proposed rules. Several of them focused on proposed paragraph (e) of § 3010.23, suggesting that the Commission change "may" to "shall" in order to require the Postal Service to exclude temporary promotional rates from the calculation of the percentage change in rates. PostCom suggests several alternative methods of accounting for temporary promotions which generated additional reply comments. The Postal Service suggests two alternatives to the proposed rules as well. These comments indicate that the treatment of promotional rates and incentive programs is likely to be crucial to the Commission's calculation of maximum rate adjustments in future rate cases. In order to allow for the development of a more complete record on this important issue, the Commission will open a separate docket to solicit targeted comments from interested persons.

1. General Comments

Alone among the commenters, the Public Representative supports proposed § 3010.23(e) and (f) without modification. Public Representative Reply Comments at 4. In particular, he argues that allowing the Postal Service to exclude some temporary promotions and incentives from the calculation of the percentage change in rates is appropriate. *Id.* Some promotions (like summer sales) are more like negotiated service agreements: Their primary goal is to generate volume. *Id.* These promotions should be excluded from the calculation of percentage change in rates. Some promotions, on the other hand, are more like investments. In these cases, the Public Representative argues that the Postal Service should be permitted to include promotional rates in the calculation of the percentage change in rates, in order to generate unused rate adjustment authority that would allow it to "recover" the investment from all mailers. *Id.*

The Postal Service generally supports the treatment of temporary promotions under the proposed rules, but suggests additional modifications to specifically provide for the treatment of mid-year promotions. Postal Service Reply Comments at 3–4. Those suggestions are discussed below.

Other commenters object to the inclusion of any temporary promotional rate in the calculation of the percentage change in rates. Three commenters claim that proposed § 3010.23(e) represents an arbitrary reversal of the Commission's past practice. Valpak Comments at 3–5; Valpak Reply Comments at 2–3; NAPM Comments at 3–4; NPPC Reply Comments at 2–3. The Valpak Comments cite seven dockets that excluded temporary promotions from the calculation of percentage change in rates. Valpak Comments at 3–4; see also NAPM Comments at 3–4. Valpak argues that the Commission failed to provide a reasoned analysis for what Valpak views as the Commission's change in position in Docket No. R2013–1. Valpak Comments at 5; see also NAPM Comments at 5. NPPC further objects that in Order No. 1541, the Commission did not announce that its treatment of promotional discounts represented a new approach. NPPC Reply Comments at 3. NAPM asserts that many of the objections raised in Docket No. R2013–1 were due to the treatment of temporary promotions, which "was a substantial departure from past practice." NAPM Comments at 4.

Two commenters assert that § 3010.23(e) and (f) are inequitable.

Valpak argues that the proposed rules are inequitable because they would allow the Postal Service to provide discounts to some mailers while increasing rates for other mailers. Valpak Comments at 5. It cites Docket No. R2013-6, the technology credit promotion, as an example of an attempt by the Postal Service to do just that. *Id.* at 5-6. Pitney Bowes focuses on the "inequitable" effects of a failed promotional program, and argues that under the proposed § 3010.23 "the Postal Service is held harmless . . . but the nonparticipating mailers pay." Pitney Bowes Comments at 3. Additionally, NPPC questions whether "requiring other (or future) mailers to pay higher rates to recover temporary promotional rates is just and reasonable under the PAEA . . ." NPPC Reply Comments at 5.

One commenter expresses concern that proposed § 3010.23(e) could allow the Postal Service to raise rates above the maximum rate adjustment. NPPC Reply Comments at 5. NPPC asserts that excluding temporary promotional rates from the calculation of the percentage change in rates has, until Docket No. R2013-1, been the Commission's safeguard against the possibility of exceeding the maximum rate adjustment. *Id.*

2. Changing "May" to "Shall"

Proposed paragraphs (e) and (f) of § 3010.23 would have permitted the Postal Service to exclude temporary promotional rates and incentive programs from the calculation of percentage change in rates if they resulted in an overall rate decrease. Four commenters propose modifying the Commission-proposed paragraph (e) to change the option to exclude temporary promotions into a requirement to exclude temporary promotions. PostCom Comments at 2-4; NAPM Comments at 4; Valpak Reply Comments at 2-3; NPPC Reply Comments at 6. They support substituting "shall" for "may" in proposed paragraph (e). PostCom characterizes this change as a codification of the Postal Service's past approach to temporary promotions. PostCom Comments at 3. It also argues that the change will provide additional certainty for mailers by making it easier for small mailers to evaluate the impact of a proposed temporary promotion. *Id.* at 4. PostCom suggests that it could support a "good cause" exception to its proposed general rule that temporary promotional rates must be excluded from the calculation of the percentage change in rates. *Id.* at 5.

NPPC supports the change from "may" to "shall," without a good cause exception, on the basis that the Commission's approach in Docket No. R2013-1 was "mistaken." NPPC Reply Comments at 6. Valpak and NAPM support this approach as well. Valpak Reply Comments at 3; NAPM Comments at 5. NAPM also proposes to strike paragraph (f) of § 3010.23. NAPM Comments at 5.

Although it does not explicitly support the suggestion to change "may" to "shall," Pitney Bowes proposes that the Commission "conform proposed rule 3010.23(e) to the analogous rule for NSAs, rule 3010.24(a)." Pitney Bowes Comments at 4. This approach would likely lead to the same results as changing "may" to "shall" in proposed § 3010.23(e) because it would require the Postal Service to exclude temporary promotional rates from the calculation of the percentage change in rates. Valpak supports this alternative approach. Valpak Reply Comments at 3.

3. PostCom Alternative and Additional Modifications

PostCom suggests an alternative to proposed § 3010.23(e): Clarifying that the Postal Service may include temporary promotional rates in the calculation of the percentage change in rates for a mid-year rate case if it uses § 3010.26(b) to calculate unused rate adjustment authority for that case. PostCom Comments at 5. This approach differs from the Postal Service's proposal in Docket No. R2013-6. In that docket, the Postal Service sought (unsuccessfully) to generate unused rate adjustment authority without adding it to the schedule of unused rate adjustment authority. *Id.* Valpak states that it prefers the change from "may" to "shall" to this alternative approach. Valpak Reply Comments at 2.

In addition, PostCom proposes two modifications to the proposed rules. The first would be to require that any unused rate adjustment authority resulting from a temporary promotion be used only to adjust rates for the product to which the temporary promotion applied. PostCom Comments at 6-7. Valpak dismisses this proposal as "an impossibility," due to the Postal Service's authority to set its own rates. Valpak Reply Comments at 12-13.

The second modification would be to "require the Postal Service to reconcile the volume sent at promotional rates with the adjustment authority it claims in its next scheduled price adjustment." PostCom Comments at 7. That is, the Commission should re-calculate the unused rate adjustment authority resulting from a temporary promotion

once it receives data concerning the actual volumes associated with the temporary promotion.

4. Postal Service Alternatives

The Postal Service objects to the approaches described above. Postal Service Reply Comments at 1. Instead, it proposes that the Commission "expand its proposed rules" to specifically address mid-year promotions. *Id.* at 3. The Postal Service's preferred method to address mid-year promotions is essentially the approach it proposed in Docket No. R2013-6: Allow the Postal Service "to forgo a full-scale rate adjustment authority calculation and simply calculate the authority resulting specifically from the promotion or rate decrease, and then use such authority in the next annual price adjustment, when a full rate adjustment authority calculation would be made." *Id.* The Commission rejected this approach in Order No. 1743.³²

As an alternative, the Postal Service proposes that the Commission modify its proposed rules to allow it "to convert revenue foregone in promotions as well as any other rate decreases into unused rate adjustment authority, without conducting a full-scale calculation of all the rate adjustment authority that has accrued since the last annual price adjustment." Postal Service Reply Comments at 4.

The Postal Service also notes the difficulty in isolating the effects of temporary promotions from the effects of other rate adjustments in the context of an "annual price change," where rates are adjusted for many products, often in several classes at once. *Id.*

5. Conclusion

The comments received in this docket indicate that the treatment of promotional rates and incentive programs is likely to continue to be a point of contention in future rate cases. The Commission recognizes the need for certainty for the mailing community and the Postal Service in this regard. In order to allow for the development of a complete record on this important issue, the Commission will open a separate docket to consider the treatment of promotional rates and incentive programs. Consequently, proposed paragraphs (e) and (f) will not be included in § 3010.23. Section 3010.23(b) is revised to remove the reference to paragraph (f).

³² Docket No. R2013-6, Order Approving Technology Credit Promotion, June 10, 2013 (Order No. 1743).

V. Ordering Paragraphs

It is ordered:

1. Part 3010 of title 39, Code of Federal Regulations, is revised as set forth below the signature of this order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in '39 CFR Part 3010

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Acting Secretary.

For the reasons stated above, the Postal Regulatory Commission amends 39 CFR chapter III by revising part 3010 to read as follows:

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

Sec.

- 3010.1 Definitions in this subpart.
- 3010.2 Applicability.
- 3010.3 Types of rate adjustments for market dominant products.
- 3010.4 Type 1-A rate adjustment—in general.
- 3010.5 Type 1-B rate adjustment—in general.
- 3010.6 Type 2 rate adjustment—in general.
- 3010.7 Type 3 rate adjustment—in general.
- 3010.8 Schedule for Regular and Predictable Rate Adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)

- 3010.10 Notice.
- 3010.11 Proceedings for Type 1-A and Type 1-B rate adjustment filings.
- 3010.12 Contents of notice of rate adjustment.

Subpart C—Rules for Determining the Maximum Rate Adjustment

- 3010.20 Calculation of maximum rate adjustment.
- 3010.21 Calculation of annual limitation when notices of rate adjustment are 12 or more months apart.
- 3010.22 Calculation of annual limitation when notices of rate adjustment are less than 12 months apart.
- 3010.23 Calculation of percentage change in rates.
- 3010.24 Treatment of volume associated with negotiated service agreements.
- 3010.25 Limitation on application of unused rate adjustment authority.
- 3010.26 Calculation of unused rate adjustment authority.
- 3010.27 Application of unused rate adjustment authority.
- 3010.28 Maximum size of rate adjustments.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

- 3010.40 Negotiated service agreements.
- 3010.41 Notice.
- 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.
- 3010.43 Data collection plan and report.
- 3010.44 Proceedings for Type 2 rate adjustments.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

- 3010.60 Applicability.
- 3010.61 Contents of exigent requests.
- 3010.62 Supplemental information.
- 3010.63 Treatment of unused rate adjustment authority.
- 3010.64 Expeditious treatment of exigent requests.
- 3010.65 Special procedures applicable to exigent requests.
- 3010.66 Deadline for Commission decision.

Authority: 39 U.S.C. 503; 3622.

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

§ 3010.1 Definitions in this subpart.

(a) *Annual limitation* means:
 (1) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3010.21; and
 (2) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3010.22.

(b) *Class* means a class of market dominant postal products.

(c) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(d) *Type 1-A rate adjustment* means a rate adjustment described in § 3010.4.

(e) *Type 1-B rate adjustment* means a rate adjustment described in § 3010.5.

(f) *Type 2 rate adjustment* means a rate adjustment described in § 3010.6.

(g) *Type 3 rate adjustment* means a rate adjustment described in § 3010.7.

(h) *Unused rate adjustment authority* means the percentage calculated pursuant to § 3010.26.

§ 3010.2 Applicability.

This part implements provisions in 39 U.S.C. of chapter 36, subchapter I

establishing ratesetting policies and procedures for market dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

§ 3010.3 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1-A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1-B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b) The Postal Service may combine Type 1-A, Type 1-B, and Type 2 rate adjustments for purposes of filing with the Commission.

§ 3010.4 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment is a rate adjustment based on the annual limitation.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1-A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment for that class, subject to the expiration terms in § 3010.26(e).

§ 3010.5 Type 1-B rate adjustment—in general.

A Type 1-B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part.

§ 3010.6 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.7 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when

justified by exceptional or extraordinary circumstances.

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.8 Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, <http://www.prc.gov>.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1-A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1-A filing. No explanation is required for variations involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)

§ 3010.10 Notice.

(a) The Postal Service, in every instance in which it determines to

exercise its statutory authority to make a Type 1-A or Type 1-B rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

§ 3010.11 Proceedings for Type 1-A and Type 1-B rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1-A or Type 1-B rate adjustment filing, promptly publish notice of the filing in the *Federal Register*, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitations established in § 3010.28.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable, the limitations set forth in § 3010.28, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment should address the subjects identified in paragraph (b) of this section and may address the subjects identified in paragraph (c) of this section.

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(k) A Commission finding that a planned Type 1-A or Type 1-B rate adjustment is in compliance with the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; the limitations set forth in § 3010.28; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1-A or Type 1-B rate adjustment does not contravene other policies of 39 U.S.C. chapter 36,

subchapter I is provisional and subject to subsequent review.

§ 3010.12 Contents of notice of rate adjustment.

(a) A Type 1-A or Type 1-B notice of rate adjustment must include the following information:

- (1) A schedule of the planned rates;
- (2) The planned effective date(s) of the planned rates;
- (3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and
- (4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by the following information:

(1) The annual limitation calculated as required by § 3010.21 or § 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI-U values, are listed with citations to the original sources.

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown.

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown and all input values are listed with citations to the original sources.

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(9) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(10) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information relied on to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) Whenever the Postal Service establishes a new discount or surcharge it does not believe is a workshare discount, it must include with its filing:

(1) An explanation of the basis for its belief that the discount or surcharge is not a workshare discount; and

(2) A certification that the Postal Service applied approved analytical principles to the discount or surcharge.

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3010.27. All calculations are to be shown, including citations to the original sources.

(f) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

Subpart C—Rules for Determining the Maximum Rate Adjustment

§ 3010.20 Calculation of maximum rate adjustment.

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(b) Rates of general applicability are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §§ 3010.21(a) and 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) For a Type 1-A notice of rate adjustment, the annual limitation for the class; and

(2) For a combined Type 1-A and Type 1-B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3010.28.

§ 3010.21 Calculation of annual limitation when notices of rate adjustment are 12 or more months apart.

(a) The monthly CPI-U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment applicable to a class, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average) - 1.

§ 3010.22 Calculation of annual limitation when notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI-U values needed for the calculation of the partial year limitation of this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982-84 = 100. The current Series ID for the index is "CUUR0000SA0."

(b) If a notice of a Type 1-A or Type 1-B rate adjustment is filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment applicable to a class, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI-U index is calculated by summing the 12 most recently available monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) - 1.

§ 3010.23 Calculation of percentage change in rates.

(a) In this section, the term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(b) For each class of mail and product within the class, the percentage change in rates is calculated in three steps.

First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where,

N = number of rate cells in the class
i = denotes a rate cell (i = 1, 2, ..., N)
R_{i,n} = planned rate of rate cell i
R_{i,c} = current rate of rate cell i
V_i = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Adjustments shall be based on known mail characteristics or historic volume data, as opposed to forecasts of mailer behavior. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

§ 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage change in rates under § 3010.23 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g., because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes

with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3010.21 or § 3010.22.

§ 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1-A and Type 1-B rate adjustments. When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b) of this section. When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment authority calculated under paragraph (b) of this section plus the interim unused rate adjustment authority calculated under paragraph (c)(2) of this section, less any interim unused rate adjustment authority used in accordance with paragraph (d) of this section.

(b) When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to §§ 3010.21 or 3010.22 and the actual percentage change in rates for the class.

(c)(1) When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to § 3010.21(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to § 3010.21(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the notice of rate adjustment that led to its calculation. If interim unused rate adjustment authority is used to make such a rate adjustment, the interim unused rate adjustment authority generated pursuant to the notice shall first be added to the schedule of unused rate adjustment authority devised and maintained under paragraph (f) of this section as the most recent entry. Then, any interim unused rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing unused rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

(e) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

§ 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

§ 3010.28 Maximum size of rate adjustments.

Unused rate adjustment authority used to make a Type 1-B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Notice.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum the following information:

(a) A copy of the negotiated service agreement;

(b) The planned effective date(s) of the planned rates;

(c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates;

(d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission;

(e) A statement identifying all parties to the agreement and a description, clearly explaining the operative components of the agreement;

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall be based on accepted analytical principles:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from

implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(5) If the Postal Service believes the Commission's accepted analytical principles are not the most accurate and reliable methodology available—

(i) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service's alternative methodology.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement;

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace; and

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(i) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(ii) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(iii) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the **Federal Register**, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as *exigent requests*.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase and the specific rate adjustments requested relate to those circumstances;

(4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in paragraph (a) of this section.

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3010.61

in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3010.28 of this subpart.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

§ 3010.64 Expedient treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request in the **Federal Register**, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A specified period for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information

provided in response to the topics specified in § 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3001.9 of this chapter, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

- (1) The sufficiency of the justification for an exigent rate adjustment;
- (2) The adequacy of the justification for adjustments in the amounts requested by the Postal Service; and
- (3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.

[FR Doc. 2013-20583 Filed 8-23-13; 8:45 am]

BILLING CODE 7710-FW-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, 52, 53, 63, and 64

[FCC 96-79; FCC 96-489; FCC 99-227; FCC 00-116; FCC 01-362; FCC 04-251 and FCC 10-85]

Extension of Lines, Interconnection, Numbering, Payphone Compensation, Pole Attachment Complaint Procedures, Obligations of Local Exchange Carriers, Special Provisions Concerning Bell Operating Companies, and Area Code Relief

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the approval of the Office of Management and Budget (OMB) for information collection requirements in the sections outlined in the **DATES** section.

DATES: The following information collection requirements have been approved by OMB and are effective August 26, 2013:

- 47 CFR 1.1404(g), (h) and the third sentence of paragraph (j)—63 FR 12025, May 17, 2000
- 47 CFR 51.217(c)(3)—64 FR 51911, September 27, 1999
- 47 CFR 52.19(c)(3)(i), (c)(4)—67 FR 6431, February 12, 2002
- 47 CFR 52.36—75 FR 35305, June 22, 2010
- 47 CFR 53.203(b) and (e)—62 FR 2967, January 21, 1997
- 47 CFR 63.62(a)—61 FR 15733, April 9, 1996
- 47 CFR 64.1310(g)—70 FR 720, January 5, 2005

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Competition Policy Division, Wireline Competition Bureau at Michele.Berlove@fcc.gov.

SUPPLEMENTARY INFORMATION: On January 24, 2001, OMB approved the information collection requirements contained in 47 CFR 1.1404(g), (h) and (j) as a revision to OMB Control Number 3060-0392.

On October 29, 1999, OMB approved the information collection requirements contained in 47 CFR 51.217(c)(3) as a revision to OMB Control Number 3060-0741.

On March 12, 2002, OMB approved the information collection requirements contained in 47 CFR 52.19(c)(3)(i) and (4) as a new collection, OMB Control Number 3060-1005.

On July 29, 2010, OMB approved the information collection requirements contained in 47 CFR 52.36 as a revision to OMB Control Number 3060-0742.

On March 19, 1997, OMB approved the information collection requirements contained in 47 CFR 53.203(b) and (e) as a new collection, OMB Control Number 3060-0734.

On December 13, 1996, OMB approved the information collection requirements contained in 47 CFR 63.62(a) as a revision to OMB Control Number 3060-0149.

On May 25, 2005, OMB approved the information collection requirements contained in 47 CFR 64.1310(g) as a revision to OMB Control Number 3060-1046.

These information collection requirements required OMB approval to become effective. The Commission publishes this document as an announcement of those approvals. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Thomas Butler, Federal Communications Commission, Room 5-C458, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Numbers, 3060-0392, 3060-0741, 3060-1005, 3060-0742, 3060-0734, 3060-0149, and 3060-1046 in your correspondence. The Commission will also accept your comments via the Internet if you send them to PRA@fcc.gov.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) (202) 419-0432 (TTY).

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval for the information collection requirements described above. The OMB Control Numbers are 3060-0392, 3060-0741, 3060-1005, 3060-0742, 3060-0734, 3060-0149, and 3060-1046. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, has been most recently approved to be:

- For 3060-0392: 1,772 responses, for a total of 2,629 hours, and \$450,000 in annual costs.
- For 3060-0741: 573,767 responses, for a total of 575,448 hours, and no annual costs.
- For 3060-1005: 32 responses, for a total of 830 hours, and no annual costs.
- For 3060-0742: 10,001,890 responses, for a total of 672,516 hours, and \$13,423,321 in annual costs.

For 3060-0734: 1,515 responses, for a total of 72,495 hours, and \$1,500,000 in annual costs.

For 3060-0149: 60 responses, for a total of 300 hours, and no annual costs.

For 3060-1046: 8,080 responses, for a total of 160,184 hours, and no annual costs.

An agency may not conduct or sponsor a collection of information unless it displays a current valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act, which does not display a current, valid OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2013-20675 Filed 8-23-13; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110816505-2184-03]

RIN 0648-XC793

Fisheries of the Northeastern United States; Northeast Multispecies Fisheries Management Plan; Northern Red Hake Quota Harvested

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

ACTION: Temporary rule; possession limit reduction.

SUMMARY: Beginning August 26, 2013, the northern red hake possession limit is reduced to the incidental possession limit for the remainder of the 2013 fishing year.

DATES: Effective at 0001 hr local time, August 26, 2013, through 2400 hr local time April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, (978) 281-9177.

SUPPLEMENTARY INFORMATION: The regulations at § 648.86(d)(4) require that, if the NMFS Northeast Region Administrator (Regional Administrator) projects that 90 percent of the total allowable landings (TAL) has been landed for a small-mesh multispecies stock, the Regional Administrator shall reduce the possession limit for that

stock to the incidental possession limit of 400 lb (181.44 kg) for the remainder of the fishing year.

The 2013 fishing year northern red hake TAL is 199,077 lb (90,300 kg) (78 FR 20260; April 4, 2013) and 90 percent of the TAL is 179,169 lb (81,270 kg). Based on dealer, vessel trip report, and other available information, NMFS has projected that, as of August 25, 2013, 90 percent of the available 2013 TAL for northern red hake will be landed. Therefore, effective 0001 hr, August 26, 2013, the possession limit for northern red hake is reduced to the incidental possession limit of 400 lb (181.44 kg). This incidental possession limit will be in effect through the remainder of the fishing year, which ends April 30, 2014.

Vessels that have declared a trip through the vessel monitoring system (VMS) or interactive voice response system, and crossed the VMS demarcation line prior to August 26, 2013, are not be subject to the incidental limit for that trip, and, may complete the trip under the previous higher possession limit of 5,000 lb (2.27 mt).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: August 21, 2013.

Emily H. Menashes,

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

[FR Doc. 2013-20762 Filed 8-21-13; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 78, No. 165

Monday, August 26, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0700; Directorate Identifier 2013-NM-102-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. This proposed AD was prompted by reports of fractured rudder pedal tubes installed on the pilot-side rudder bar assembly. This proposed AD would require repetitive inspections for cracking and damage of both pilot-side rudder pedal tubes, and replacement of affected pilot-side rudder bar assemblies if necessary. We are proposing this AD to detect and correct cracking of both pilot-side rudder pedal tubes, which could result in loss of pilot rudder pedal input causing reduced yaw controllability or a runway excursion.

DATES: We must receive comments on this proposed AD by October 10, 2013.

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, 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 review copies of the 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>; or in person at the Docket Operations office 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:

Ricardo Garcia, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7331; 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-2013-0700; Directorate Identifier 2013-NM-102-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2013-12, dated May 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There have been two in-service reports of fracture of rudder pedal tubes installed on the pilot-side rudder bar assembly.

Laboratory examination of the fractured rudder pedal tubes found that in both cases, the fatigue cracks initiated at the aft taper pin holes where the connecting rod fitting is attached. Fatigue testing of the rudder pedal tubes confirmed that the fatigue cracking is due to loads induced during parking brake application. Therefore, only the rudder pedal tubes on the pilot's side are vulnerable to fatigue cracking as the parking brake is primarily applied by the pilot.

Loss of pilot rudder pedal input during flight would result in reduced yaw controllability of the aeroplane. Loss of pilot rudder pedal input during takeoff or landing may lead to a runway excursion.

This [Canadian] AD mandates initial and repetitive [detailed or eddy current] inspections [for cracking and damage and replacement if necessary] of the pilot-side rudder * * * [bar assembly], until the terminating action is accomplished.

Required actions also include repairing damage. The terminating action is replacement of both pilot-side rudder bar assemblies. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 601R-27-162, including Appendix A, dated April 5, 2013. 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.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in Bombardier Service Bulletin 601R-27-162, including Appendix A, dated April 5, 2013, is referred to as a "detailed inspection." We have included the

definition for a detailed inspection in paragraph (h) of the proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 529 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|------------------|--|------------|-----------------------------|---------------------------------|
| Inspection | 3 work-hours × \$85 per hour = \$255 per inspection cycle. | \$0 | \$255 per inspection cycle. | \$134,895 per inspection cycle. |

We estimate the following costs to do any necessary replacement that would

be required based on the results of the proposed inspection. We have no way of

determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|-------------------|--|------------|------------------|
| Replacement | 6 work-hours × \$85 per hour = \$510 | \$2,850 | \$3,360 |

We have received no definitive data that would enable us to provide a cost estimate for the repair specified in this proposed AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA-2013-0700; Directorate Identifier 2013-NM-102-AD.

(a) Comments Due Date

We must receive comments by October 10, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 and subsequent.

(d) Subject

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

(e) Reason

This AD was prompted by reports of fractured rudder pedal tubes installed on the pilot-side rudder bar assembly. We are issuing this AD to detect and correct cracking of both pilot-side rudder pedal tubes, which could result in loss of pilot rudder pedal input causing reduced yaw controllability or a runway excursion.

(f) Compliance

You are responsible for having the actions required by this AD performed within the

compliance times specified, unless the actions have already been done.

(g) Initial Inspections

At the applicable time specified in paragraph (g)(1) through (g)(6) of this AD, do a detailed or eddy current inspection for cracking and damage (i.e., corrosion or cracking) of both pilot-side rudder pedal tubes having part number (P/N) 600-90204-3, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-162, including Appendix A, dated April 5, 2013.

(1) For airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Do the inspection before the accumulation of 23,000 total flight cycles.

(2) For airplanes that have accumulated 20,000 total flight cycles or more, but less than 25,000 total flight cycles as of the effective date of this AD: Do the inspection within 3,000 flight cycles after the effective date of this AD, but not to exceed 26,300 total flight cycles.

(3) For airplanes that have accumulated 25,000 total flight cycles or more, but less than 30,000 total flight cycles as of the effective date of this AD: Do the inspection within 1,300 flight cycles after the effective date of this AD, but not to exceed 30,800 total flight cycles.

(4) For airplanes that have accumulated 30,000 total flight cycles or more, but less than 33,000 total flight cycles as of the effective date of this AD: Do the inspection within 800 flight cycles after the effective date of this AD, but not to exceed 33,500 total flight cycles.

(5) For airplanes that have accumulated 33,000 total flight cycles or more, but less than 37,000 total flight cycles as of the effective date of this AD: Do the inspection within 500 flight cycles after the effective date of this AD, but not to exceed 37,300 total flight cycles.

(6) For airplanes that have accumulated 37,000 total flight cycles or more as of the effective date of this AD: Do the inspection within 300 flight cycles after the effective date of this AD.

(h) Inspection Definition

For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

(i) Repetitive Inspections

For any tube on which no cracking and no damage is found during any inspection required by paragraph (g) of this AD: At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, repeat the detailed or eddy current inspection for cracking of the pilot-side rudder pedal tubes, specified in paragraph (g) of this AD, until the terminating action specified in paragraph (k) of this AD has been accomplished.

(1) If the most recent inspection was a detailed inspection: Repeat the inspection within 600 flight cycles thereafter.

(2) If the most recent inspection was an eddy current inspection: Repeat the inspection within 1,000 flight cycles thereafter.

(j) Corrective Actions

(1) If any cracking is found around the aft tapered holes during any inspection required by paragraph (g) or (i) of this AD, before further flight, replace the affected rudder bar assemblies, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-162, including Appendix A, dated April 5, 2013.

(2) If any other damage (i.e., corrosion or cracking), other than that specified in paragraph (j)(1) of this AD, is found during any inspection required by paragraph (g) or (i) of this AD, before further flight, repair using a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(k) Optional Terminating Action

Replacement of both pilot-side rudder bar assemblies, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-162, including Appendix A, dated April 5, 2013, terminates the inspections required by paragraphs (g) and (i) of this AD.

(l) 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) *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.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2013-12, dated May 14, 2013, for related information, which

can be found in the AD docket on the internet at <http://www.regulations.gov>.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>. You may review copies of 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 August 16, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-20715 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2013-0586; Airspace Docket No. 13-ASW-11]

Proposed Amendment of Class E Airspace; Gainesville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Gainesville, TX. Decommissioning of the Gainesville radio beacon (RBN) at Gainesville Municipal Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before October 10, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2013-0586/Airspace Docket No. 13-ASW-11, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-

647-5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321-7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2013-0586/Airspace Docket No. 13-ASW-11." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Gainesville Municipal Airport, Gainesville, TX. Airspace reconfiguration to within a 6.6-mile radius of the airport, with a segment extending from the 6.6-mile radius to 10.4 miles north of the airport, is necessary due to the decommissioning of the Gainesville RBN and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and management of IFR operations at the airport. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the

scope of that authority as it would amend controlled airspace at Gainesville Municipal Airport, Gainesville, TX.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

- 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Gainesville, TX [Amended]

Gainesville Municipal Airport, TX
(Lat. 33°09'08" N., long. 97°11'50" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Gainesville Municipal Airport, and within 1 mile each side of the 001° bearing from the airport extending from the 6.6-mile radius to 10.4 miles north of the airport.

Issued in Fort Worth, TX, on August 16, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013-20719 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2013-0658; Airspace Docket No. 13-ASW-17]

Proposed Amendment of Class E Airspace; Del Rio, TX

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Del Rio, TX. Additional controlled airspace is necessary to accommodate new circling approach requirements at Laughlin Air Force Base (AFB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for instrument approach procedures at the airport.

DATES: Comments must be received on or before October 10, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2013-0658/Airspace Docket No. 13-ASW-17, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817-321-7716.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2013-0658/Airspace Docket No. 13-ASW-17." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by amending Class E airspace designated as an extension to a Class C surface area at Laughlin AFB, Del Rio, TX. An additional segment to the north is needed to contain approach category E military aircraft conducting circling approaches to the airport, to retain the safety and management of IFR aircraft in Class E airspace to/from the en route environment. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6003 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Laughlin AFB, Del Rio, TX.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6003 Class E airspace areas designated as an extension.

* * * * *

ASW TX E3 Del Rio, TX [Amended]

Del Rio, Laughlin AFB, TX
(Lat. 29°21'34" N., long. 100°46'40" W.)
Laughlin VORTAC

(Lat. 29°21'39" N., long. 100°46'18" W.)
That airspace extending upward from the surface within 2 miles each side of the 003° radial of the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 10 miles north of the airport, and from the 060° radial of the Laughlin VORTAC clockwise to the 195° radial, extending from the 5-mile radius of Laughlin AFB to the 5.5-mile radius, and 2.6 miles each side of the 145° radial of the Laughlin VORTAC extending from the 5.5-mile radius of Laughlin AFB to 6.6 miles southeast of the airport, and 2.6 miles each side of the 305° radial of the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 6.6 miles northwest of Laughlin AFB, and from the 333° radial of the Laughlin VORTAC clockwise to the 342° radial, extending from the 5-mile radius of Laughlin AFB to the 5.5-mile radius. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on August 16, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013-20716 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2013-0576; Airspace Docket No. 13-ANM-11]

Proposed Modification of Class E Airspace; Prineville, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Prineville,

OR, to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Prineville Airport. A minor adjustment would also be made to the geographic coordinates of the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before October 10, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2013-0576; Airspace Docket No. 13-ANM-11, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2013-0576 and Airspace Docket No. 13-ANM-11) and be submitted in triplicate to the Docket Management System (see ADDRESSES section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2013-0576 and Airspace Docket No. 13-ANM-11". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for

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

Availability of NPRMs

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

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

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Prineville Airport, Prineville, OR. Additional controlled airspace extending upward from 700 feet above the surface within the 6.9-mile radius of the airport, with segments extending west and southeast is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Prineville Airport, Prineville, OR. This action would enhance the safety and management of aircraft operations at the airport. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which

is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Prineville Airport, Prineville, OR.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM OR E5 Prineville, OR [Modified]

Prineville Airport, OR

(Lat. 44°17'16" N., long. 120°54'19" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the airport, and 5 miles each side of the 281° bearing of the airport extending 12.4 miles west, and 3.5 miles each side of the 120° bearing of the airport extending 7.7 miles southeast; that airspace extending upward from 1,200 feet above the surface within a 9.2-mile radius of the airport clockwise from the 320° bearing to the 190° bearing, then extending 27.4 miles from the airport in an arc clockwise to the 230° bearing, then extending 37.5 miles from the airport in an arc clockwise to the 320° bearing, then extending 6.8 miles each side of the 121° bearing of the airport to 34.3 miles southeast.

Issued in Seattle, Washington, on August 15, 2013.

Christopher Ramirez

*Acting Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2013–20729 Filed 8–23–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0657; Airspace
Docket No. 13–AGL–24]

Proposed Revocation of Class E Airspace; Danville, IL

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to
remove Class E airspace at Danville, IL.

The FAA has determined that, because of changes in the composition of flight operations at Vermilion Regional Airport, a Class E surface area is no longer needed to enhance the safety and management of Instrument Flight Rules (IFR) operations for standard instrument approach procedures at the airport.

DATES: Comments must be received on or before October 10, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2013–0657/Airspace Docket No. 13–AGL–24, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT:
Scott Enander, Central Service Center,
Operations Support Group, Federal
Aviation Administration, Southwest
Region, 2601 Meacham Blvd., Fort
Worth, TX 76137; telephone: (817) 321–
7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2013–0657/Airspace Docket No. 13–AGL–24." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

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

You may review the public docket, containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class E airspace designated as a surface area at Vermilion Regional Airport, Danville, IL. Curtailment of scheduled air taxi operations and changes in airport usage has rendered this airspace as unnecessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6002 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule,

when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove controlled airspace at Vermilion Regional Airport, Danville, IL.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

- 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL IL E2 Danville, IL [Removed]

Issued in Fort Worth, TX, on August 16, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013-20722 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-113792-13]

RIN 1545-BL55

Tax Credit for Employee Health Insurance Expenses of Small Employers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations provide guidance on the tax credit available to certain small employers that offer health insurance coverage to their employees under section 45R of the Internal Revenue Code (Code), enacted by the Patient Protection and Affordable Care Act. These proposed regulations affect certain taxable employers and certain tax-exempt employers.

DATES: Comments and request for a public hearing must be received by November 25, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-113792-13), Internal Revenue Service, room 5205, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG-113792-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS113792-13).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, call Stephanie Caden at (202) 927-9639; concerning submission of comments, and/or to request a hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 45R of the Internal Revenue Code (Code) offers a tax credit to certain

small employers that provide insured health coverage to their employees. Section 45R was added to the Code by section 1421 of the Patient Protection and Affordable Care Act, enacted March 23, 2010, Public Law No. 111-148 (as amended by section 10105(e) of the Patient Protection and Affordable Care Act, which was amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029)) (collectively, the "Affordable Care Act").

I. Section 45R

Section 45R(a) provides for a health insurance tax credit in the case of an eligible small employer for any taxable year in the credit period. Section 45R(d) provides that in order to be an eligible small employer with respect to any taxable year, an employer must have in effect a contribution arrangement that qualifies under section 45R(d)(4) and must have no more than 25 full-time equivalent employees (FTEs), and the average annual wages of its FTEs must not exceed an amount equal to twice the dollar amount determined under section 45R(d)(3)(B). The amount determined under section 45R(d)(3)(B) is \$25,000 (as adjusted for inflation for taxable years beginning after December 31, 2013).

Section 45R(d)(4) states that a contribution arrangement qualifies if it requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan (QHP) offered to employees by the employer through an Exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the QHP (referred to in this preamble as the uniform percentage requirement). For purposes of section 45R, an Exchange refers to a Small Business Health Options Program (SHOP) Exchange, established pursuant to section 1311 of the Affordable Care Act and defined in 45 CFR 155.20. For purposes of this preamble and the proposed regulations, a contribution arrangement that meets these requirements is referred to as a "qualifying arrangement." See also the section of this preamble entitled "Explanation of Provisions."

Section 45R(b) provides that, subject to the reductions described in section 45R(c), the amount of the credit is equal to 50 percent (35 percent in the case of a tax-exempt eligible small employer) of the lesser of: (1) The aggregate amount of nonelective contributions the employer made on behalf of its employees during the taxable year under the qualifying arrangement for premiums for QHPs offered by the employer to its employees through a

SHOP Exchange, or (2) the aggregate amount of nonelective contributions the employer would have made during the taxable year under the arrangement if each employee taken into account under: (1) Of this sentence had enrolled in a QHP which had a premium equal to the average premium (as determined by the Secretary of Health and Human Services) for the small group market in the rating area in which the employee enrolls for coverage. Section 45R(c) phases out the credit based upon the number of the employer's FTEs in excess of 10 and the amount by which the average annual wages exceeds \$25,000 (as adjusted for inflation for taxable years beginning after December 31, 2013 pursuant to section 45R(d)(3)(B)). Specifically, section 45R(c) provides that the credit amount determined under section 45R(b) is reduced (but not below zero) by the sum of: (1) The credit amount determined under section 45R(b) multiplied by a fraction, the numerator of which is the total number of FTEs of the employer in excess of 10 and the denominator of which is 15, and (2) the credit amount determined under section 45R(b) multiplied by a fraction, the numerator of which is the average annual wages of the employer in excess of the dollar amount in effect under section 45R(d)(3)(B) and the denominator of which is such dollar amount. Section 45R(d)(3) provides that the average annual wages of an eligible small employer for any taxable year is the amount determined by dividing the aggregate amount of wages that were paid by the employer to employees during the taxable year by the number of FTEs of the employer and rounding such amount to the next lowest multiple of \$1,000.

Section 45R(e)(2) provides that for taxable years beginning in or after 2014, the credit period means the two-consecutive-taxable year period beginning with the first taxable year in which the employer (or any predecessor) offers one or more QHPs to its employees through a SHOP Exchange.

For taxable years beginning in 2010, 2011, 2012, and 2013, section 45R(g) provides that the credit is determined without regard to whether the taxable year is in a credit period, and no credit period is treated as beginning with a taxable year beginning before 2014. The amount of the credit is 35 percent (25 percent in the case of a tax-exempt eligible small employer) of an eligible small employer's nonelective contributions for premiums paid for health insurance coverage (within the meaning of section 9832(b)(1)) of an

employee. Section 45R(g)(3) provides that an employer does not become ineligible for the tax credit solely because it arranges for the offering of insurance outside of a SHOP Exchange.

The Treasury Department and the IRS have published two notices addressing the application of section 45R. Each notice provides guidance that taxpayers may rely upon for taxable years beginning before January 1, 2014. See Notice 2010-44 (2010-22 IRB 717 (June 10, 2010)) and Notice 2010-82 (2010-51 IRB 857 (December 20, 2010)). Notice 2010-44 also provided transition relief for taxable years beginning in 2010 with respect to the requirements for a qualifying arrangement under section 45R.

II. Notice 2010-44

Notice 2010-44 addresses the eligibility requirements for employers to claim the credit, provides guidance on how to calculate and claim the credit, and explains the effect on estimated tax, alternative minimum tax, and deductions. The notice specifically describes the rules for how employees are taken into account in determining an employer's FTEs, average wages, and premiums paid, with certain individuals excluded and with employees of certain related employers included.

III. Notice 2010-82

Notice 2010-82 expands on the guidance provided in Notice 2010-44 and provides additional guidance on determining whether to take into account spouses and leased employees (as defined in section 414(n)) in computing an employer's FTEs, average annual wages, and premiums paid. The notice provides that employer contributions to health reimbursement arrangements (HRAs), health flexible spending arrangements (FSAs), and health savings accounts (HSAs) are not taken into account for purposes of the section 45R credit. The notice further explains the requirement that an eligible small employer must pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in health insurance coverage offered by the employer. The notice provides rules for applying the uniform percentage requirement in taxable years beginning after December 31, 2009 and prior to 2014, and further provides that for taxable years beginning in 2010, an employer may satisfy the uniform percentage requirement either by meeting the requirements provided in Notice 2010-82 or by meeting the transition relief rules provided in Notice 2010-44. With respect to calculating the credit, the notice provides guidance on

small group markets, taxpayers with employees in multiple States, the application of the average premium cap, and taxpayers with fiscal taxable years.

Explanation of Provisions

These proposed regulations generally incorporate the provisions of Notice 2010-44 and Notice 2010-82 as modified to reflect the differences between the statutory provisions applicable to years before 2014 and those applicable to years after 2013. As in Notices 2010-44 and 2010-82, these proposed regulations use the term "qualifying arrangement" to describe an arrangement under which an eligible small employer pays premiums for each employee enrolled in health insurance coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the coverage. Section 45R(d)(4) and these proposed regulations require that, for tax years beginning during or after 2014, the health insurance coverage described in a qualifying arrangement be a QHP offered by an employer to its employees through a SHOP Exchange (but see section II.I of this preamble for a description of certain transition guidance for 2014).

I. Eligibility for the Credit

A. Eligible Small Employer Defined

Section 45R and these proposed regulations provide that an eligible small employer is defined as an employer that has no more than 25 FTEs for the taxable year, whose employees have average annual wages of less than \$50,000 per FTE (as adjusted for inflation for years after December 31, 2013), and that has a qualifying arrangement in effect that requires the employer to pay a uniform percentage (not less than 50 percent) of the premium cost of a QHP offered by the employer to its employees through a SHOP Exchange. A tax-exempt eligible small employer is an eligible small employer that is described in section 501(c) and that is exempt from tax under section 501(a). An employer that is an agency or instrumentality of the Federal government, or of a State, local or Indian tribal government, is not an eligible small employer for purposes of section 45R unless it is an organization described in section 501(a) (and otherwise meets the requirements for an eligible small employer). However, a farmers' cooperative described in section 521 that is subject to tax pursuant to section 1381 and otherwise meets the requirements of this section is an eligible small employer.

Section 45R does not require that, in order for an employer to be an eligible small employer, the employees perform services in a trade or business. Thus, an employer that otherwise meets the requirements for the section 45R credit does not fail to be an eligible small employer merely because the employees of the employer are not performing services in a trade or business. For example, a household employer that otherwise satisfies the requirements of section 45R is an eligible small employer for purposes of the credit.

An employer located outside the United States (including a U.S. Territory) may be an eligible small employer if the employer has income effectively connected with the conduct of a trade or business in the United States, otherwise meets the requirements of this section and is able to offer a QHP to its employees through a SHOP Exchange.

B. Application of Section 414 Aggregation Rules

In accordance with section 45R(e)(5), these proposed regulations provide that all employers treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 45R. Thus, for example, all employees of the employers treated as a single employer are counted in computing the single employer's FTEs and average annual wages. This applies to employers that are corporations in a controlled group of corporations, employers that are members of an affiliated service group, and employers that are partnerships, sole proprietorships, etc. under common control under section 414(c). Section 414 also applies to tax-exempt eligible small employers under common control. See § 1.414(c)-5.

C. Determining Employees Taken Into Account

The proposed rules for determining employees taken into account are the same as those in the previous notices. In general, all employees (determined under the common law standard) who perform services for the employer during the taxable year are taken into account in determining FTEs and average annual wages, including those who are not performing services in the employer's trade or business. (But see special rules for seasonal employees described in this section of the preamble.) However, section 45R and these proposed regulations provide that certain individuals are not considered employees when calculating the credit, and hours and wages of these individuals are not counted when

determining an employer's eligibility for the credit. The following individuals are not employees or are otherwise excluded for this purpose: independent contractors (including sole proprietors); partners in a partnership; shareholders owning more than two percent of an S corporation; owners of more than five percent of other businesses; family members of these owners and partners, including a child (or descendant of a child), a sibling or step sibling, a parent (or ancestor of a parent), a step-parent, a niece or nephew, an aunt or uncle, or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or a sister-in-law. A spouse is also considered a family member for this purpose, as is a member of the household who is not a family member but qualifies as a dependent on the individual income tax return of an excluded individual.

Section 45R(d)(5) and these proposed regulations provide that seasonal employees who work for 120 or fewer days during the taxable year are not considered employees when determining FTEs and average annual wages, but premiums paid on behalf of seasonal workers may be counted in determining the amount of the credit. Seasonal workers include retail workers employed exclusively during holiday seasons and workers employed exclusively during the summer.

Compensation paid to a minister performing services in the exercise of his or her ministry generally is subject to tax under the Self-Employment Contributions Act (SECA) and not under the Federal Insurance Contributions Act (FICA), whether the minister is an employee or self-employed under the common law. See sections 1402(c)(2)(d), 1402(c)(4), and 3121(b)(8)(A). For purposes of income taxes generally, including the credit under section 45R, whether a minister is an employee is determined under the common law standard for determining worker status. If under the common law a minister is not an employee, the minister is not taken into account in determining an employer's FTEs. If under the common law a minister is an employee, the minister is taken into account in determining an employer's FTEs. However, because a minister performing services in the exercise of his or her ministry is treated as not engaged in employment for purposes of FICA, compensation paid to a minister is not wages as defined under section 3121(a), and so is not included for purposes of computing an employer's average annual wages.

D. Determining Hours of Service

These proposed regulations provide that an employee's hours of service for a year include hours for which the employee is paid, or entitled to payment, for the performance of duties for the employer during the employer's taxable year. Hours of service also include hours for which the employee is paid for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. Hours of service do not include the hours of seasonal employees who work for 120 or fewer days during the taxable year, nor do they include hours worked for a year in excess of 2,080 for a single employee.

These proposed regulations describe three methods for calculating the total number of hours of service for a single employee for the taxable year: actual hours worked; days-worked equivalency; and weeks-worked equivalency. Employers need not use the same method for all employees and may apply different methods for different classifications of employees if the classifications are reasonable and consistently applied. For example, an employer may use the actual hours worked method for all hourly employees and the weeks-worked equivalency method for all salaried employees. These proposed rules are the same as those in the previous notices.

E. Determining FTEs

In accordance with section 45R(d)(2), these proposed regulations provide that FTEs are calculated by computing the total hours of service for the taxable year using a method described in section 1.D of this preamble, and dividing the total hours of service by 2,080. If the result is not a whole number (0, 1, 2, etc.), the result is rounded down to the next lowest whole number. The only exception to this rule is when the result is less than one; in this case, the employer rounds up to one FTE. In some circumstances, an employer with 25 or more employees may qualify for the credit if some of its employees work less than full-time. For example, an employer with 46 employees that each are paid wages for 1,040 hours per year has 23 FTEs and, therefore, may qualify for the credit. These proposed rules are the same as those in the previous notices.

F. Determining Average Annual FTE Wages

In accordance with section 45R(e)(4), these proposed regulations define wages, for purposes of the credit, as wages defined under section 3121(a) for

purposes of FICA, determined without considering the social security wage base limitation. To calculate average annual FTE wages, an employer must figure the total wages paid during the taxable year to all employees, divide the total wages paid by the number of FTEs, and if the result is not a multiple of \$1,000, round the result to the next lowest multiple of \$1,000. For example, \$30,699 is rounded down to \$30,000. But see special rules for seasonal employees described in section I.C of this preamble. These proposed rules are the same as those in the previous notices.

II. Calculating the Credit

A. Maximum Credit

Under section 45R and these proposed regulations, for taxable years beginning during or after 2014, the maximum credit for an eligible small employer other than a tax-exempt eligible small employer is 50 percent of the eligible small employer's premium payments made on behalf of its employees under a qualifying arrangement for QHPs offered through a SHOP Exchange. For a tax-exempt eligible small employer for those years, the maximum credit is 35 percent. The employer's tax credit is subject to several adjustments and limitations as set forth in this preamble.

B. Average Premium Limitation

Under section 45R and these proposed regulations, for purposes of calculating the credit for taxable years beginning after 2013, the employer's premium payments are limited by the average premium in the small group market in the rating area in which the employee enrolls for coverage through a SHOP Exchange. The credit will be reduced by the excess of the credit calculated using the employer's premium payments over the credit calculated using the average premium. For example, if an employer pays 50 percent of the \$7,000 premium for family coverage for its employees (\$3,500), but the average premium for family coverage in the small group market in the rating area in which the employees enroll is \$6,000, for purposes of calculating the credit the employer's premium payments are limited to 50 percent of \$6,000 (\$3,000).

C. Credit Phaseout

Under section 45R and these proposed regulations, the credit phases out for eligible small employers if the number of FTEs exceeds 10, or if the average annual wages for FTEs exceed \$25,000 (as adjusted for inflation for

taxable years beginning after December 31, 2013). For an employer with both more than 10 FTEs and average annual FTE wages exceeding \$25,000, the credit will be reduced based on the sum of the two reductions. This may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual FTE wages of less than double the \$25,000 dollar amount (as adjusted for inflation).

D. State Subsidy and Tax Credit Limitation

Some States offer tax credits to a small employer that provides health insurance to its employees. Some of these credits are refundable credits and others are nonrefundable credits. In addition, some States offer premium subsidy programs for certain small employers under which the State makes a payment equal to a portion of the employees' health insurance premiums. Generally, the State pays this premium subsidy either directly to the employer or to the employer's insurance company (or another entity licensed under State law to engage in the business of insurance).

Under these proposed regulations, and consistent with previous notices, if the employer is entitled to a State tax credit or premium subsidy that is paid directly to the employer, the amount of employer premiums paid is not reduced for purposes of calculating the section 45R credit, but the amount of the credit cannot exceed the net premiums paid, which are the employer premiums paid minus the amount of any State tax credits or premium subsidies received. If a State makes premium payments directly to the insurance company, the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the "qualifying arrangement" requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of coverage. Also, these premium payments by the State are treated as an employer contribution under section 45R for purposes of calculating the credit, but the amount of the credit cannot exceed the premiums actually paid by the employer. Finally, if a State-administered program, such as Medicaid, makes payments on behalf of individuals and their families who meet certain eligibility requirements, these payments do not reduce the amount of employer premiums paid for purposes of calculating the credit.

E. Payroll Tax Limitation for Tax-Exempt Employers

Section 45R and these proposed regulations define the term "payroll taxes" as (1) amounts required to be withheld under section 3402¹ and (2) the employee's and employer's shares of Medicare tax required to be withheld and paid under sections 3101(b) and 3111(b) on employees' wages for the year. For a tax-exempt eligible small employer, the amount of the credit cannot exceed the amount of the payroll taxes of the employer during the calendar year in which the taxable year begins.

F. Two-Consecutive-Taxable Year Credit Period Limitation

These proposed regulations provide that the first year for which an eligible small employer files Form 8941, "Credit for Small Employer Health Insurance Premiums," claiming the credit, or files Form 990-T, "Exempt Organization Business Income Tax Return," with an attached Form 8941, is the first year of the two-consecutive-taxable year credit period. Even if the employer is only eligible to claim the credit for part of the first year, the filing of Form 8941 begins the first year of the two-consecutive-taxable year credit period. For application of the two-consecutive-taxable year credit period under the transition relief related to taxable years beginning in 2014, see § 1.45R-3(i) of these proposed regulations and section II.I of the Explanation of Provisions section of this preamble.

Section 45R(i) provides that regulations shall be prescribed as necessary to prevent the avoidance of the two-year limit on the credit period through the use of successor entities and the avoidance of the credit phase-out limitations through the use of multiple entities. For purposes of identifying successor entities, these proposed regulations generally apply the rules for identifying successor employers applicable under the employment tax provisions for determining when wages paid by a predecessor may be attributed to a successor employer (see § 31.3121(a)(1)-1(b)). Accordingly, under the proposed regulations, an entity that would be treated as a successor employer for employment tax purposes will also be treated as a successor employer for purposes of the two-consecutive-taxable year credit

period under section 45R. Therefore, if the predecessor employer had previously claimed the credit under section 45R for a period, that period will count towards the successor employer's two-consecutive-taxable year credit period.

G. Premium Payments by the Employer

In general, only premiums paid by the employer for employees enrolled in a QHP offered through a SHOP Exchange are counted when calculating the credit.² If the employer pays a portion of the premiums and the employees pay the rest, only the portion paid by the employer is taken into account. For this purpose, any premium paid through a salary reduction arrangement under a section 125 cafeteria plan is not treated as an employer-paid premium. Premiums paid with employer-provided flex credits that employees may elect to receive as cash or as a taxable benefit are treated as paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan. See Notice 2012-40 (2012-26 IRB 1046 (June 25, 2012)). The proposed regulations further provide that amounts made available by an employer under or contributed by an employer to HRAs, FSAs and HSAs are not taken into account for purposes of determining premium payments by the employer.

The proposed regulations provide that if a minister is a common law employee and is taken into account in an employer's FTEs, the premiums paid by the employer for health insurance may be counted in calculating the credit.

A leased employee is defined in section 414(n)(2) as a person who is not an employee of the service recipient and who provides services to the service recipient pursuant to an agreement with the leasing organization. The person must have performed services for the service recipient on a substantially full-time basis for a period of at least one year under the primary direction and control of the service recipient. Leased employees are counted in computing a service recipient's FTEs and average annual wages. See section 45R(e)(1)(B).

See section II.I of this preamble for special rules related to taxable years beginning in 2014.

H. Trusts, Estates, Regulated Investment Companies, Real Estate Investment Trusts and Cooperative Organizations

Section 45R(e)(5)(B) provides that rules similar to the rules of section 52(c), (d) and (e) will apply. Because section 45R(f) explicitly provides that a tax-exempt eligible small employer may be eligible for the credit, these proposed regulations do not adopt a rule similar to section 52(c). However, these proposed regulations provide that rules similar to the rules of section 52(d) and (e) and the regulations thereunder apply in calculating and apportioning the credit with respect to trusts, estates, regulated investment companies, real estate investment trusts, and cooperative organizations.

I. Transition Rules

If an eligible small employer's plan year begins on a date other than the first day of its taxable year, it may not be practical or possible for the employer to offer insurance to its employees through a SHOP Exchange at the beginning of its first taxable year beginning in 2014. These proposed regulations provide that if: (1) As of August 26, 2013, a small employer offers coverage in a plan year that begins on a date other than the first day of its taxable year, (2) the employer offers coverage during the period before the first day of the plan year beginning in 2014 that would have qualified the employer for the credit under the rules otherwise applicable to the period before January 1, 2014, and (3) the employer begins offering coverage through a SHOP Exchange as of the first day of its plan year that begins in 2014, then it will be treated as offering coverage through a SHOP Exchange for its entire 2014 taxable year for purposes of eligibility for, and calculation of, a credit under section 45R. Thus, for an employer that meets these requirements, the credit will be calculated at the 50 percent rate (35 percent rate for tax-exempt eligible small employers) for the entire 2014 taxable year and the 2014 taxable year will be the start of the two-consecutive-taxable year credit period.

III. Application of Uniform Percentage Requirement

A. Uniform Premium

Section 45R and these proposed regulations require that to be eligible for the credit, an eligible small employer must generally pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in a QHP offered to its employees through a SHOP Exchange. These proposed regulations set forth rules for applying this requirement in

¹ Although section 45R(f)(3)(A)(i) cites to section 3401(a)(1) as imposing the obligation on employers to withhold income tax from employees, it is actually section 3402 that imposes the withholding obligation. We have cited to section 3402 throughout this preamble and in the proposed regulation.

² In general a stand-alone dental health plan will be considered a qualified health plan. Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 Fed. Reg. 18310, 18315 (March 27, 2012).

separate situations depending upon (1) whether the premium established for the QHP is based upon list billing or is based upon composite billing, (2) whether the QHP offers only self-only coverage, or other coverage (such as family coverage) for which a higher premium is charged, and (3) whether the employer offers one QHP or more than one QHP. The uniform percentage rule applies only to the employees offered coverage and does not impose a coverage requirement.

B. Composite Billing and List Billing

These proposed regulations define the term "composite billing" to mean a system of billing under which a health insurer charges a uniform premium for each of the employer's employees or charges a single aggregate premium for the group of covered employees that the employer may then divide by the number of covered employees to determine the uniform premium. In contrast, the term "list billing" is defined as a billing system under which a health insurer lists a separate premium for each employee based on the age of the employee or other factors.

C. Employers Offering One QHP

For an employer offering one QHP under a composite billing system with one level of self-only coverage, these proposed regulations provide that the uniform percentage requirement is met if an eligible small employer pays the same amount for each employee enrolled in coverage and that amount is equal to at least 50 percent of the premium for self-only coverage. For employers offering one QHP under a composite billing system with different tiers of coverage (for example, self-only, self plus one, and family coverage) for which different premiums are charged, the uniform percentage requirement is satisfied if the eligible small employer either: (1) Pays the same amount for each employee enrolled in that tier of coverage and that amount is equal to at least 50 percent of the premium for that tier of coverage, or (2) pays an amount for each employee enrolled in the more expensive tiers of coverage that is the same for all employees and is no less than the amount that the employer would have contributed toward self-only coverage for that employee (and is equal to at least 50 percent of the premium for self-only coverage).

For an employer offering one QHP under a list billing system that offers only self-only coverage, the uniform percentage requirement is satisfied if the eligible small employer either: (1) Pays an amount equal to a uniform percentage (not less than 50 percent) of

the premium charged for each employee, or (2) determines an "employer-computed composite rate" and, if any employee contribution is required, each enrolled employee pays a uniform amount toward the self-only premium that is no more than 50 percent of the employer-computed composite rate for self-only coverage. The proposed regulations define "employer-computed composite rate" as the average rate determined by adding the premiums for that tier of coverage for all employees eligible to participate in the employer's health insurance plan (whether or not the eligible employee enrolls in coverage under the plan or in that tier of coverage under the plan) and dividing by the total number of such eligible employees.

For eligible small employers offering one QHP under list billing with different tiers of coverage for which different premiums are charged, the uniform percentage requirement is satisfied if the eligible small employer pays toward the premium for each employee covered under each tier of coverage an amount equal to or exceeding the amount the employer would have contributed with respect to that employee for self-only coverage, calculated either based on the actual premium that would have been charged by the insurer for that employee for self-only coverage, or based on the employer-computed composite rate for self-only coverage, and the employer premium payments within the same tier are uniform in percentage or amount. Alternatively, the eligible small employer may satisfy the uniform percentage requirement by meeting the uniform percentage requirement separately for each tier of coverage and substituting the employer-computed composite rate for that tier of coverage for the employer-computed composite rate for self-only coverage.

The proposed regulations provide examples of how the uniform percentage requirement is applied in all of these situations.

D. Employers Offering More Than One Plan

As set forth in these proposed regulations, if an employer offers more than one QHP through a SHOP Exchange, the uniform percentage requirement may be satisfied in one of two ways. The first is on a plan-by-plan basis, meaning that the employer's premium payments for each plan must individually satisfy the uniform percentage requirement stated above. The amounts or percentages of premiums paid toward each QHP do not have to be the same, but they must each

satisfy the uniform percentage requirement if each QHP is tested separately. The other permissible method to satisfy the uniform percentage requirement is through the reference plan method. Under the reference plan method, the employer designates one of its QHPs as a reference plan. Then the employer either determines a level of employer contributions for each employee such that, if all eligible employees enrolled in the reference plan, the contributions would satisfy the uniform percentage requirement as applied to that reference plan, or the employer allows each employee to apply the minimum amount of employer contribution determined necessary to meet the uniform percentage requirement toward the reference plan or toward coverage under any other available QHP.

E. Employers Complying With State Law

The Treasury Department and the IRS understand that at least one State requires employers to contribute a certain percentage (50%) to an employee's premium cost, but also requires that the employee's contribution not exceed a certain percentage of monthly gross earnings so that, in some instances, the employer's required contribution for a particular employee may exceed 50 percent of the premium.³ To satisfy the uniform percentage requirement under section 45R, that employer generally would be required to increase the employer contribution to all its employees' premiums to match the increase for that one employee, which may be difficult especially if the percentage increase is substantial. Accordingly, for taxable years beginning in 2014, an employer will be treated as meeting the uniform percentage requirement if the failure to satisfy the uniform percentage requirement is attributable to additional employer contributions made to certain employees solely to comply with an applicable State or local law.

IV. Claiming the Credit

A. Form 8941, Credit for Small Employer Health Insurance Premiums

For an eligible small employer that is not a tax-exempt eligible small employer, the credit is calculated on Form 8941, "Credit for Small Employer Health Insurance Premiums," and can be applied against both regular and alternative minimum tax. For tax-exempt eligible small employers, the credit is also calculated on Form 8941

³ See Hawaii Prepaid Health Care Act, Hawaii Revised Statutes Chapter 393 (1974).

and attached to Form 990-T, "Exempt Organization Business Income Tax Return." Filing Form 990-T with an attached Form 8941 is required for a tax-exempt eligible small employer to claim the credit, even if it is not otherwise required to file Form 990-T.

B. Estimated Tax Payments and Alternative Minimum Tax (AMT) Liability

These proposed regulations provide that the section 45R credit may be reflected in an eligible small employer's estimated tax payments in accordance with the estimated tax rules. The credit can also be used to offset an eligible small employer's AMT liability for the year, subject to certain limitations based on the amount of an employer's regular tax liability, AMT liability and other allowable credits. See section 38(c)(1), as modified by section 38(c)(4)(B)(vi), for these limitations.

C. Reduced Section 162 Deduction

No deduction is allowed under section 162 for that portion of the premiums paid equal to the amount of the credit claimed under section 45R. See section 280C(h).

Proposed Effective/Applicability Dates

These regulations are proposed to be effective the date the final regulations are published in the **Federal Register**, and apply to taxable years beginning after December 31, 2013. To assist with any preparation needed for transition to the requirements applicable to taxable years beginning after December 31, 2014, employers may also rely on these proposed regulations for guidance for taxable years beginning after December 31, 2013, and before December 31, 2014. If and to the extent future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect and employers will be provided with time to come into compliance with the final regulations (and will in any case not be required to comply for taxable years beginning prior to January 1, 2015).

Availability of IRS Documents

IRS notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory

assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. While the number of small entities affected is substantial, the economic impact on the affected small entities is not significant. The information required to determine a small employer's eligibility for, and amount of, an applicable credit, generally consisting of the annual hours worked by its employees, the annual wages paid to its employees, the cost of the employees' premiums for qualified health plans and the employer's contribution towards those premiums, is information that the small employer generally will retain for business purposes and be readily available to accumulate for purposes of completing the necessary form for claiming the credit. In addition, this credit is available to any eligible small employer only twice (because the credit can be claimed by a small employer only for two consecutive taxable years beginning after December 31, 2013, beginning with the taxable year for which the small employer first claims the credit). Accordingly, no small employer will calculate the credit amount or complete the process for claiming the credit under this regulation more than two times.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time,

and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stephanie Caden, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.45R-0 is added to read as follows:

§ 1.45R-0 Table of Contents

This section lists the table of contents for §§ 1.45R-1 through 1.45R-5.

§ 1.45R-1 Definitions.

- (a) Definitions.
- (1) Average premium.
- (2) Composite billing.
- (3) Credit period.
- (4) Eligible small employer.
- (5) Employee.
- (6) Employer-computed composite rate.
- (7) Exchange.
- (8) Family member.
- (9) Full-time equivalent employee (FTE).
- (10) List billing.
- (11) Net premium payments.
- (12) Nonelective contribution.
- (13) Payroll taxes.
- (14) Qualified health plan QHP.
- (15) Qualifying arrangement.
- (16) Seasonal worker.
- (17) Small Business Health Options Program (SHOP).

- (18) State.
- (19) Tax-exempt eligible small employer.
- (20) Tier.
- (21) United States.
- (22) Wages.
- (b) Effective/applicability date.

§ 1.45R-2 Eligibility for the credit.

- (a) Eligible small employer.
- (b) Application of section 414 employer aggregation rules.
- (c) Employees taken into account.
- (d) Determining the hours of service performed by employees.
 - (1) In general.
 - (2) Permissible methods.
 - (3) Examples.
 - (e) FTE calculation.
 - (1) In general.
 - (2) Example.

(f) Determining the employer's average annual wages.

- (1) In general.
- (2) Example.

(g) Effective/applicability date.

§ 1.45R-3 Calculating the credit.

- (a) In general.
- (b) Average premium limitation.
 - (1) In general.
 - (2) Examples.
 - (c) Credit phaseout.
 - (1) In general.
 - (2) \$25,000 dollar amount adjusted for inflation.
 - (3) Examples.
 - (d) State credits and subsidies for health insurance.
 - (1) Payments to employer.
 - (2) Payments to issuer.
 - (3) Credits may not exceed net premium payment.
 - (4) Examples.

(e) Payroll tax limitation for tax-exempt eligible small employers.

- (1) In general.
- (2) Example.
- (f) Two-consecutive-taxable year credit period limitation.

(g) Premium payments by the employer for a taxable year.

- (1) In general.
- (2) Excluded amounts.
- (h) Rules applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperative organizations.

(i) Transition rule for 2014.

(1) In general.

(2) Example.

(j) Effective/applicability date.

§ 1.45R-4 Uniform percentage of premium paid.

- (a) In general.
 - (b) Employers offering one QHP.
 - (1) Employers offering one QHP, self-only coverage, composite billing.
 - (2) Employers offering one QHP, other tiers of coverage, composite billing.
 - (3) Employers offering one QHP, self-only coverage, list billing.
 - (4) Employers offering one QHP, other tiers of coverage, list billing.
 - (c) Employers offering more than one QHP.
 - (1) QHP-by-QHP method.
 - (2) Reference QHP method.
 - (d) Special rules regarding employer compliance with applicable State and local law.

(e) Examples.

(f) Effective/applicability date.

§ 1.45R-5 Claiming the credit.

- (a) Claiming the credit.
- (b) Estimated tax payments and alternative minimum tax (AMT) liability.
- (c) Reduction of section 162 deduction.
- (d) Effective/applicability date.

■ **Par. 3.** Sections 1.45R-1, 1.45R-2, 1.45R-3, 1.45R-4 and 1.45R-5 are added to read as follows:

§ 1.45R-1 Definitions.

(a) *Definitions.* The definitions in this section apply to this section and §§ 1.45R-2, 1.45R-3, 1.45R-4, and 1.45R-5.

(1) *Average premium.* The term *average premium* means an average premium for the small group market in the rating area in which the employee enrolls for coverage. The average premium for the small group market in a rating area is determined by the Secretary of Health and Human Services.

(2) *Composite billing.* The term *composite billing* means a system of billing under which a health insurer charges a uniform premium for each of the employer's employees or charges a single aggregate premium for the group of covered employees that the employer then divides by the number of covered employees to determine the uniform premium.

(3) *Credit period*—(i) *In general.* The term *credit period* means, with respect to any eligible small employer (or any predecessor employer), the two-consecutive-taxable year period beginning with the first taxable year beginning after December 31, 2013, for which the eligible small employer files an income tax return with an attached Form 8941, "Credit for Small Employer Health Insurance Premiums" (or files a Form 990-T, "Exempt Organization Business Income Tax Return," with an attached Form 8941 in the case of a tax-exempt eligible employer). For a transition rule for 2014, see § 1.45R-3(i).

(ii) *Examples.* The following examples illustrate the provisions of paragraph (a)(3)(i) of this section:

Example 1. (i) *Facts.* In 2014, an eligible small employer (Employer) that uses a calendar year as its taxable year begins to offer insurance through a SHOP Exchange. Employer has 4 employees and otherwise qualifies for the credit, but none of the employees enroll in the coverage offered by Employer through the SHOP Exchange. In mid-2015, the 4 employees enroll for coverage through the SHOP Exchange but Employer does not file Form 8941 or claim the credit. In 2016, Employer has 20 employees and all are enrolled in coverage offered through the SHOP Exchange. Employer files Form 8941 with Employer's 2016 tax return to claim the credit.

(ii) *Conclusion.* Employer's taxable year 2016 is the first year of the credit period. Accordingly, Employer's two-year credit period is 2016 and 2017.

Example 2. (i) *Facts.* Same facts as *Example 1*, but Employer files Form 8941 with Employer's 2015 tax return.

(ii) *Conclusion.* Employer's taxable year 2015 is the first year of the credit period. Accordingly, Employer's two-year credit period is 2015 and 2016 (and does not include 2017). Employer is entitled to a credit based on a partial year of SHOP Exchange coverage for Employer's taxable year 2015.

(4) *Eligible small employer.* (i) The term *eligible small employer* means an

employer that meets the requirements set forth in § 1.45R-2.

(ii) For the definition of tax-exempt eligible small employer, see paragraph (a)(19) of this section.

(iii) A farmers' cooperative described under section 521 that is subject to tax pursuant to section 1381, and otherwise meets the requirements of this paragraph (a)(4) and § 1.45R-2, is an eligible small employer.

(5) *Employee*—(i) *In general.* Except as otherwise specifically provided in this paragraph (a)(5), the term *employee* means an individual who is an employee of the eligible small employer under the common law standard. See § 31.3121(d)-1(c).

(ii) *Leased employees.* For purposes of this paragraph (a)(5), the term *employee* also includes a leased employee (as defined in section 414(n)).

(iii) *Certain individuals excluded.* The term *employee* does not include independent contractors (including sole proprietors), partners in a partnership, shareholders owning more than two percent of an S corporation, and any owners of more than five percent of other businesses. The term *employee* also does not include family members of these owners and partners including the employee-spouse of a shareholder owning more than two percent of the stock of an S corporation, the employee-spouse of an owner of more than five percent of a business, the employee-spouse of a partner owning more than a five percent interest in a partnership, and the employee-spouse of a sole proprietor.

(iv) *Seasonal employees.* The term *employee* does not include seasonal workers unless the seasonal worker provides services to the employer on more than 120 days during the taxable year.

(v) *Dependents.* The term *employee* does not include any other member of the household of owners and partners who qualifies as a dependent under section 152(d)(2)(H).

(vi) *Ministers.* Whether a minister is an employee is determined under the common law standard for determining worker status. If, under the common law standard, a minister is not an employee, the minister is not an employee for purposes of this paragraph (a)(5) and is not taken into account in determining an employer's FTEs, and premiums paid for the minister's health insurance coverage are not taken into account in computing the credit. If, under the common law standard, a minister is an employee, the minister is an employee for purposes of this paragraph (a)(5), and is taken into account in determining an employer's FTEs, and premiums paid

by the employer for the minister's health insurance coverage can be taken into account in computing the credit. Because the performance of services by a minister in the exercise of his or her ministry is not treated as employment for purposes of the Federal Insurance Contributions Act (FICA), compensation paid to the minister is not wages as defined under section 3121(a), and is not counted as wages for purposes of computing an employer's average annual wages.

(6) *Employer-computed composite rate.* The term *employer-computed composite rate* refers to a rate for a tier of coverage (such as self-only or family) of a QHP that is the average rate determined by adding the premiums for that tier of coverage for all employees eligible to participate in the QHP (whether or not they actually receive coverage under the plan or under that tier of coverage) and dividing by the total number of such eligible employees. The employer-computed composite rate is used in list billing to convert individual premiums for a tier of coverage into an employer-computed composite rate for that tier of coverage.

(7) *Exchange.* The term *Exchange* means an exchange as defined in 45 CFR 155.20.

(8) *Family member.* The term *family member* is defined with respect to a taxpayer as a child (or descendant of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law. A spouse of any of these family members is also considered a family member.

(9) *Full-time equivalent employee (FTE).* The number of *full-time equivalent employees (FTEs)* is determined by dividing the total number of hours of service for which wages were paid by the employer to employees during the taxable year by 2,080. See § 1.45-2(d) and (e) for permissible methods of calculating hours of service and the method for calculating the number of an employer's FTEs.

(10) *List billing.* The term *list billing* refers to a system of billing under which a health insurer lists a separate premium for each employee based on the age of the employee or other factors.

(11) *Net premium payments.* The term *net premium payments* means, in the case of an employer receiving a State tax credit or State subsidy for providing health insurance to its employees, the excess of the employer's actual premium payments over the State tax credit or State subsidy received by the

employer. In the case of a State payment directly to an insurance company (or another entity licensed under State law to engage in the business of insurance), the employer's net premium payments are the employer's actual premium payments. If a State-administered program (such as Medicaid or another program that makes payments directly to a health care provider or insurance company on behalf of individuals and their families who meet certain eligibility guidelines) makes payments that are not contingent on the maintenance of an employer-provided group health plan, those payments are not taken into account in determining the employer's net premium payments.

(12) *Nonelective contribution.* The term *nonelective contribution* means an employer contribution other than a contribution pursuant to a salary reduction arrangement under section 125.

(13) *Payroll taxes.* For purposes of section 45R, the term *payroll taxes* means amounts required to be withheld as tax from the employees of a tax-exempt eligible small employer under section 3402, amounts required to be withheld from such employees under section 3101(b), and amounts of tax imposed on the tax-exempt eligible small employer under section 3111(b).

(14) *Qualified health plan (QHP).* The term *qualified health plan (QHP)* means a qualified health plan as defined in Affordable Care Act section 1301(a) (see 42 U.S.C. 18021(a)), but does not include a catastrophic plan described in Affordable Care Act section 1302(e) (see 42 U.S.C. 18022(e)).

(15) *Qualifying arrangement.* The term *qualifying arrangement* means an arrangement that requires an eligible small employer to make a nonelective contribution on behalf of each employee who enrolls in a QHP offered to employees by the employer through a SHOP Exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the QHP.

(16) *Seasonal worker.* The term *seasonal worker* means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1), and retail workers employed exclusively during holiday seasons.

(17) *Small Business Health Options Program (SHOP).* The term *Small Business Health Options Program (SHOP)* means an Exchange established pursuant to section 1311 of the Affordable Care Act and defined in 45 CFR 155.20.

(18) *State.* The term *State* means a State as defined in section 7701(a)(10), including the District of Columbia.

(19) *Tax-exempt eligible small employer.* The term *tax-exempt eligible small employer* means an eligible small employer that is exempt from federal income tax under section 501(a) as an organization described in section 501(c).

(20) *Tier.* The term *tier* refers to a category of coverage under a benefits package that varies only by the number of individuals covered. For example, self-only coverage, self plus one coverage, and family coverage would constitute three separate tiers of coverage.

(21) *United States.* The term *United States* means United States as defined in section 7701(a)(9).

(22) *Wages.* The term *wages* for purposes of section 45R means wages as defined under section 3121(a) for purposes of the Federal Insurance Contributions Act (FICA), determined without regard to the social security wage base limitation under section 3121(a)(1).

(b) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 1.45R-2 Eligibility for the credit.

(a) *Eligible small employer.* To be eligible for the credit, an employer must be an eligible small employer. In order to be an eligible small employer, with respect to any taxable year, an employer must have no more than 25 full-time equivalent employees (FTEs), must have in effect a qualifying arrangement, and the average annual wages of its FTEs must not exceed an amount equal to twice the dollar amount in effect under § 1.45R-3(c)(2). To claim the credit for taxable years beginning in or after 2014, the qualifying arrangement is an arrangement that requires an employer to make a nonelective contribution on behalf of each employee who enrolls in a qualified health plan (QHP) offered to employees through a small business health options program (SHOP) Exchange in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the QHP. Notwithstanding the foregoing, an employer that is an agency or instrumentality of the federal government, or of a State, local or Indian tribal government, is not an eligible small employer unless it is an organization described in section 501(c) that is exempt from tax under section 501(a). An employer does not fail to be an eligible small employer merely because its employees are not performing services in a trade or business of the employer. An employer

located outside the United States (including a U.S. Territory) must have income effectively connected with the conduct of a trade or business in the United States, and otherwise meet the requirements of this section, to be an eligible small employer. For eligibility standards for SHOP related to foreign employers, see 45 CFR 155.710. Paragraphs (b) through (f) of this section provide the rules for determining whether the requirements to be an eligible small employer are met, including rules related to identifying and counting the employer's number of the employer's FTEs, counting the employees' hours of service, and determining the employer's average annual FTE wages for the taxable year. For rules on determining whether the uniform percentage requirement is met, see § 1.45R-4.

(b) *Application of section 414 employer aggregation rules.* All employers treated as a single employer under section 414(b), (c), (m) or (o) are treated as a single employer for purposes of this section. Thus, all employees of a controlled group under section 414(b), (c) or (o), or an affiliated service group under section 414(m), are taken into account in determining whether any member of the controlled group or affiliated service group is an eligible small employer. Similarly, all wages paid to, and premiums paid for, employees by the members of the controlled group or affiliated service group are taken into account when determining the amount of the credit for a group treated as a single employer under these rules.

(c) *Employees taken into account.* To be eligible for the credit, an employer must have employees as defined in § 1.45R-1(a)(5) during the taxable year. All employees of the eligible small employer are taken into account for purposes of determining the employer's FTEs and average annual FTE wages. Employees include former employees who terminated employment during the year for which the credit is being claimed, employees covered under a collective bargaining agreement, and employees who do not enroll in a QHP offered by the employer through a SHOP Exchange.

(d) *Determining the hours of service performed by employees—(1) In general.* An employee's hours of service for a year include each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer during the employer's taxable year. It also includes each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during

which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence (except that no more than 160 hours of service are required to be counted for an employee on account of any single continuous period during which the employee performs no duties).

(2) *Permissible methods.* In calculating the total number of hours of service that must be taken into account for an employee during the taxable year, eligible small employers need not use the same method for all employees, and may apply different methods for different classifications of employees if the classifications are reasonable and consistently applied. Eligible small employers may change the method for calculating employees' hours of service for each taxable year. An eligible small employer may use any of the following three methods.

(i) *Actual hours worked.* An employer may use the actual hours of service provided by employees including hours worked and any other hours for which payment is made or due (as described in paragraph (d)(1) of this section).

(ii) *Days-worked equivalency.* An employer may use a days-worked equivalency whereby the employee is credited with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service under paragraph (d)(1) of this section.

(iii) *Weeks-worked equivalency.* An employer may use a weeks-worked equivalency whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service under paragraph (d)(1) of this section.

(3) *Examples.* The following examples illustrate the rules of paragraph (d) of this section:

Example 1. Counting hours of service by hours actually worked or for which payment is made or due. (i) *Facts.* An eligible small employer (Employer) has payroll records that indicate that Employee A worked 2,000 hours and that Employer paid Employee A for an additional 80 hours on account of vacation, holiday and illness. Employer uses the actual hours worked method described in paragraph (d)(2)(i) of this section.

(ii) *Conclusion.* Under this method of counting hours, Employee A must be credited with 2,080 hours of service (2,000 hours worked and 80 hours for which payment was made or due).

Example 2. Counting hours of service under days-worked equivalency. (i) *Facts.* Employee B worked from 8:00 a.m. to 12:00 p.m. every day for 200 days. Employer uses the days-worked equivalency method described in paragraph (d)(2)(ii) of this section.

(ii) *Conclusion.* Under this method of counting hours, Employee B must be credited with 1,600 hours of service (8 hours for each day Employee B would otherwise be credited with at least 1 hour of service \times 200 days).

Example 3. Counting hours of service under weeks-worked equivalency. (i) *Facts.* Employee C worked 49 weeks, took 2 weeks of vacation with pay, and took 1 week of leave without pay. Employer uses the weeks-worked equivalency method described in paragraph (d)(2)(iii) of this section.

(ii) *Conclusion.* Under this method of counting hours, Employee C must be credited with 2,040 hours of service (40 hours for each week during which Employee C would otherwise be credited with at least 1 hour of service \times 51 weeks).

Example 4. Excluded employees. (i) *Facts.* Employee D worked 3 consecutive weeks at 32 hours per week during the holiday season. Employee D did not work during the remainder of the year. Employee E worked limited hours after school from time to time through the year for a total of 350 hours. Employee E does not work through the summer. Employer uses the actual hours worked method described in paragraph (d)(2)(i) of this section.

(ii) *Conclusion.* Employee D is a seasonal employee who worked for 120 days or less for Employer during the year. Employee D's hours are not counted when determining the hours of service of Employer's employees. Employee E works throughout most of the year and is not a seasonal employee. Employer counts Employee E's 350 hours of service during the year.

(e) *FTE Calculation—(1) In general.* The number of an employer's FTEs is determined by dividing the total hours of service, determined in accordance with paragraph (d) of this section, credited during the year to employees taken into account under paragraph (c) of this section (but not more than 2,080 hours for any employee) by 2,080. The result, if not a whole number, is then rounded to the next lowest whole number. If, however, after dividing the total hours of service by 2,080, the resulting number is less than one, the employer rounds up to one FTE.

(2) *Example.* The following example illustrates the provisions of paragraph (e) of this section:

Example. Determining the number of FTEs. (i) *Facts.* A sole proprietor pays 5 employees wages for 2,080 hours each, pays 3 employees wages for 1,040 hours each, and pays 1 employee wages for 2,300 hours. One of the employees working 2,080 hours is the sole proprietor's nephew. The sole proprietor's FTEs would be calculated as follows: 8,320 hours of service for the 4 employees paid for 2,080 hours each ($4 \times 2,080$); the sole proprietor's nephew is excluded from the FTE calculation; 3,120 hours of service for the 3 employees paid for 1,040 hours each ($3 \times 1,040$); and 2,080 hours of service for the 1 employee paid for 2,300 hours (lesser of 2,300 and 2,080). The sum of the included hours of service equals 13,520 hours of service.

(ii) *Conclusion.* The sole proprietor's FTEs equal 6 (13,520 divided by 2,080 = 6.5, rounded to the next lowest whole number).

(f) *Determining the employer's average annual FTE wages—(1) In general.* All wages paid to employees (including overtime pay) are taken into account in computing an eligible small employer's average annual FTE wages. The average annual wages paid by an employer for a taxable year is determined by dividing the total wages paid by the eligible small employer during the employer's taxable year to employees taken into account under paragraph (c) of this section by the number of the employer's FTEs for the year. The result is then rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000). For purposes of determining the employer's average annual wages for the taxable year, only wages that are paid for hours of service determined under paragraph (d) of this section are taken into account.

(2) *Example.* The following example illustrates the provision of paragraphs (e) and (f) of this section:

Example. (i) Facts. An employer has 26 FTEs with average annual wages of \$23,000. Only 22 of the employer's employees enroll for coverage offered by the employer through a SHOP Exchange.

(ii) *Conclusion.* The hours of service and wages of all employees are taken into consideration in determining whether the employer is an eligible small employer for purposes of the credit. Because the employer does not have fewer than 25 FTEs for the taxable year, the employer is not an eligible small employer for purposes of this section, even if less than 25 employees (or FTEs) enroll for coverage through the SHOP Exchange.

(g) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 1.45R-3 Calculating the credit.

(a) *In general.* The tax credit available to an eligible small employer equals 50 percent of the eligible small employer's premium payments made on behalf of its employees under a qualifying arrangement, or in the case of a tax-exempt eligible small employer, equals 35 percent of the employer's premium payments made on behalf of its employees under a qualifying arrangement. The employer's tax credit is subject to the following adjustments and limitations:

(1) The average premium limitation for the small group market in the rating area in which the employee enrolls for coverage, described in paragraph (b) of this section;

(2) The credit phaseout described in paragraph (c) of this section;

(3) The net premium payment limitation in the case of State credits or subsidies described in paragraph (d) of this section;

(4) The payroll tax limitation for a tax-exempt eligible small employer described in paragraph (e) of this section;

(5) The two-consecutive-taxable year credit period limitation, described in paragraph (f) of this section; *

(6) The rules with respect to the premium payments taken into account, described in paragraph (g) of this section;

(7) The rules with respect to credits applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperatives described in paragraph (h) of this section; and

(8) The transition relief for 2014 described in paragraph (i) of this section.

(b) *Average premium limitation—(1) In general.* The amount of an eligible small employer's premium payments that are taken into account in calculating the credit is limited to the premium payments the employer would have made under the same arrangement if the average premium for the small group market in the rating area in which the employee enrolls for coverage were substituted for the actual premium.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b)(1) of this section:

Example 1. Comparing premium payments to average premium for small group market.

(i) *Facts.* An eligible small employer (Employer) offers a health insurance plan with self-only and family coverage through a small business options program (SHOP) Exchange. Employer has 9 full-time equivalent employees (FTEs) with average annual wages of \$23,000 per FTE. All 9 employees are employees as defined under § 1.45R-1(a)(5). Four employees are enrolled in self-only coverage and 5 are enrolled in family coverage. Employer pays 50% of the premiums for all employees enrolled in self-only coverage and 50% of the premiums for all employees enrolled in family coverage (and the employee is responsible for the remainder in each case). The premiums are \$4,000 a year for self-only coverage and \$10,000 a year for family coverage. The average premium for the small group market in Employer's rating area is \$5,000 for self-only coverage and \$12,000 for family coverage. Employer's premium payments for each FTE (\$2,000 for self-only coverage and \$5,000 for family coverage) do not exceed 50 percent of the average premium for the small group market in Employer's rating area (\$2,500 for self-only coverage and \$6,000 for family coverage).

(ii) *Conclusion.* The amount of premiums paid by Employer for purposes of computing the credit equals \$33,000 ((4 × \$2,000) plus (5 × \$5,000)).

Example 2. Premium payments exceeding average premium for small group market. (i) Facts. Same facts as *Example 1*, except that the premiums are \$6,000 for self-only coverage and \$14,000 for family coverage. Employer's premium payments for each employee (\$3,000 for self-only coverage and \$7,000 for family coverage) exceed 50% of the average premium for the small group market in Employer's rating area (\$2,500 for self-only coverage and \$6,000 for family coverage).

(ii) *Conclusion.* The amount of premiums paid by Employer for purposes of computing the credit equals \$40,000 ((4 × \$2,500) plus (5 × \$6,000)).

(c) *Credit phaseout—(1) In general.* The tax credit is subject to a reduction (but not reduced below zero) if the employer's FTEs exceed 10 or average annual FTE wages exceed \$25,000. If the number of FTEs exceeds 10, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the number of FTEs in excess of 10 and the denominator of which is 15. If average annual FTE wages exceed \$25,000, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the amount by which average annual FTE wages exceed \$25,000 and the denominator of which is \$25,000. In both cases, the result of the calculation is subtracted from the otherwise applicable credit to determine the credit to which the employer is entitled. For an employer with both more than 10 FTEs and average annual FTE wages exceeding \$25,000, the total reduction is the sum of the two reductions.

(2) *\$25,000 dollar amount adjusted for inflation.* For taxable years beginning in a calendar year after 2013, each reference to "\$25,000" in paragraph (c)(1) of this section is replaced with a dollar amount equal to \$25,000 multiplied by the cost-of-living adjustment under section 1(f)(3) for the calendar year, determined by substituting "calendar year 2012" for "calendar year 1992" in section 1(f)(3)(B).

(3) *Examples.* The following examples illustrate the provisions of paragraph (c) of this section. For purposes of these examples, no employer is a tax-exempt organization and no other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example 1. Calculating the maximum credit for an eligible small employer without an applicable credit phaseout. (i) Facts. An eligible small employer (Employer) has 9 FTEs with average annual wages of \$23,000. Employer pays \$72,000 in health insurance premiums for those employees (which does

not exceed the total average premium for the small group market in the rating area), and otherwise meets the requirements for the credit.

(ii) *Conclusion.* Employer's credit equals \$36,000 ($50\% \times \$72,000$).

Example 2. Calculating the credit phaseout if the number of FTEs exceeds 10 or average annual wages exceed \$25,000, as adjusted for inflation. (i) *Facts.* An eligible small employer (Employer) has 12 FTEs and average annual FTE wages of \$30,000 in a year when the amount in paragraph (c)(1) of this section, as adjusted for inflation, is \$25,000. Employer pays \$96,000 in health insurance premiums for its employees (which does not exceed the average premium for the small group market in the rating area) and otherwise meets the requirements for the credit.

(ii) *Conclusion.* The initial amount of the credit is determined before any reduction ($50\% \times \$96,000$) = \$48,000. The credit reduction for FTEs in excess of 10 is \$6,400 ($\$48,000 \times 2/15$). The credit reduction for average annual FTE wages in excess of \$25,000 is \$9,600 ($\$48,000 \times \$5,000/\$25,000$), resulting in a total credit reduction of \$16,000 ($\$6,400 + \$9,600$). Employer's total tax credit equals \$32,000 ($\$48,000 - \$16,000$).

(d) *State credits and subsidies for health insurance—(1) Payments to employer.* If the employer is entitled to a State tax credit or a premium subsidy that is paid directly to the employer, the premium payment made by the employer is not reduced by the credit or subsidy for purposes of determining whether the employer has satisfied the requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost. Also, except as described in paragraph (d)(3) of this section, the maximum amount of the credit is not reduced by reason of a State tax credit or subsidy or by reason of payments by a State directly to an employer.

(2) *Payments to issuer.* If a State makes payments directly to an insurance company (or another entity licensed under State law to engage in the business of insurance) to pay a portion of the premium for coverage of an employee enrolled for coverage through a SHOP Exchange, the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has satisfied the requirement to pay an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of coverage. Also, except as described below in paragraph (d)(3) of this section, these premium payments by the State are treated as an employer contribution under this section for purposes of calculating the credit.

(3) *Credits may not exceed net premium payment.* Regardless of the application of paragraphs (d)(1) and

(d)(2) of this section, in no event may the amount of the credit exceed the amount of the employer's net premium payments as defined in § 1.45R-1(a)(11).

(4) *Examples.* The following examples illustrate the provisions of paragraphs (d)(1) through (d)(3) of this section. For purposes of these examples, the eligible small employer's taxable year and plan year begin during or after 2014. No other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example 1. State premium subsidy paid directly to employer. (i) *Facts.* The State in which an eligible small employer (Employer) operates provides a health insurance premium subsidy of up to 40% of the health insurance premiums for each eligible employee. The State pays the subsidy directly to Employer. Employer has one employee, Employee D. Employee D's health insurance premiums are \$100 per month and are paid as follows: \$80 by Employer and \$20 by Employee D through salary reductions to a cafeteria plan. The State pays Employer \$40 per month as a subsidy for Employer's payment of insurance premiums on behalf of Employee D. Employer is otherwise an eligible small employer that meets the requirements for the credit.

(ii) *Conclusion.* For purposes of calculating the credit, the amount of premiums paid by the employer is \$80 per month (the premium payment by the Employer without regard to the subsidy from the State). The maximum credit is \$40 ($\$80 \times 50\%$).

Example 2. State premium subsidy paid directly to insurance company. (i) *Facts.* The State in which Employer operates provides a health insurance premium subsidy of up to 30% for each eligible employee. Employer has one employee, Employee E. Employee E is enrolled in self-only coverage through a qualified health plan (QHP) offered by Employer through a SHOP Exchange. Employee E's health insurance premiums are \$100 per month and are paid as follows: \$50 by Employer; \$30 by the State and \$20 by the employee. The State pays the \$30 per month directly to the insurance company and the insurance company bills Employer for the employer and employee's share, which equal \$70 per month. Employer is otherwise an eligible small employer that meets the requirements for the credit.

(ii) *Conclusion.* For purposes of calculating the amount of the credit, the amount of premiums paid by Employer is \$80 per month (the sum of Employer's payment and the State's payment). The maximum credit is \$40 ($\$80 \times 50\%$).

Example 3. Credit limited by employer's net premium payment. (i) *Facts.* Employer is an eligible small employer that is not a tax-exempt organization. The State in which Employer operates provides a health insurance premium subsidy of up to 50% for each eligible employee. Employer has one employee, Employee F. Employee F is enrolled in self-only coverage under the QHP offered to Employee F by Employer through a SHOP Exchange. Employee F's health

insurance premiums are \$100 per month and are paid as follows: \$20 by Employer; \$50 by the State and \$30 by Employee F. The State pays the \$50 per month directly to the insurance company and the insurance company bills Employer for the employer's and employee's shares, which total \$50 per month. Employer is otherwise an eligible small employer that meets the requirements for the credit. The amount of premiums paid by Employer (the sum of Employer's payment and the State's payment) is \$70 per month, which is more than 50% of the \$100 monthly premium payment. The amount of the premium for calculating the credit is also \$70 per month.

(ii) *Conclusion.* The maximum credit without adjustments or limitations is \$35 ($\$70 \times 50\%$). Employer's net premium payment is \$20 (the amount actually paid by Employer excluding the State subsidy). Because the credit may not exceed Employer's net premium payment, the credit is \$20 (the lesser of \$35 or \$20).

(e) *Payroll tax limitation for tax-exempt eligible small employers—(1) In general.* For a tax-exempt eligible employer, the amount of the credit claimed cannot exceed the total amount of payroll taxes (as defined in § 1.45R-1(a)(13)) of the employer during the calendar year in which the taxable year begins.

(2) *Example.* The following example illustrates the provisions of paragraph (e)(1) of this section. For purposes of this example, the eligible small employer's taxable year and plan year begin during or after 2014. No other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example. Calculating the maximum credit for a tax-exempt eligible small employer. (i) *Facts.* Employer is a tax-exempt eligible small employer that has 10 FTEs with average annual wages of \$21,000. Employer pays \$80,000 in health insurance premiums for its employees (which does not exceed the average premium for the small group market in the rating area) and otherwise meets the requirements for the credit. The total amount of Employer's payroll taxes equals \$30,000.

(ii) *Conclusion.* The initial amount of the credit is determined before any reduction: ($35\% \times \$80,000$) = \$28,000, and Employer's payroll taxes are \$30,000. The total tax credit equals \$28,000 (the lesser of \$28,000 and \$30,000).

(f) *Two-consecutive-taxable year credit period limitation.* The credit is only available to an eligible small employer, including a tax-exempt eligible small employer, during that employer's credit period. For a transition rule for 2014, see paragraph (i) of this section. To prevent the avoidance of the two-year limit on the credit period through the use of successor entities, a successor entity and a predecessor entity are treated as

the same employer. For this purpose, the rules for identifying successor entities under § 31.3121(a)(1)–1(b) apply. Accordingly, for example, if an eligible small employer claims the credit for the 2014 and 2015 taxable years, that eligible small employer's credit period will have expired so that any successor employer to that eligible small employer will not be able to claim the credit for any subsequent taxable years.

(g) *Premium payments by the employer for a taxable year*—(1) *In general.* Only premiums paid by an eligible small employer or tax-exempt eligible small employer on behalf of each employee enrolled in a QHP or payments paid to the issuer in accordance with paragraph (d)(2) of this section are counted in calculating the credit. If an eligible small employer pays only a portion of the premiums for the coverage provided to employees (with employees paying the rest), only the portion paid by the employer is taken into account. Premiums paid on behalf of seasonal workers may be counted in determining the amount of the credit (even though seasonal worker wages and hours of service are not included in the FTE and average annual FTE wage calculation unless the seasonal worker works for the employer on more than 120 days during the taxable year).

(2) *Excluded amounts*—(i) *Salary reduction amounts.* Any premium paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan is not treated as paid by the employer for purposes of section 45R and these regulations. For this purpose, premiums paid with employer-provided flex credits that employees may elect to receive as cash or other taxable benefit are treated as paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan.

(ii) *HSAs, HRAs, and FSAs.* Employer contributions to, or amounts made available under, health savings accounts, reimbursement arrangements, and health flexible spending arrangements are not taken into account in determining the premium payments by the employer for a taxable year.

(h) *Rules applicable to trusts, estates, regulated investment companies, real estate investment trusts and cooperative organizations.* Rules similar to the rules of section 52(d) and (e) and the regulations thereunder apply in calculating and apportioning the credit with respect to a trust, estate, a regulated investment company or real estate investment trusts or cooperative organization.

(i) *Transition rule for 2014*—(1) *In general.* This paragraph (i) applies if as of August 26, 2013 an eligible small employer offers coverage on a plan year that begins on a date other than the first day of its taxable year. In such a case, if an eligible small employer has a health plan year beginning after January 1, 2014 but before January 1, 2015 (2014 health plan year) that begins after the start of its first taxable year beginning after January 1, 2014 (2014 taxable year), and the employer offers one or more QHPs to its employees through a SHOP Exchange as of the first day of its 2014 health plan year, then the eligible small employer is treated as offering coverage through a SHOP Exchange for its entire 2014 taxable year for purposes of section 45R if the health care coverage provided from the first day of the 2014 taxable year through the day immediately preceding the first day of the 2014 health plan year would have qualified for a credit under section 45R using the rules applicable to taxable years beginning before January 1, 2014. If the eligible small employer claims the section 45R credit in the 2014 taxable year, the 2014 taxable year begins the first year of the credit period.

(2) *Example.* The following example illustrates the rule of paragraph (i) of this section. For purposes of this example, the eligible small employer is not a tax-exempt organization. No other adjustments or limitations on the credit apply other than those adjustments and limitations explicitly set forth in the example.

Example. (i) Facts. An eligible small employer (Employer) has a 2014 taxable year that begins January 1, 2014 and ends on December 31, 2014, and a 2014 health plan year that begins July 1, 2014 and ends June 30, 2015. Employer offers a QHP through a SHOP Exchange the coverage under which begins July 1, 2014. Employer provides coverage from January 1, 2014 through June 30, 2014 that would have qualified for a credit under section 45R using the rules applicable to taxable years beginning before January 1, 2014.

(ii) *Conclusion.* Employer may claim the credit at the 50% rate under section 45R for the entire 2014 taxable year using the rules under paragraph (i) of this section. Accordingly, in calculating the credit, Employer may count premiums paid for coverage from January 1, 2014 through June 30, 2014, as well as premiums paid from July 1, 2014 through December 31, 2014. If Employer claims the credit for the 2014 taxable year, that taxable year is the first year of the credit period.

(j) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 1.45R–4 Uniform percentage of premium paid.

(a) *In general.* An eligible small employer must pay a uniform percentage (not less than 50 percent) of the premium for each employee enrolled in a qualified health plan (QHP) offered to employees by the employer through a small business health options program (SHOP) Exchange.

(b) *Employers offering one QHP.* An employer that offers a single QHP through a SHOP Exchange must satisfy the requirements of this paragraph (b).

(1) *Employers offering one QHP, self-only coverage, composite billing.* For an eligible small employer offering self-only coverage and using composite billing, the employer satisfies the requirements of this paragraph if it pays the same amount toward the premium for each employee receiving self-only coverage under the QHP, and that amount is equal to at least 50 percent of the premium for self-only coverage.

(2) *Employers offering one QHP, other tiers of coverage, composite billing.* For an eligible small employer offering one QHP providing at least one tier of coverage with a higher premium than self-only coverage and using composite billing, the employer satisfies the requirements of this paragraph (b)(2) if it either—

(i) Pays an amount for each employee enrolled in that more expensive tier of coverage that is the same for all employees and that is no less than the amount that the employer would have contributed toward self-only coverage for that employee, or

(ii) Meets the requirements of paragraph (b)(1) of this section for each tier of coverage that it offers.

(3) *Employers offering one QHP, self-only coverage, list billing.* For an eligible small employer offering one QHP providing only self-only coverage and using list billing, the employer satisfies the requirements of this paragraph (b)(3) if either—

(i) The employer pays toward the premium an amount equal to a uniform percentage (not less than 50 percent) of the premium charged for each employee, or

(ii) The employer converts the individual premiums for self-only coverage into an employer-computed composite rate for self-only coverage, and, if an employee contribution is required, each employee who receives coverage under the QHP pays a uniform amount toward the self-only premium that is no more than 50 percent of the employer-computed composite rate for self-only coverage.

(4) *Employers offering one QHP, other tiers of coverage, list billing.* For an eligible small employer offering one QHP providing at least one tier of coverage with a higher premium than self-only coverage and using list billing, the employer satisfies the requirements of this paragraph (b)(4) if it either—

(i) Pays toward the premium for each employee covered under each tier of coverage an amount equal to or exceeding the amount that the employer would have contributed with respect to that employee for self-only coverage, calculated either based upon the actual premium that would have been charged by the insurer for that employee for self-only coverage or based upon the employer-computed composite rate for self-only coverage, or

(ii) Meets the requirements of paragraph (b)(3) of this section for each tier of coverage that it offers substituting the employer-computed composite rate for each tier of coverage for the employer-computed composite rate for self-only coverage.

(c) *Employers offering more than one QHP.* If an eligible small employer offers more than one QHP, the employer must satisfy the requirements of this paragraph (c). The employer may satisfy the requirements of this paragraph (c) in either of the following two ways:

(1) *QHP-by-QHP method.* The employer makes payments toward the premium with respect to each QHP for which the employer is claiming the credit that satisfy the uniform percentage requirement under paragraph (b) of this section on a QHP-by-QHP basis (so that the amounts or percentages of premium paid by the employer for each QHP need not be identical, but the payments with respect to each QHP must satisfy paragraph (b) of this section); or

(2) *Reference QHP method.* The employer designates a reference QHP and makes employer contributions in accordance with the following requirements—

(i) The employer determines a level of employer contributions for each employee such that, if all eligible employees enrolled in the reference QHP, the contributions would satisfy the uniform percentage requirement under paragraph (b) of this section, or

(ii) The employer allows each employee to apply the minimum amount of employer contribution determined necessary to meet the uniform percentage requirement under paragraph (b) of this section either toward the reference QHP or toward the cost of coverage under any of the other available QHPs.

(d) *Special rules regarding employer compliance with applicable State or local law.* An employer will be treated as satisfying the uniform percentage requirement if the failure to otherwise satisfy the uniform percentage requirement is attributable solely to additional employer contributions made to certain employees to comply with an applicable State or local law.

(e) *Examples.* The following examples illustrate the provisions of paragraphs (a) through (d) of this section:

Example 1. (i) Facts. An eligible small employer (Employer) offers a QHP on a SHOP Exchange, Plan A, which uses composite billing. The premiums for Plan A are \$5,000 per year for self-only coverage, and \$10,000 for family coverage. Employees can elect self-only or family coverage under Plan A. Employer pays \$3,000 (60% of the premium) toward self-only coverage under Plan A and \$6,000 (60% of the premium) toward family coverage under Plan A.

(ii) *Conclusion.* Employer's contributions of 60% of the premium for each tier of coverage satisfy the uniform percentage requirement.

Example 2. (i) Facts. Same facts as Example 1, except that Employer pays \$3,000 (60% of the premium) for each employee electing self-only coverage under Plan A and pays \$3,000 (30% of the premium) for each employee electing family coverage under Plan A.

(ii) *Conclusion.* Employer's contributions of 60% of the premium toward self-only coverage and the same dollar amount toward the premium for family coverage satisfy the uniform percentage requirement, even though the percentage is not the same.

Example 3. (i) Facts. Employer offers two QHPs, Plan A and Plan B, both of which use composite billing. The premiums for Plan A are \$5,000 per year for self-only coverage and \$10,000 for family coverage. The premiums for Plan B are \$7,000 per year for self-only coverage and \$13,000 for family coverage. Employees can elect self-only or family coverage under either Plan A or Plan B. Employer pays \$3,000 (60% of the premium) for each employee electing self-only coverage under Plan A, \$3,000 (30% of the premium) for each employee electing family coverage under Plan A, \$3,500 (50% of the premium) for each employee electing self-only coverage under Plan B, and \$3,500 (27% of the premium) for each employee electing family coverage under Plan B.

(ii) *Conclusion.* Employer's contributions of 60% (or \$3,000) of the premiums for self-only coverage and the same dollar amounts toward the premium for family coverage under Plan A, and of 50% (or \$3,500) of the premium for self-only of coverage and the same dollar amount toward the premium for family coverage under Plan B, satisfy the uniform percentage requirement on a QHP-by-QHP basis; therefore the employer's contributions to both plans satisfy the uniform percentage requirement.

Example 4. (i) Facts. Same facts as Example 3, except that Employer designates Plan A as the reference QHP. Employer pays

\$2,500 (50% of the premium) for each employee electing self-only coverage under Plan A and pays \$2,500 of the premium for each employee electing family coverage under Plan A or either self-only or family coverage under Plan B.

(ii) *Conclusion.* Employer's contribution of 50% (or \$2,500) toward the premium of each employee enrolled under Plan A or Plan B satisfies the uniform percentage requirement.

Example 5. (i) Facts. Employer receives a list billing premium quote with respect to Plan X, a QHP offered by Employer on a SHOP Exchange for health insurance coverage for each of Employer's four employees. For Employee L, age 20, the self-only premium is \$3,000 per year, and the family premium is \$8,000. For Employees M, N and O, each age 40, the self-only premium is \$5,000 per year and the family premium is \$10,000. The total self-only premium for the four employees is \$18,000 ($\$3,000 + (3 \times 5,000)$). Employer calculates an employer-computed composite self-only rate of \$4,500 ($\$18,000/4$). Employer offers to make contributions such that each employee would need to pay \$2,000 of the premium for self-only coverage. Under this arrangement, Employer would contribute \$1,000 toward self-only coverage for L and \$3,000 toward self-only coverage for M, N, and O. In the event an employee elects family coverage, Employer would make the same contribution (\$1,000 for L or \$3,000 for M, N, or O) toward the family premium.

(ii) *Conclusion.* Employer satisfies the uniform percentage requirement because it offers and makes contributions based on an employer-calculated composite self-only rate such that, to receive self-only coverage, each employee must pay a uniform amount which is not more than 50% of the composite rate, and it allows employees to use the same employer contributions toward family coverage.

Example 6. (i) Facts. Same facts as Example 5, except that Employer calculates an employer-computed composite family rate of \$9,500 ($\$8,000 + 3 \times 10,000/4$) and requires each employee to pay \$4,000 of the premium for family coverage.

(ii) *Conclusion.* Employer satisfies the uniform percentage requirement because it offers and makes contributions based on a calculated self-only and family rate such that, to receive either self-only or family coverage, each employee must pay a uniform amount which is not more than 50% of the composite rate for coverage of that tier.

Example 7. (i) Facts. Same facts as Example 5, except that Employer also receives a list billing premium quote from Plan Y with respect to a second QHP offered by Employer on a SHOP Exchange for each of Employer's 4 employees. Plan Y's quote for Employee L, age 20, is \$4,000 per year for self-only coverage or \$12,000 per year for family coverage. For Employees M, N and O, each age 40, the premium is \$7,000 per year for self-only coverage or \$15,000 per year for family coverage. The total self-only premium under Plan Y is \$25,000 ($\$4,000 + (3 \times 7,000)$). The employer-computed composite self-only rate is \$6,250 ($\$25,000/4$). Employer designates Plan X as the reference plan. Employer offers to make contributions based

on the employer-calculated composite premium for the reference QHP (Plan X) such that each employee has to contribute \$2,000 to receive self-only coverage through Plan X. Under this arrangement, Employer would contribute \$1,000 toward self-only coverage for L and \$3,000 toward self-only coverage for M, N, and O. In the event an employee elects family coverage through Plan X or either self-only or family coverage through Plan Y, Employer would make the same contributions (\$1,000 for L or \$3,000 for M, N, or O) toward that coverage.

(ii) *Conclusion.* Employer satisfies the uniform percentage requirement because it offers and makes contributions based on the employer-calculated composite self-only premium for the Plan X reference QHP such that, in order to receive self-only coverage, each employee must pay a uniform amount which is not more than 50% of the self-only composite premium of the reference QHP; it allows employees to use the same employer contributions toward family coverage in the reference QHP or coverage through another QHPs.

Example 8. (i) Facts. Employer has five employees. Employer is located in a State that requires employers to pay 50% of employees' premium costs, but also requires that an employee's contribution not exceed a certain percentage of the employee's monthly gross earnings from that employer. Employer offers to pay 50% of the premium costs for all its employees, and to comply with the State law. Employer contributes more than 50% of the premium costs for two of its employees.

(ii) *Conclusion.* Employer satisfies the uniform percentage requirement because its failure to otherwise satisfy the uniform percentage requirement is attributable solely to compliance with the applicable State or local law.

(f) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

§ 1.45R-5 Claiming the credit.

(a) *Claiming the credit.* The credit is a general business credit and is claimed on an eligible small employer's annual income tax return and offsets an employer's actual tax liability for the year. The credit is claimed by attaching Form 8941, "Credit for Small Employer Health Insurance Premiums," to the eligible small employer's income tax return or, in the case of a tax-exempt eligible small employer, by attaching Form 8941 to the employer's Form 990-T, "Exempt Organization Business Income Tax Return." To claim the credit, a tax-exempt eligible small employer must file a form 990-T with an attached Form 8941, even if a Form 990-T would not otherwise be required to be filed.

(b) *Estimated tax payments and alternative minimum tax (AMT) liability.* An eligible small employer may reflect the credit in determining estimated tax payments for the year in

which the credit applies in accordance with the estimated tax rules as set forth in section 6654 and 6655 and the applicable regulations. An eligible small employer may also use the credit to offset the employer's alternative minimum tax (AMT) liability for the year, if any, subject to certain limitations based on the amount of an eligible small employer's regular tax liability, AMT liability and other allowable credits. See section 38(c)(1), as modified by section 38(c)(4)(B)(vi). However, an eligible small employer, including a tax-exempt eligible small employer, may not reduce its deposits and payments of employment tax (that is, income tax required to be withheld under section 3402, social security and Medicare tax under sections 3101 and 3111, and federal unemployment tax under section 3301) during the year in anticipation of the credit.

(c) *Reduction of section 162 deduction.* No deduction under section 162 is allowed for the eligible small employer for that portion of the health insurance premiums that is equal to the amount of the credit under § 1.45R-2.

(d) *Effective/applicability date.* This section is applicable for periods after December 31, 2013.

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013-20769 Filed 8-23-13; 8:45 am]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2011-0597; FRL-9900-29-Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Redesignation of the Columbus Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant, under the Clean Air Act (CAA), a redesignation request and approve a State Implementation Plan (SIP) revision request submitted by the state of Ohio on June 3, 2011, and supplemented on April 30, 2013. The Ohio Environmental Protection Agency (OEPA) has requested the redesignation of the Columbus, Ohio (OH) area to attainment of the 1997 annual fine particulate (PM_{2.5}) National Ambient

Air Quality Standard (NAAQS or standard). The Columbus, Ohio area (Columbus area) includes Coshocton, Delaware, Licking, Fairfield, and Franklin Counties. EPA is proposing to determine that the Columbus area has attained the 1997 annual PM_{2.5} NAAQS and to approve the state's redesignation request. EPA is proposing to approve related Ohio SIP revisions, including the state's plan for maintaining attainment of the 1997 annual PM_{2.5} NAAQS in the Columbus area through 2023, the state's 2022 Nitrogen Oxides (NO_x) and PM_{2.5} Motor Vehicle Emission Budgets (MVEBs) for the Columbus area (which EPA is also proposing to find adequate), and 2005 NO_x, Sulfur Dioxide (SO₂), and primary PM_{2.5} and 2007 Volatile Organic Compound (VOC) and ammonia emission inventories for the Columbus area. In the context of this proposal to redesignate the Columbus area, EPA addresses a number of additional issues, including the effects of two decisions of the United States Court of Appeals for the District of Columbia (D.C. Circuit or Court): The Court's August 21, 2012, decision to vacate and remand to EPA the Cross-State Air Pollution Rule (CSAPR); and the Court's January 4, 2013, decision to remand to EPA two final rules implementing the 1997 annual PM_{2.5} standard.

DATES: Comments must be received on or before September 25, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2011-0597, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Aburano.Douglas@epa.gov.
- *Fax:* (312) 408-2279.
- *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Douglas Aburano, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2011-0597. EPA's policy is that all comments

received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects and viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard,

Chicago, Illinois 60604, (312) 886-6057, or Doty.Edward@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What actions is EPA proposing?
- III. What is the background for these actions?
- IV. What are the criteria for redesignation to attainment?
 - V. What is EPA's analysis of the State's request?
 - A. Has the Columbus area attained the 1997 annual PM_{2.5} standard?
 - B. Has the State of Ohio met all plan requirements of the CAA applicable for purposes of redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} standard?
 1. Ohio Has Met All Applicable Requirements for Purposes of Redesignation of the Columbus Area Under Section 110 and Part D of the CAA
 - a. Section 110 General SIP Requirements
 - b. Part D Requirements
 2. The Columbus Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA
 3. Nonattainment Requirements
 4. Effect of the January 4, 2013, D.C. Circuit Decision Regarding PM_{2.5} Implementation Under Subpart 4 of the CAA
 - a. Background
 - b. Proposal on This Issue
 - i. Applicable Requirements for Purposes of Evaluating the Redesignation Request
 - ii. Subpart 4 Requirements and Ohio's Redesignation Request
 - iii. Subpart 4 and Control of PM_{2.5} Precursors
 - c. Are the PM_{2.5} air quality improvements in the Columbus area due to permanent and enforceable emission reductions?
 1. Permanent and Enforceable Emission Controls
 - a. Federal Emission Control Measures
 - i. Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards
 - ii. Heavy-Duty Diesel Engine Rule
 - iii. Non-Road Diesel Engine Standards
 - iv. Non-Road Spark-Ignition Engines and Recreational Engine Standards
 - b. Control Measures in Upwind Areas
 - i. NO_x SIP Call
 - ii. Clean Air Interstate Rule (CAIR) and CSAPR
 2. Emission Reductions
 - a. Ohio's Demonstration That Significant Emission Reductions Have Occurred in the Columbus Area and in Upwind Areas
 - b. VOC and Ammonia Emission Reductions
 - c. Conclusions Regarding Emission Reductions Between 2005 and 2008 in the Columbus Area
 - D. Does Ohio have a fully approvable PM_{2.5} maintenance plan pursuant to section 175A of the CAA for the Columbus area?
 1. What is required in a maintenance plan?
 2. Attainment Inventory

3. Demonstration of Maintenance
 - a. State Demonstration of Maintenance
 - b. CAIR and CSAPR
- i. Background—Effect of the August 21, 2012, D.C. Circuit Decision regarding EPA's CSAPR
- ii. Maintenance Plan Precursor Evaluation Resulting From Court Decisions
- c. EPA's Conclusion for Ohio's Maintenance Demonstration
4. Monitoring Network
5. Verification of Continued Attainment
6. Contingency Plan
7. Provision for Future Update of the Annual PM_{2.5} Maintenance Plan
- E. Has Ohio adopted acceptable MVEBs for the PM_{2.5} maintenance period?
 1. How are MVEBs developed and what are the MVEBs for the Columbus area?
 2. What are safety margins?
 - F. Are the 2005 and 2007 base year PM_{2.5}-related emissions inventories for the Columbus area approvable under section 172(c)(3) of the CAA?
 1. EPA's Base Year Emissions Inventory SIP Policy
 2. 2005 and 2007 Base Year PM_{2.5}-Related Emission Inventories for the Columbus Area

VI. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

II. What actions is EPA proposing?

EPA is proposing to take several actions related to the redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} NAAQS. EPA is proposing to determine that the Columbus area has attained the 1997 annual PM_{2.5} NAAQS based on quality

assured, certified 2008–2012 air quality data.

EPA is proposing to find that the state of Ohio and the Columbus area meet requirements for redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} NAAQS under section 107(d)(3)(E) of the CAA. EPA is, thus, proposing to grant Ohio's request for a redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} NAAQS.

EPA is proposing to approve Ohio's PM_{2.5} maintenance plan for the 1997 annual PM_{2.5} NAAQS for the Columbus area as a revision to the Ohio SIP, meeting the requirements of section 175A of the CAA. The PM_{2.5} maintenance plan uses projected emissions data for 2022, but EPA believes that the plan suffices to demonstrate maintenance of the 1997 annual PM_{2.5} NAAQS in the Columbus area through 2023. The state of Ohio commits to revise this maintenance plan to cover an additional 10 years within 8 years after EPA approves the redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} NAAQS.

EPA is proposing to approve Ohio's 2022 PM_{2.5} and NO_x MVEBs for the Columbus area. In addition, EPA is proposing to find these MVEBs as adequate for purposes of transportation and general conformity demonstrations and determinations.

Finally, EPA is proposing to approve 2005 primary PM_{2.5}, NO_x, and SO₂ emission inventories and 2007 VOC and ammonia emission inventories for the Columbus area as satisfying the requirement of section 172(2)(3) of the CAA for a current, accurate, and comprehensive emission inventory.

III. What is the background for these actions?

Fine particulate pollution can be emitted directly from a source (e.g., primary PM_{2.5}, organic particles, crustal matter, and elemental carbon) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary fine particulates formed from reactions involving SO₂ emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_x (primarily NO and NO₂) from power plants, mobile sources, and other combustion sources. Emitted precursors of general concern in the secondary formation of PM_{2.5} are SO₂, NO_x, VOC, ammonia, and primary PM_{2.5}, all of which can react in the atmosphere with other compounds to

form fine particulates locally (within or immediately downwind of significant source areas) and adding to PM_{2.5} levels produced through local primary PM_{2.5} emissions and transported PM_{2.5} and PM_{2.5} precursors.

The first air quality standards for PM_{2.5} were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (µg/m³) of ambient air, based on a three-year average of the annual mean PM_{2.5} concentrations at each monitoring site (the site's PM_{2.5} design value for the annual standard). In the same rulemaking, EPA promulgated a 24-hour PM_{2.5} standard at a level of 65 µg/m³, based on a three-year average of the annual 98th percentile of 24-hour PM_{2.5} concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual PM_{2.5} standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Columbus area as nonattainment for the 1997 annual PM_{2.5} standard.

On October 17, 2006, at 71 FR 61144, the EPA retained the annual PM_{2.5} standard at 15 µg/m³ (2006 annual PM_{2.5} standard), but revised the 24-hour PM_{2.5} standard to 35 µg/m³, based again on the three-year average of the annual 98th percentile of the 24-hour PM_{2.5} concentrations. In response to legal challenges of the 2006 annual PM_{2.5} standard, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009).

On January 15, 2013 (78 FR 3086), EPA finalized a rule revising the annual PM_{2.5} standard to 12 µg/m³ based on current scientific evidence regarding the protection of public health. EPA has not established attainment and nonattainment areas for this revised annual standard and is not addressing this standard in this proposal.

Since the Columbus area is designated as nonattainment for the 1997 annual PM_{2.5} standard and not for other PM_{2.5} standards, today's proposed action addresses redesignation of this area for only this standard.

On September 14, 2011, EPA issued a final determination that the Columbus area had attained the 1997 annual PM_{2.5} standard by the applicable attainment date (76 FR 56641). This determination of attainment for the 1997 annual PM_{2.5} standard was based on quality-assured annual-averaged PM_{2.5} concentrations for PM_{2.5} monitoring sites in Franklin

County for the periods of 2007–2009 and 2008–2010. Based on our review of complete, quality-assured, and state-certified ambient PM_{2.5} monitoring data from 2010–2012, we are proposing to determine that the Columbus, Ohio area continues to attain the 1997 annual PM_{2.5} NAAQS.

On June 3, 2011, OEPA submitted a request for EPA to redesignate the Columbus area to attainment of the 1997 annual PM_{2.5} NAAQS and to approve a SIP revision containing emission inventories and PM_{2.5} maintenance plan for the area. The maintenance plan also includes 2022 MVEBs for the Columbus area. In a supplemental submission to EPA on April 30, 2013, the OEPA submitted 2007 VOC and ammonia emission inventories to supplement the 2005 primary PM_{2.5}, SO₂, and NO_x emission inventories, included in the June 3, 2011, redesignation request, to meet the emission inventory requirement of section 172(c)(3) of the CAA.

In this proposed rule, EPA takes into account two recent decisions of the D.C. Circuit. In the first of the two Court decisions, the D.C. Circuit, on August 21, 2012, issued its decision in *EME Homer City Generation v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), which vacated and remanded CSAPR and ordered EPA to continue administering CAIR "pending . . . development of a valid replacement." *EME Homer City Generation*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013.¹ In the second decision, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Rule (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008). 706 F.3d 428 (D.C. Cir. 2013).

IV. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment of a NAAQS. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS

¹ On March 29, 2013, EPA and other parties filed petitions in the Supreme Court seeking *certiorari* of the D.C. Circuit's decision in *EME Homer City*. On June 24, 2013, the Supreme Court consolidated the petitions and granted *certiorari*. The Supreme Court's decision to grant the petitions is not a decision on the merits but instead a decision to review the case on the merits. As such, it does not alter the current status of CAIR or CSAPR. At this time, CAIR remains in place.

based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the applicable SIP, Federal air pollution control regulations and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

V. What is EPA's analysis of the State's request?

A. Has the Columbus area attained the 1997 annual PM_{2.5} standard?

In a rulemaking published on September 14, 2011, EPA determined that the Columbus area had attained the 1997 annual PM_{2.5} NAAQS by the applicable attainment deadline for this area. The basis and effect of this determination were discussed in the notices of proposed (76 FR 28393, May

17, 2011) and final (76 FR 56641, September 14, 2011) rulemaking. The determination was based on quality-assured air quality monitoring data for 2007–2009 showing that the area has met the standard. The data have been certified by Ohio.

In this action, we are proposing to determine that the Columbus area continues to attain the 1997 annual PM_{2.5} NAAQS based on the most recent three years of complete, certified and quality-assured data, and, therefore, we are proposing to update our determination of attainment for the Columbus area. Under EPA's regulations at 40 CFR 50.7, the annual primary (human health-based) and secondary (environment-based) PM_{2.5} standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 µg/m³ at all relevant monitoring sites in the area. Under 40 CFR part 50, appendix N 4.1, a year of PM_{2.5} data meets completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data.

EPA has reviewed the ambient air quality monitoring data for the Columbus area consistent with the

requirements contained at 40 CFR part 50. EPA's review focused on Columbus area PM_{2.5} data quality assured and certified by the state of Ohio for the period of 2007–2012 and recorded in the EPA Air Quality System (AQS).

The Columbus area had three PM_{2.5} monitoring sites with valid, complete annual PM_{2.5} data for all three-year periods considered here. All of these monitoring sites were located in Franklin County. A fourth PM_{2.5} monitoring site was located in Franklin County beginning in 2010, but has yet to monitor complete, certified annual mean PM_{2.5} concentrations for a three-year period. Nevertheless, data measured at this site to date support a finding of attainment.

Table 1 summarizes the three-year average annual mean PM_{2.5} concentrations (design values) for the three PM_{2.5} monitoring sites located in Franklin County for the three-year periods of 2007–2009, 2008–2010, 2009–2011, and 2010–2012. These monitors recorded complete PM_{2.5} data in accordance with criteria set forth by EPA in 40 CFR part 50, appendix N. Available data are considered to be sufficient for comparison to the NAAQS if three consecutive years of data exist.

TABLE 1—THE THREE-YEAR PM_{2.5} DESIGN VALUES FOR THE COLUMBUS, OHIO AREA MONITORS WITH COMPLETE, CERTIFIED PM_{2.5} MONITORING DATA FOR 2007–2012

| County | Monitor | PM _{2.5} Three-year design value 2007–2009 (µg/m ³) | PM _{2.5} Three-year design value 2008–2010 (µg/m ³) | PM _{2.5} Three-year design value 2009–2011 (µg/m ³) | PM _{2.5} Three-year design value 2010–2012 (µg/m ³) |
|----------|-------------|--|--|--|--|
| Franklin | 39-049-0024 | 13.0 | 12.5 | 12.2 | 11.9 |
| Franklin | 39-049-0025 | 12.9 | 12.2 | 11.9 | 11.6 |
| Franklin | 39-049-0081 | 11.7 | 11.3 | 11.2 | 11.0 |

EPA's review of monitoring data from the 2007–2009, 2008–2010, 2009–2011, and 2010–2012 monitoring periods supports EPA's determination that the Columbus area has monitored attainment of the 1997 annual PM_{2.5} NAAQS for each three-year period considered (the most recent periods with complete, quality-assured, and state-certified annual PM_{2.5} concentrations for this area). Therefore, EPA proposes to determine that the Columbus area continues to attain the 1997 annual PM_{2.5} NAAQS, and EPA proposes to renew its determination of attainment for the Columbus area.

B. Has the State of Ohio met all requirements of the CAA applicable for purposes of redesignation of the Columbus area to attainment of the 1997 annual PM_{2.5} standard?

We are proposing to find that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Columbus area under section 110 of the CAA (general SIP requirements). We are also proposing to find that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). We are proposing to find that all applicable requirements of the Ohio SIP, for purposes of redesignation, have been approved, in accordance with section 107(d)(3)(E)(ii) of the CAA. As

discussed below, in this proposed rule, EPA is proposing to approve Ohio's 2005 (primary PM_{2.5}, SO₂, and NO_x) and 2007 (VOC and ammonia) emissions inventories as meeting the requirements of section 172(c)(3) of the CAA for a comprehensive emissions inventory.

In making these proposed findings, we have ascertained which SIP requirements are applicable for purposes of redesignation, and have concluded that there are measures in the Ohio SIP meeting these requirements. These measures are approved or will be approved by the time of final rulemaking.

1. Ohio Has Met All Applicable Plan Requirements for Purposes of Redesignation of the Columbus Area Under Section 110 and Part D of the CAA

a. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of a stationary source within areas covered by the plan; (4) include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR), permit programs; (5) include criteria for stationary source emission control measures, monitoring and reporting; (6) include provisions for air quality modeling; and (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that a SIP contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan requirements and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the

relevant measures we must consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See: Reading, Pennsylvania proposed and final rulemakings (61 FR 53174-53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed the Ohio SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of this redesignation. EPA has previously approved provisions of Ohio's SIP addressing section 110 requirements, including provisions addressing particulate matter, at 40 CFR 52.1870. On December 5, 2007, and September 4, 2009, Ohio made submittals addressing "infrastructure SIP" elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757, and published final approval on July 14, 2011, at 76 FR 41075. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the PM_{2.5} nonattainment status of the Columbus area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's PM_{2.5} redesignation request.

b. Part D Requirements

EPA is proposing to determine that, upon approval of the base year emissions inventories discussed below in section V.F of this rulemaking, the Ohio SIP will meet the SIP requirements for the Columbus area applicable for purposes of redesignation under part D of the CAA.

Subpart 1 of part D, found in sections 172-176 of the CAA, sets forth the basic nonattainment requirements applicable to all pollutant nonattainment areas.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Columbus area are contained in sections 172(c)(1)-(9) of the CAA. A thorough

discussion of these requirements can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary (human health-based) NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been achieved in the Columbus area, no additional measures are needed to provide for attainment, and the section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard (becoming permanently not applicable upon final redesignation of the area to attainment of the 1997 annual PM_{2.5} standard, when the area's maintenance plan will dictate the need for additional emission control measures) (40 CFR 51.1004(c)).

The Reasonable Further Progress (RFP) requirement under CAA section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Columbus area has monitored attainment of the 1997 annual PM_{2.5} NAAQS. See "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Amendments of 1990," 57 FR 13498, April 16, 1992, (General Preamble) at 57 FR 13564. See also 40 CFR 51.918. In addition, because the Columbus area has attained the 1997 annual PM_{2.5} NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio submitted a 2005 base year emissions inventory for primary PM_{2.5}, SO₂, and NO_x emissions along with their redesignation request, and supplemented these emissions with a 2007 base year emissions inventory for VOC and ammonia emissions on April 30, 2013. As discussed below, in section V.F of this proposed rule, EPA is proposing to approve the 2005 and 2007 base year emissions inventories as meeting the section 172(c)(3) emission

inventory requirement for the Columbus area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment" (Nichols memorandum). Ohio has demonstrated that the Columbus area will be able to maintain the 1997 annual PM_{2.5} standard without part D NSR in effect in the Columbus area. Therefore, the state need not have a fully approved part D NSR program as a condition for the approval of the state's redesignation request. The state's PSD program will become effective in the Columbus area upon redesignation of this area to attainment. See rulemakings for Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469-20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834-31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain emission control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe that Ohio's SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Subpart 1 Section 176(c)(4)(D) Conformity SIP Requirements

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity), as well as to all other federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was signed into law on August 10, 2005 (Pub. L. 109-59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement and enforceability. EPA believes that it is reasonable to interpret the transportation conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) for two reasons.

First, the requirement to submit SIP revisions to comply with the transportation conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to section 175A maintenance plans. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the transportation conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749-62750 (December 7, 1995) (Tampa, Florida).

Ohio has an approved transportation conformity SIP (72 FR 20945).

2. The Columbus Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio's comprehensive 2005 and 2007 emissions inventories, EPA will have fully approved the Ohio SIP for the Columbus area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation to attainment for the 1997 annual PM_{2.5} NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum, "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memorandum); *Southwestern Pennsylvania Growth Alliance v.*

Browner, 144 F.3d 984, 989-990 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA in 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under the particulate matter standards. In this action, EPA is proposing to approve Ohio's 2005 and 2007 base year emissions inventories for the Columbus area as meeting the requirement of section 172(c)(3) of the CAA for the 1997 annual PM_{2.5} standard.

3. Nonattainment Requirements

Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. In 2008, Ohio submitted an attainment demonstration for PM_{2.5} for the Columbus area. However, pursuant to 40 CFR 51.1004(c), EPA's determination that the Columbus area has attained the 1997 annual PM_{2.5} standard suspends the requirement for the state to submit, and for the EPA to rule on, certain SIP planning elements related to attainment requirements of the CAA, including attainment demonstration requirements, the Reasonably Available Control Technology (RACT)-RACM requirements of section 172(c)(1) of the CAA, the RFP and attainment requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the contingency measure requirements of section 172(c)(9) of the CAA.

As a result, the only remaining requirement under section 172 to be considered is the emissions inventory requirement under section 172(c)(3) of the CAA. As discussed in section V.F of this proposed rule, EPA is proposing to approve the 2005 and 2007 emissions inventories that Ohio submitted along with its redesignation request and maintenance plan for the Columbus area and in its April 30, 2013, supplement as satisfying this emissions inventory requirement.

No Ohio SIP provision applicable for redesignation of the Columbus area for the 1997 PM_{2.5} standard is currently disapproved, conditionally approved or partially approved. If EPA approves Ohio's Columbus area 2005 and 2007 PM_{2.5}-based emissions inventories as proposed, Ohio will have a fully approved SIP for all requirements applicable for purposes of redesignation.

4. Effect of the January 4, 2013, D.C. Circuit Decision Regarding PM_{2.5} Implementation Under Subpart 4 of the CAA

a. Background

As discussed above, on January 4, 2013, in *Natural Resources Defense Council v. EPA*, the D.C. Circuit remanded to EPA the "Final Clean Air Fine Particle Implementation Rule" (72 FR 20586, April 25, 2007) and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" final rule (73 FR 28321, May 16, 2008) (collectively, "1997 PM_{2.5} Implementation Rule"). 706 F.3d 428 (D.C. Cir. 2013). The Court found that EPA erred in implementing the 1997 PM_{2.5} NAAQS pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than to the particulate matter-specific provisions of subpart 4 of part D of title I.

b. Proposal on This Issue

In this portion of the proposed redesignation, EPA addresses the effect of the Court's January 4, 2013, ruling on the proposed redesignation. As explained below, EPA is proposing to determine that the Court's January 4, 2013, decision does not prevent EPA from redesignating the Columbus area to attainment. Even in light of the Court's decision, redesignation for this area is appropriate under the CAA and EPA's longstanding interpretations of the CAA's provisions regarding redesignation. EPA first explains its longstanding interpretation that requirements that are imposed, or that become due, after a complete redesignation request is submitted for an area that is attaining the standard, are not applicable for purposes of evaluating a redesignation request. Second, EPA then shows that, even if EPA applies the subpart 4 requirements to Ohio's redesignation request and disregards the provisions of its 1997 PM_{2.5} implementation rule recently remanded by the Court, the state's request for redesignation of this area still qualifies for approval. EPA's discussion takes into account the effect of the Court's ruling on the Columbus area's maintenance plan, which EPA views as approvable when subpart 4 requirements are considered.

i. Applicable Requirements for Purposes of Evaluating the Redesignation Request

With respect to the 1997 PM_{2.5} Implementation Rule, the Court's January 4, 2013, ruling rejected EPA's reasons for implementing the PM_{2.5}

NAAQS solely in accordance with the provisions of subpart 1, and remanded that matter to EPA, so that it could address implementation of the 1997 PM_{2.5} NAAQS under subpart 4 of part D of the CAA, in addition to subpart 1. For the purposes of evaluating Ohio's redesignation request for the Columbus area, to the extent that implementation under subpart 4 would impose additional requirements for areas designated nonattainment, EPA believes that those requirements are not "applicable" for the purposes of CAA section 107(d)(3)(E), and, thus, EPA is not required to consider subpart 4 requirements with respect to the Columbus area redesignation. Under its longstanding interpretation of the CAA, EPA has interpreted section 107(d)(3)(E) to mean, as a threshold matter, that the part D provisions which are "applicable" and which must be approved in order for EPA to redesignate an area include only those which came due prior to a state's submittal of a complete redesignation request. See the Calcagni memorandum. See also "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum from Michael Shapiro, Acting Assistant Administrator, Air and Radiation, September 17, 1993 (Shapiro memorandum); Final Redesignation of Detroit-Ann Arbor, (60 FR 12459, 12465-66, March 7, 1995); Final Redesignation of St. Louis, Missouri, (68 FR 25418, 25424-27, May 12, 2003); *Sierra Club v. EPA*, 375 F.3d 537, 541 (7th Cir. 2004) (upholding EPA's redesignation rulemaking applying this interpretation and expressly rejecting Sierra Club's view that the meaning of "applicable" under the statute is "whatever should have been in the plan at the time of attainment rather than whatever actually was in the plan and already implemented or due at the time of attainment").² In this case, at the time that Ohio submitted its redesignation request, requirements under subpart 4 were not due, and indeed, were not yet known to apply.

EPA's view that, for purposes of evaluating the Columbus area redesignation, the subpart 4 requirements were not due at the time the state submitted the redesignation

request is in keeping with the EPA's interpretation of subpart 2 requirements for subpart 1 ozone nonattainment areas redesignated subsequent to the D.C. Circuit's decision in *South Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006). In *South Coast*, the Court found that EPA was not permitted to implement the 1997 8-hour ozone standard solely under subpart 1, and held that EPA was required under the statute to implement the standard under the ozone-specific requirements of subpart 2 as well. Subsequent to the *South Coast* decision, in evaluating and acting upon redesignation requests for the 1997 8-hour ozone standard that were submitted to EPA for areas under subpart 1, EPA applied its longstanding interpretation of the CAA that "applicable requirements," for purposes of evaluating a redesignation, are those that had been due at the time the redesignation request was submitted. See, e.g., Proposed Redesignation of Manitowoc County and Door County Nonattainment Areas (75 FR 22047, 22050, April 27, 2010). In those actions, EPA, therefore, did not consider subpart 2 requirements to be "applicable" for the purposes of evaluating whether the area should be redesignated under section 107(d)(3)(E).

EPA's interpretation derives from CAA section 107(d)(3). Section 107(d)(3)(E)(v) states that, for an area to be redesignated, a state must meet "all requirements 'applicable' to the area under section 110 and part D." Section 107(d)(3)(E)(ii) provides that the EPA must have fully approved the "applicable" SIP for the area seeking redesignation. These two sections read together support EPA's interpretation of "applicable" as only those requirements that came due prior to submission of a complete redesignation request. First, holding states to an ongoing obligation to adopt new CAA requirements that arise after the states submit their redesignation requests, in order to be redesignated, would make it problematic or impossible for EPA to act on redesignation requests in accordance with the 18 month deadline Congress set for EPA action in section 107(d)(3)(D). If "applicable requirements" were interpreted to be a continuing flow of requirements with no reasonable limitation, states, after submitting redesignation requests, would be forced continuously to make additional SIP submissions that in turn would require EPA to undertake further notice-and-comment rulemaking actions to act on those submissions. This would create a regime of unceasing rulemaking that would delay action on the

² Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A(c) of the CAA.

redesignation requests beyond the 18 month timeframe provided by the CAA for this purpose.

Second, a fundamental premise for redesignating a nonattainment area to attainment is that the area has attained the relevant NAAQS due to emission reductions from existing controls. Thus, an area, for which a redesignation request has been submitted, would have already attained the NAAQS as a result of satisfying statutory requirements that came due prior to the submission of the request. Absent a showing that unadopted and unimplemented requirements are necessary for future maintenance, it is reasonable to view the requirements applicable for purposes of evaluating the redesignation request as including only those SIP requirements that have already come due. These are the requirements that led to attainment of the NAAQS. To require, for redesignation approval, that a state also satisfy additional SIP requirements coming due after the state submits its complete redesignation request, and while EPA is reviewing it, would compel the state to do more than is necessary to attain the NAAQS, without a showing that the additional requirements are necessary for maintenance.

In the context of this redesignation, the timing and nature of the Court's January 4, 2013, decision in *NRDC v. EPA* compound the consequences of imposing requirements that come due after the redesignation request is submitted. The state of Ohio submitted its redesignation request on June 3, 2011, but the Court did not issue its decision remanding EPA's 1997 PM_{2.5} Implementation Rule concerning the applicability of the provisions of subpart 4 until January 2013.

To require the state's fully-completed and pending redesignation request to comply now with requirements of subpart 4 that the Court announced only in January 2013, would be to give retroactive effect to such requirements when the state had no notice that it was required to meet them. The D.C. Circuit recognized the inequity of this type of retroactive impact in *Sierra Club v. Whitman*, 285 F.3d 63 (D.C. Cir. 2002),³ where it upheld the District Court's ruling refusing to make retroactive EPA's determination that the St. Louis

area did not meet its attainment deadline. In that case, petitioners urged the Court to make EPA's nonattainment determination effective as of the date that the statute required, rather than the later date on which EPA actually made the determination. The Court rejected this view, stating that applying it "would likely impose large costs on States, which would face fines and suits for not implementing air pollution prevention plans . . . even though they were not on notice at the time." *Id.* at 68. Similarly, it would be unreasonable to penalize the state of Ohio by rejecting its redesignation request for an area that is already attaining the 1997 PM_{2.5} standard and that met all applicable requirements known to be in effect at the time of the redesignation request. For EPA now to reject the redesignation request solely because the state did not expressly address subpart 4 requirements, of which it had no notice, would inflict the same unfairness condemned by the Court in *Sierra Club v. Whitman*.

ii. Subpart 4 Requirements and Ohio's Redesignation Request

Even if EPA were to take the view that the Court's January 4, 2013, decision requires that, in the context of pending redesignations, subpart 4 requirements were due and in effect at the time the state submitted its redesignation request, EPA proposes to determine that the Columbus area still qualifies for redesignation to attainment. As explained below, EPA believes that the redesignation request for the Columbus area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of redesignating the area to attainment.

With respect to evaluating the relevant substantive requirements of subpart 4 for purposes of redesignating the Columbus area, EPA notes that subpart 4 incorporates components of subpart 1 of part D, which contains general air quality planning requirements for areas designated as nonattainment. See Section 172(c). Subpart 4 itself contains specific planning and scheduling requirements for PM₁₀⁴ nonattainment areas, and, under the Court's January 4, 2013, decision in *NRDC v. EPA*, these same statutory requirements also apply to PM_{2.5} nonattainment areas. EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, and which makes recommendations to states for meeting

the statutory requirements for SIPs addressing nonattainment areas. See General Preamble. In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM-10 requirements." 57 FR 13538 (April 16, 1992). The subpart 1 requirements include, among other things, provisions for attainment demonstrations, RACM, RFP, emissions inventories, and contingency measures.

For the purposes of this redesignation, in order to identify additional requirements which would apply under subpart 4, we are considering the Columbus area to be a "moderate" PM_{2.5} nonattainment area. Under section 188 of the CAA, all areas designated nonattainment areas under subpart 4 would initially be classified by operation of law as "moderate" nonattainment areas, and would remain moderate nonattainment areas unless and until EPA reclassifies the areas as "serious" nonattainment areas. Accordingly, EPA believes that it is appropriate to limit the evaluation of the potential impacts of subpart 4 requirements to those that would be applicable to moderate nonattainment areas. Sections 189(a) and (c) of subpart 4 apply to moderate nonattainment areas and include the following: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM (section 189(a)(1)(C)); and (4) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date (section 189(c)).

The permit requirements of subpart 4, as contained in section 189(a)(1)(A), refer to and apply the subpart 1 permit provisions requirements of sections 172 and 173 to PM₁₀, without adding to them. Consequently, EPA believes that section 189(a)(1)(A) does not itself impose for redesignation purposes any additional requirements for moderate areas beyond those contained in subpart 1.⁵ In any event, in the context of redesignation, EPA has long relied on the interpretation that a fully approved nonattainment NSR program is not considered an applicable requirement for redesignation, provided that the area can maintain the standard with a PSD program after redesignation. A detailed

³ *Sierra Club v. Whitman* was discussed and distinguished in a recent D.C. Circuit decision that addressed retroactivity in a quite different context, where, unlike the situation here, EPA sought to give its regulations retroactive effect. *National Petrochemical and Refiners Ass'n v. EPA*, 630 F.3d 145, 163 (D.C. Cir. 2010), rehearing denied, 643 F.3d 958 (D.C. Cir. 2011), cert. denied, 132 S. Ct. 571 (2011).

⁴ PM₁₀ refers to particulates nominally 10 micrometers in diameter or smaller.

⁵ The potential effect of section 189(e) on section 189(a)(1)(A) for purposes of evaluating this redesignation request is discussed below.

rationale for this view is described in the Nichols memorandum. See also rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

With respect to the specific attainment planning requirements under subpart 4,⁶ when EPA evaluates a redesignation request under either subpart 1 and/or 4, any area that is attaining the PM_{2.5} standard is viewed as having satisfied the attainment planning requirements for these subparts. For redesignations, EPA has, for many years, interpreted attainment-linked requirements as not applicable for areas attaining the standard. In the General Preamble, EPA stated that:

The requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

General Preamble, 57 FR 13498, 13564. The General Preamble also explained that:

[t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans . . . provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas.

Id.

EPA similarly stated in its 1992 Calcagni memorandum that, “The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.”

It is evident that, even if we were to consider the Court’s January 4, 2013, decision in *NRDC v. EPA* to mean that attainment-related requirements specific to subpart 4 should be imposed retroactively⁷ and, thus, are now past due, those requirements do not apply to an area that is attaining the 1997 PM_{2.5} standard, for the purpose of evaluating a pending request to redesignate the

area to attainment. EPA has consistently enunciated this interpretation of applicable requirements under section 107(d)(3)(E) since the General Preamble was published more than twenty years ago. Courts have recognized the scope of EPA’s authority to interpret “applicable requirements” in the redesignation context. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004).

Moreover, even outside the context of redesignations, EPA has viewed the obligations to submit attainment-related SIP planning requirements of subpart 4 as inapplicable for areas that EPA determines are attaining the standard. EPA’s prior “Clean Data Policy” rulemakings for the PM₁₀ NAAQS, also governed by the requirements of subpart 4, explain EPA’s reasoning. They describe the effects of a determination of attainment on the attainment-related SIP planning requirements of subpart 4. See “Determination of Attainment for Coso Junction Nonattainment Area,” (75 FR 27944, May 19, 2010). See also Coso Junction proposed PM₁₀ redesignation, (75 FR 36023, 36027, June 24, 2010); Proposed and Final Determinations of Attainment for San Joaquin Nonattainment Area (71 FR 40952, 40954–55, July 19, 2006; and 71 FR 63641, 63643–47 October 30, 2006). In short, EPA in this context, has also long concluded that to require states to meet superfluous SIP planning requirements is not necessary and not required by the CAA, so long as those areas continue to attain the relevant NAAQS.

Elsewhere in this notice, EPA proposes to determine that the area has attained the 1997 PM_{2.5} standard. Under its longstanding interpretation, EPA is proposing to determine here that the area meets the attainment-related plan requirements of subparts 1 and 4.

Thus, EPA is proposing to conclude that the requirements to submit an attainment demonstration under 189(a)(1)(B), a RACM determination under section 172(c)(1) and section 189(a)(1)(c), a RFP demonstration under 189(c)(1), and contingency measure requirements under section 172(c)(9) are satisfied for purposes of evaluating the redesignation request.

iii. Subpart 4 and Control of PM_{2.5} Precursors

The D.C. Circuit, in *NRDC v. EPA*, remanded to EPA the two rules at issue in the case with instructions to EPA to re-pronulgate them consistent with the requirements of subpart 4. EPA, in this section, addresses the Court’s opinion with respect to PM_{2.5} precursors. While past implementation of subpart 4 for PM₁₀ has allowed for control of PM₁₀ precursors, such as NO_x from major

stationary, mobile, and area sources, in order to attain the standard as expeditiously as practicable, CAA section 189(e) specifically provides that control requirements for major stationary sources of direct PM₁₀ shall also apply to PM₁₀ precursors from those sources, except where EPA determines that major stationary sources of such precursors “do not contribute significantly to PM₁₀ levels which exceed the standard in the area.”

EPA’s 1997 PM_{2.5} implementation rule, remanded by the D.C. Circuit, contained rebuttable presumptions concerning certain PM_{2.5} precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided, among other things, that a state was “not required to address VOC [and ammonia] as . . . PM_{2.5} attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures.” EPA intended these to be rebuttable presumptions. EPA established these presumptions at the time because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing PM_{2.5} concentrations. EPA also left open the possibility for such regulation of VOC and ammonia in specific areas where that was necessary.

The Court, in its January 4, 2013, decision, made reference to both section 189(e) and 40 CFR 51.1002, and stated that, “In light of our disposition, we need not address the petitioners’ challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not PM_{2.5} precursors, as subpart 4 expressly governs precursor presumptions.” *NRDC v. EPA*, at 27, n.10.

Elsewhere in the Court’s opinion, however, the Court observed:

Ammonia is a precursor to fine particulate matter, making it a precursor to both PM_{2.5} and PM₁₀. For a PM₁₀ nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].

Id. at 21, n.7. For a number of reasons, EPA believes that its proposed redesignation of the Columbus area is consistent with the Court’s decision with respect to subpart 4. First, while the Court, citing section 189(e), stated that “for a PM₁₀ area governed by subpart 4, a precursor is ‘presumptively regulated,’” the Court expressly declined to decide the specific challenge to EPA’s 1997 PM_{2.5} implementation rule provisions

⁶ i.e., attainment demonstration, RFP, RACM, milestone requirements, and contingency measures.

⁷ As EPA has explained above, we do not believe that the Court’s January 4, 2013, decision should be interpreted so as to impose these requirements on the states retroactively. *Sierra Club v. Whitman*, *supra*.

regarding ammonia and VOC as precursors. The Court had no occasion to reach whether and how it was substantively necessary to regulate any specific precursor in a particular PM_{2.5} nonattainment area, and did not address what might be necessary for purposes of acting upon a redesignation request.

However, even if EPA takes the view that the requirements of subpart 4 were deemed applicable at the time the state submitted the redesignation request, and disregards the implementation rule's rebuttable presumptions regarding ammonia and VOC as PM_{2.5} precursors, the regulatory consequence would be to consider the need for regulation of all precursors from any sources in the area to demonstrate attainment and to apply the section 189(e) provisions to major stationary sources of precursors. In the case of the Columbus area, EPA believes that doing so is consistent with proposing redesignation of the area for the 1997 PM_{2.5} standard. The Columbus area has attained the 1997 PM_{2.5} standard without any specific additional controls of VOC and ammonia emissions from any sources in the area.

Precursors in subpart 4 are specifically regulated under the provisions of section 189(e), which requires, with important exceptions, control requirements for major stationary sources of PM₁₀ precursors.⁸ Under subpart 1 and EPA's prior implementation rule, all major stationary sources of PM_{2.5} precursors were subject to regulation, with the exception of ammonia and VOC. Thus, we must address here whether additional controls of ammonia and VOC from major stationary sources are required under section 189(e) of subpart 4 in order to redesignate the area for the 1997 PM_{2.5} standard. As explained below, we do not believe that any additional controls of ammonia and VOC are required in the context of this redesignation.

In the General Preamble, EPA discusses its approach to implementing section 189(e). See 57 FR 13538–13542. With regard to precursor regulation under section 189(e), the General Preamble explicitly stated that control of VOC under other CAA requirements may suffice to relieve a state from the need to adopt precursor controls under section 189(e). See 57 FR 13542. EPA, in this proposal, proposes to determine that the SIP has met the provisions of

section 189(e) with respect to ammonia and VOC as precursors. This proposed determination is based on our findings that: (1) The Columbus area contains no major stationary sources of ammonia, and (2) existing major stationary sources of VOC are adequately controlled under other provisions of the CAA regulating the ozone NAAQS.⁹ In the alternative, EPA proposes to determine that, under the express exception provisions of section 189(e), and in the context of the redesignation of the area, which is attaining the 1997 annual PM_{2.5} standard, at present ammonia and VOC precursors from major stationary sources do not contribute significantly to levels exceeding the 1997 annual PM_{2.5} standard in this area. See 57 FR 13539–13542.

EPA notes that its 1997 PM_{2.5} Implementation Rule provisions in 40 CFR 51.1002 were not directed at evaluation of PM_{2.5} precursors in the context of redesignation, but at SIP plans and control measures required to bring a nonattainment area into attainment of the 1997 PM_{2.5} NAAQS. By contrast, redesignation to attainment primarily requires the area to have already attained due to permanent and enforceable emission reductions, and to demonstrate that controls in place can continue to maintain the standard. Thus, even if we regard the Court's January 4, 2013, decision as calling for "presumptive regulation" of ammonia and VOC for the control of PM_{2.5} under the attainment planning provisions of subpart 4, those provisions do not require additional control of these precursors for an area that already qualifies for redesignation. Nor does EPA believe that requiring Ohio to address precursors differently than they have already done would result in a substantively different outcome.

Although, as EPA has emphasized, its consideration here of precursor requirements under subpart 4 is in the context of a redesignation to attainment, EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM₁₀ contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, i.e., states may determine that only certain precursors need to be regulated for attainment and control purposes.¹⁰ Courts have upheld this

approach to the requirements of subpart 4 for PM₁₀.¹¹ EPA believes that application of this approach to PM_{2.5} precursors under subpart 4 is reasonable. Because the Columbus area has already attained the 1997 PM_{2.5} NAAQS with its current approach to regulation of PM_{2.5} precursors, EPA believes that it is reasonable to conclude in the context of this redesignation that there is no need to revisit the attainment control strategy with respect to the treatment of precursors. Even if the Court's decision is construed to impose an obligation, in evaluating this redesignation request, to consider additional precursors under subpart 4, it would not affect EPA's approval here of Ohio's request for redesignation of the Columbus area. In the context of a redesignation, the state has shown that the Columbus area has attained the standard. Moreover, the state has shown and EPA has proposed to determine that attainment in this area is due to permanent and enforceable emissions reductions on all precursors necessary to provide for continued attainment. Therefore, no further control of additional precursors is necessary. Accordingly, EPA does not view the January 4, 2013, decision of the Court as precluding redesignation of the Columbus area to attainment for the 1997 PM_{2.5} NAAQS at this time.

In sum, even if Ohio were required to address precursors for the Columbus area under subpart 4 rather than under subpart 1, as interpreted in EPA's remanded 1997 PM_{2.5} Implementation Rule, EPA would still conclude that the area had met all applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) and (v).

C. Are the PM_{2.5} air quality improvements in the Columbus area due to permanent and enforceable emission reductions?

For purposes of redesignation, section 107(d)(3)(E)(iii) of the CAA requires the state to demonstrate that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the SIP, applicable Federal air pollution control regulations, and other permanent and enforceable emission reductions. EPA

Valley PM-10 Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM-10 Standards," 69 FR 30006 (May 26, 2004) (approving a PM₁₀ attainment plan that imposed controls on direct PM₁₀ and NO_x emissions and that did not impose controls on SO₂, VOC, or ammonia emissions).

¹¹ See, e.g., *Assoc. of Irrigated Residents v. EPA*, 423 F.3d 989 (9th Cir. 2005).

⁸ Under either subpart 1 or subpart 4, for purposes of demonstrating attainment as expeditiously as practicable, a state is required to evaluate all economically and technologically feasible control measures for direct PM emissions and precursor emissions, and to adopt those measures that are deemed reasonably available.

⁹ The Columbus area has reduced VOC emissions through the implementation of various control programs including VOC RACT regulations and various on-road and non-road motor vehicle control programs.

¹⁰ See, e.g., "Approval and Promulgation of Implementation Plans for California—San Joaquin

finds that Ohio has demonstrated that the observed PM_{2.5} air quality improvement in the Columbus area is due to permanent and enforceable emission reductions. In making this demonstration, Ohio has determined the change in primary PM_{2.5}, NO_x, and SO₂ emissions between 2005, one of the years in which the Columbus area violated the 1997 annual PM_{2.5} standard, and 2008, one of the years in which the Columbus area attained the 1997 annual PM_{2.5} standard. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that have been implemented in the Columbus area and in surrounding contributing areas.

1. Permanent and Enforceable Emission Controls

The following is a discussion of permanent and enforceable emission control measures that have been implemented in the Columbus area and in upwind areas (resulting in lower pollutant transport into the Columbus area).

a. Federal Emission Control Measures

Reductions in PM_{2.5} precursor emissions have occurred statewide and in upwind areas as a result of the following Federal emission control measures. Most of these emission control measures will result in additional emission reductions in the future.

i. Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards

These emission control requirements result in lower VOC, NO_x, and SO₂ emissions from new cars and light-duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the time post-2009 vehicles have entirely replaced pre-2009 vehicles, the following vehicle NO_x emission reductions will occur nationwide: Passenger cars (light-duty vehicles, 77 percent; light-duty trucks, minivans, and sport utility vehicles, 86 percent; and, larger sport utility vehicles, vans, and heavier trucks, 65 to 95 percent. VOC emission reductions will be approximately 12 percent for passenger cars, 18 percent for smaller sports utility vehicles, light trucks, and minivans, and 15 percent for larger sports utility vans, and heavier trucks. Some of the emission reductions resulting from new vehicle standards occurred during the 2005–2008 period. Additional emission reductions occurred subsequent to 2008, and will

continue to occur as the result of this emission control throughout the maintenance period as new vehicles replace older vehicles. The Tier 2 standards also reduced the sulfur content of gasoline to 30 parts per million (ppm) beginning in January 2006. The sulfur content of gasoline is estimated to be reduced by up to 90 percent by the end of the implementation of this emission control program.

ii. Heavy-Duty Diesel Engine Rule

This rule, which EPA issued in July 2000, limits the sulfur content of diesel fuel and went into effect in 2004. A second phase of implementation took effect in 2007 and resulted in reduced PM_{2.5} emissions from heavy-duty highway diesel engines and further reduced the highway diesel fuel sulfur content to 15 ppm. The full implementation of this rule is estimated to achieve a 90 percent reduction in direct PM_{2.5} emissions (including direct emissions of sulfates) and a 95 percent reduction of NO_x emissions for new engines using low sulfur diesel fuel. The reductions in fuel sulfur content occurred by during the 2007–2009 attainment period; however, additional emission reductions will continue to occur throughout the maintenance period as vehicles with older heavy-duty diesel engines are replaced by vehicles with newer diesel engines. This rule will also lower SO₂ emissions from engines using the low sulfur diesel fuel, resulting in lower PM_{2.5} sulfate concentrations; however, EPA has not estimated the level of this emission reduction and the level of its impact on PM_{2.5} concentrations.

iii. Non-Road Diesel Engine Standards

In May 2004, EPA promulgated a rule to establish emission standards for large non-road diesel engines, such as those used in construction, agriculture, or mining operations, and to regulate the sulfur content in non-road diesel fuel. The engine emission standards in this rule were to be phased in between 2008 and 2014. This rule reduced the allowable sulfur content in non-road diesel fuel by over 99 percent. Prior to 2006, non-road diesel fuel averaged approximately 3,400 ppm in sulfur content. This rule limits non-road diesel fuel sulfur content to 500 ppm by 2010. The combined engine standards and fuel sulfur content limits reduced NO_x and PM_{2.5} emissions (including direct emissions of sulfates) from large non-road diesel engines by over 90 percent compared to pre-control non-road engines using the higher sulfur content diesel fuel. This rule achieved all of the

reductions in fuel sulfur content by 2010. Some emission reductions from the new engine emission standards were realized over the 2007–2009 attainment period, although most of the engine emission reductions will occur during the maintenance period as the non-road diesel engines are replaced with newer engines.

iv. Non-Road Spark-Ignition Engines and Recreational Engine Standards

Although Ohio did not document this Federal emission control measure in its May 2011 "Redesignation Request and Maintenance Plan for the Columbus PM_{2.5} Nonattainment Area" nor in the supplemental emissions submittal, Ohio could have also taken credit for this permanent and enforceable Federal emission control requirement.

In November 2002, EPA promulgated emission standards for groups of previously unregulated non-road engines. These engines include large spark-ignition engines, such as those used in forklifts and airport ground-service equipment; recreational vehicles using spark-ignition engines, such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and, recreational marine diesel engines. Emission standards from large spark-ignition engines were implemented in two tiers, with Tier 1 starting in 2004 and Tier 2 starting in 2007. Recreational vehicle emission standards were phased in from 2006 through 2012. Marine diesel engine standards were phased in from 2006 through 2009.

With full implementation of all of the non-road spark-ignition engine and recreational engine standards, an overall 72 percent reduction in VOC, 80 percent reduction in NO_x and 56 percent reduction carbon monoxide (CO) emissions are expected by 2020. Some of these emission reductions had occurred by the 2008–2010 attainment period and additional emission reductions will occur during the maintenance period as the fleets turn over.

b. Control Measures in Upwind Areas

Given the significance of sulfates and nitrates in the Columbus area PM_{2.5} air quality, the area's PM_{2.5} air quality is strongly affected by regulation of SO₂ and NO_x emissions from power plants in areas upwind of the Columbus area. The following discusses the emission control regulations impacting upwind area.

i. NO_x SIP Call

On October 27, 1998 (63 FR 57356), EPA issued a NO_x SIP call requiring the District of Columbia and 22 states to

reduce emissions of NO_x. Affected states were required to comply with Phase I of the NO_x SIP call beginning in 2004, and with Phase II beginning in 2007. NO_x emission reductions resulting from regulations developed in response to the NO_x SIP call area permanent and enforceable. The state of Ohio and other nearby, upwind states, including Michigan, Indiana, Illinois, and Kentucky, were subject to the NO_x SIP call.

ii. Clean Air Interstate Rule (CAIR) and CSAPR

EPA proposed CAIR on January 30, 2004, at 69 FR 4566, and promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO₂ and NO_x emissions and improve air quality in areas across Eastern United States. However, on July 11, 2008, the D.C. Circuit vacated and remanded both CAIR and the associated CAIR FIPs in their entirety. See *North Carolina v. EPA*, 531 F.3d 836 (D.C. Cir. 2008). EPA petitioned for a rehearing, and the D.C. Circuit issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur. See *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The D.C. Circuit, thereby, left CAIR in place in order to "temporarily preserve the environmental values covered by CAIR" until EPA replaced it with a rule consistent with the Court's opinion. *Id.* at 1178. The Court directed EPA to "remedy CAIR's flaws" consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action. *Id.*

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace CAIR, which, as noted above, had been in place since 2005. See 76 FR 59517. CSAPR required significant reductions in emissions of SO₂ and NO_x from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. See 76 FR 70093.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the

petitions for review of that rule in *EME Homer City Generation v. EPA* (No. 11-1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR as completed.

On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR "pending the promulgation of a valid replacement." *EME Homer City Generation*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties have filed petitions for certiorari to the U.S. Supreme Court. As noted above, on June 24, 2013, the Supreme Court consolidated the petitions and granted certiorari (granted review as requested by these petitions). Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City Generation* opinion.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment is due to emission reductions associated with CAIR, EPA is proposing to determine that those emission reductions are sufficiently permanent and enforceable for purposes of CAA section 107(d)(3)(E)(iii) (and for purposes of assessing maintenance of the 1997 annual PM_{2.5} standard in the Columbus area, as discussed below, for CAA section 175A).

2. Emission Reductions

a. Ohio's Demonstration That Significant Emission Reductions Have Occurred in the Columbus Area and in Upwind Areas

To demonstrate that significant emission reductions have resulted in attainment, Ohio EPA compared the Columbus area NO_x, SO₂, and primary PM_{2.5} emissions for 2005 with those of 2008. As noted above, the 2008 emissions represent those for a year in which the Columbus area was attaining the 1997 annual PM_{2.5} standard (2008 is the middle year of the 2007-2009 period in which the Columbus area initially attained the 1997 annual PM_{2.5} standard), and 2005 represents a year in which the Columbus area was violating this standard.

The derivation of the 2005 (base year) emissions is discussed in more detail below in section V.F of this proposed

rule. The derivation of the 2008 (attainment year) emissions is discussed in more detail here.

The 2008 emissions were based on actual source activity levels. The point source emissions were compiled from Ohio's annual emissions reports, submitted to the OEPA by individual source facilities for all non-Electric Generating Unit (non-EGU) sources, and EGU emissions projected from the 2005 EPA Air Market's acid rain database. Area source emissions were taken from the Ohio 2005 periodic inventory and were projected to 2008 using Department of Commerce Bureau of Economic Analysis (BEA) growth factors and some updated local information. Area source emissions were calculated using the most recently available emission calculation methodologies, and source activity data (population, employment by source sector, fuel use, etc.) specific to 2008. On-road mobile source emissions were calculated using EPA's MOVES2010 emissions model with 2008 Vehicle Miles Traveled (VMT) and other vehicle data (roadway speeds, vehicle type and age distribution, etc.) provided by the Mid-Ohio Regional Planning Commission (MORPC) and Ohio Department of Transportation (ODOT). Non-road mobile source emissions were generated using EPA's National Mobile Inventory Model (NMIM) 2002 application and source activity data projected to 2008. Emissions for aircraft, commercial marine vessels, and railroads were derived separately by contractors under the direction of the Lake Michigan Air Directors Consortium (LADCO). Spatial surrogates were used to allocate emissions to individual counties. Biogenic emissions were not calculated since these emissions are assumed to remain constant over time (biogenic emissions are not included in the 2002, 2008, 2015, and 2022 emissions summarized in this proposed rule).

The 2005 and 2008 emissions for NO_x, SO₂, and primary PM_{2.5} for the Columbus area are summarized in tables 2 through 4 below. All emissions are in units of tons per year (TPY). All summarized emissions are documented in Ohio's May 2011 "Redesignation Request and Maintenance Plan For the Columbus Annual PM_{2.5} Nonattainment Area."

TABLE 2—COMPARISON OF 2005 AND 2008 NO_x EMISSION TOTALS FOR THE COLUMBUS AREA BY SOURCE SECTOR [TPY]

| Source sector | 2005 | 2008 | Net change 2005–2008 |
|-------------------------------|-----------|-----------|----------------------|
| Point Sources | 25,188.87 | 24,373.96 | - 814.91 |
| Area Sources | 5,467.2 | 5,534.32 | 67.12 |
| On-Road Mobile Sources | 53,390.61 | 44,825.81 | - 8,564.80 |
| Off-Road Mobile Sources | 14,609.69 | 12,728.47 | - 1,881.22 |
| Total | 98,656.37 | 87,462.56 | - 11,193.81 |

TABLE 3—COMPARISON OF 2005 AND 2008 PRIMARY PM_{2.5} EMISSION TOTALS FOR THE COLUMBUS AREA BY SOURCE SECTOR [TPY]

| Source sector | 2005 | 2008 | Net change 2005–2008 |
|-------------------------------|----------|----------|----------------------|
| Point Sources | 1,478.64 | 1,553.83 | 75.19 |
| Area Sources | 1,552.43 | 1,620.06 | 67.63 |
| On-Road Mobile Sources | 1,660.33 | 1,451.09 | - 209.24 |
| Off-Road Mobile Sources | 1,058.53 | 908.32 | - 150.21 |
| Total | 5,749.93 | 5,533.3 | - 216.63 |

TABLE 4—COMPARISON OF 2005 AND 2008 SO₂ EMISSION TOTALS FOR THE COLUMBUS AREA BY SOURCE SECTOR [TPY]

| Source sector | 2005 | 2008 | Net change 2005–2008 |
|-------------------------------|------------|-----------|----------------------|
| Point Sources | 111,266.53 | 94,553.48 | - 16,713.05 |
| Area Sources | 566.95 | 563.68 | - 3.27 |
| On-Road Mobile Sources | 864.22 | 283.05 | - 581.17 |
| Off-Road Mobile Sources | 1,603.24 | 729.80 | - 873.44 |
| Total | 114,300.88 | 96,130.01 | - 18,170.87 |

Tables 2 through 4 show that NO_x, SO₂, and primary PM_{2.5} emissions in the Columbus area have been reduced significantly between the 2005 violation year and the 2008 attainment year.

In addition to the local PM_{2.5} precursor emission reductions, we believe that regional NO_x and SO₂ emission reductions resulting from the implementation of EPA's Acid Rain

Program (ARP) (see 40 CFR parts 72 through 78), NO_x SIP call, and CAIR have significantly contributed to the PM_{2.5} air quality improvement in the Columbus area. To assess the change in regional emissions from states believed to significantly contribute to annual PM_{2.5} concentrations in the Columbus area, OEPA has considered the change in EGU NO_x and SO₂ emissions from

Ohio and surrounding states between 2008 and 2009. Table 5 shows the reduction in NO_x and SO₂ emissions for EGUs in Ohio, the LADCO states (Illinois, Indiana, Michigan, Ohio, and Wisconsin), and nationwide (these data are taken from table 9, page 23 of OEPA's May 2011 redesignation and maintenance plan).

TABLE 5—STATEWIDE EGU EMISSIONS FOR 2008 AND 2009 [TPY]

| Area | NO _x | | | SO ₂ | | |
|--------------------|-----------------|-----------|-------------------|-----------------|-----------|-------------------|
| | 2008 | 2009 | Percent reduction | 2008 | 2009 | Percent reduction |
| Ohio | 235,018 | 96,351 | 59 | 709,444 | 601,101 | 15 |
| LADCO States | 702,384 | 393,930 | 44 | 2,019,036 | 1,620,071 | 20 |
| Nationwide | 2,996,385 | 1,990,385 | 34 | 7,616,262 | 5,747,353 | 25 |

As can be seen in table 5, the implementation of CAIR (the primary additional regional emissions control implemented during the 2008–2009 period) resulted in significant

reductions in Ohio, regional, and nationwide NO_x and SO₂ emissions from EGUs, all of which OEPA believes contributed to attainment of the 1997 annual PM_{2.5} standard in the Columbus

area. Since CAIR remains in place until EPA can replace it with an acceptable new state region-wide emissions control rule, we believe these emission

reductions to be permanent and enforceable.

The information summarized above shows that emissions of PM_{2.5} and its most significant precursors (SO₂ and NO_x) have significantly decreased between 2005 and 2009 in the Columbus area and in states with EGU emissions significantly impacting the annual PM_{2.5} concentrations in the Columbus area.

b. VOC and Ammonia Emission Reductions

For several reasons we believe that VOC emission reductions in the Columbus area and in upwind states have also contributed to the observed improvement in annual PM_{2.5} concentrations in the Columbus area. In addition, for several reasons, we also believe that changes in ammonia emissions have not significantly impacted the observed annual PM_{2.5} concentrations in this area.

First, as noted elsewhere in this proposed rule in EPA's discussion of section 189(e) of the CAA, VOC emissions in the Columbus area have historically been well-controlled under SIP requirements related to ozone and other pollutants.¹² Second, total ammonia emissions throughout the Columbus area are very low, estimated to be 6,101.37 TPY in 2007. See the discussion of 2007 VOC and ammonia emissions below. This amount of ammonia emissions appears especially small in comparison to the total amounts of SO₂ and NO_x emissions sources in the area in 2005. Third, as described below, available information shows that no PM_{2.5} precursor, including VOC and ammonia, is expected to increase over the maintenance period so as to interfere with or undermine the state's maintenance demonstration.

c. Conclusions Regarding Emission Reductions Between 2005 and 2008 in the Columbus Area

From the above, it is concluded that SO₂, NO_x, primary PM_{2.5}, and VOC emissions were well controlled between 2005 and 2008 and that significant reductions in the emissions of these pollutants occurred in the Columbus area during this period. During the same

period, emissions of ammonia are believed to have had minimal impact on PM_{2.5} concentrations in the Columbus area. We believe that the emission reductions of the significant PM_{2.5} precursors, including primary PM_{2.5}, in the Columbus area and in upwind states are responsible for the observed improvement in annual PM_{2.5} concentrations in the Columbus area. Based on this observation, we conclude that the attainment of the 1997 annual PM_{2.5} standard in the Columbus area can be explained on the basis of permanent and enforceable emission reductions within the Columbus area and in the states regulated by CAIR and NO_x SIP call regulations.

D. Does Ohio have a fully approvable PM_{2.5} maintenance plan pursuant to Section 175A of the CAA for the Columbus area?

In conjunction with Ohio's request to redesignate the Columbus area to attainment of the 1997 annual PM_{2.5} standard, OEPA submitted a SIP revision to provide for maintenance of the 1997 annual PM_{2.5} standard in the Columbus area through 2022. This maintenance plan demonstrates that emissions in the Columbus area are projected to remain at or below the attainment levels throughout the maintenance period and provides for corrective action should the 1997 annual standard be violated or threatened in the Columbus area during the maintenance period. The following summarizes the details of the maintenance plan and maintenance demonstration.

1. What is required in a maintenance plan?

Sections 107(d)(3)(E)(iv) and 175A of the CAA require that states demonstrate that the areas to be redesignated will continue to meet the PM_{2.5} NAAQS for at least 10 years after EPA approves the redesignation of the areas to attainment of the NAAQS. Section 175A of the CAA sets forth the required elements of a maintenance plan. Under section 175A, a state must also commit to submit a revised maintenance plan within eight years after redesignation to provide for maintenance of the standard for an additional 10 years after the initial 10-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future violations of the standard.

The Calcagni memorandum provides additional guidance on the content of a

maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emission inventories; a maintenance demonstration showing maintenance of the standard for the 10 years of the maintenance period; a commitment to maintain the existing monitoring network; documentation of the factors and procedures to be used for verification of continued attainment of the standard; and, a contingency plan to prevent or correct future violations of the standard.

2. Attainment Inventory

The OEPA developed NO_x, SO₂, and primary PM_{2.5} emission inventories for 2008, one of the years used to demonstrate monitored attainment of the 1997 annual PM_{2.5} standard. These emission levels are defined to be the attainment levels of the emissions. The 2008 attainment levels of the emissions are summarized in tables 3 through 5 above and in tables 6 through 8 below.

3. Demonstration of Maintenance

a. State Demonstration of Maintenance

Along with the redesignation request, OEPA submitted a revision of the Ohio PM_{2.5} SIP to include a demonstration of maintenance for the Columbus area, as required by section 175A of the CAA. This demonstration shows maintenance of the 1997 annual PM_{2.5} standard through 2022 by showing that current and future emissions of NO_x, SO₂, and primary PM_{2.5} for the Columbus area will remain at or below attainment year emission levels. A maintenance demonstration may be based on such an emissions inventory approach. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

OEPA used emission projections for 2015 and 2022 to demonstrate maintenance. For primary PM_{2.5}, SO₂, and NO_x, OEPA prepared emission estimates for the same source sectors used for the attainment year emission estimates. As for the base year and attainment year, biogenic emissions were assumed to remain constant, and were not considered in the maintenance demonstration analysis.

As done for the 2005 and 2008 mobile source emissions, OEPA used EPA's MOVES2010 mobile source model and projected traffic levels and other related mobile source factors to estimate on-road mobile source emissions for the maintenance demonstration years. The on-road mobile source emission projections were developed assuming

¹² For a thorough discussion of VOC emission controls and estimates (2002 and 2004) and projected (2009 and 2018) VOC emission levels (summertime emissions) in the Columbus area, see EPA's proposed rule for the redesignation of the Columbus area to attainment of the 1997 8-hour ozone standard (72 FR 32257, June 12, 2007). We observe here that the estimated/projected summertime VOC emission reductions in the Columbus area also generally reflect reductions in annual emissions of VOC in this area.

the continued phase-in of the Federal motor vehicle emission standards. Total VMT and other on-road vehicle data for 2015 and 2022 were derived using the same modeling systems (with projected input data population, population distribution, etc.) used to derive the 2005 and 2008 on-road mobile source emissions. As with the 2005 and 2008 on-road mobile source emissions, EPA's

MOVES2010 model was used to calculate mobile source emission factors. The 2015 and 2022 on-road mobile source emissions were used to establish MVEBs for the Columbus area. See the additional discussion of the MVEBs in section V.E of this proposed rule.

Columbus area point and area source emissions for 2015 and 2022 were

estimated using the 2008 attainment year emissions and growth factors for each source category within each source sector. Emission growth factors were provided by LADCO.

Tables 6 through 8 summarize the projected NO_x, SO₂, and primary PM_{2.5} emissions for 2008, 2015 and 2022 by source sector in the Columbus area.

TABLE 6—COMPARISON OF 2008, 2015, AND 2022 NO_x EMISSIONS BY SOURCE SECTOR (TPY) FOR THE COLUMBUS AREA

| Source sector | 2008 | 2015 | 2022 | Net change 2008–2022 |
|-----------------------|-----------|-----------|-----------|----------------------|
| Point Sources | 24,373.96 | 13,159.20 | 7,627.51 | -16,746.45 |
| Area Sources | 5,534.32 | 5,577.77 | 5,631.84 | 97.52 |
| On-Road Mobile | 44,825.81 | 21,812.27 | 10,597.83 | -34,227.98 |
| Off-Road Mobile | 12,728.47 | 8,113.60 | 3,519.93 | -9,208.54 |
| Totals | 87,462.56 | 48,662.84 | 27,377.11 | -60,085.45 |

TABLE 7—COMPARISON OF 2008, 2015, AND 2022 SO₂ EMISSIONS BY SOURCE SECTOR (TPY) FOR THE COLUMBUS AREA

| Source sector | 2008 | 2015 | 2022 | Net change 2008–2022 |
|-----------------------|-----------|-----------|-----------|----------------------|
| Point Sources | 94,553.48 | 44,636.32 | 23,258.56 | -71,294.92 |
| Area Sources | 563.68 | 548.39 | 533.8 | -29.88 |
| On-Road Mobile | 283.05 | 128.37 | 124.45 | -158.60 |
| Off-Road Mobile | 729.80 | 259.63 | 149.42 | -580.38 |
| Totals | 96,130.01 | 45,572.71 | 24,066.23 | -72,063.78 |

TABLE 8—COMPARISON OF 2008, 2015, AND 2022 PRIMARY PM_{2.5} EMISSIONS BY SOURCE SECTOR (TPY) FOR THE COLUMBUS AREA

| Source sector | 2008 | 2015 | 2022 | Net change 2008–2022 |
|-----------------------|----------|----------|----------|----------------------|
| Point Sources | 1,553.83 | 1,647.99 | 1,745.63 | 191.80 |
| Area Sources | 1,620.06 | 1,623.79 | 1,627.88 | 7.82 |
| On-Road Mobile | 1,451.09 | 759.53 | 486.2 | -964.89 |
| Off-Road Mobile | 908.32 | 613.95 | 314.31 | -594.01 |
| Totals | 5,533.30 | 4,645.26 | 4,174.02 | -1,359.28 |

Comparison of the 2008 and projected 2015 and 2022 emissions demonstrates that future NO_x, SO₂, and primary PM_{2.5} emissions through 2022 will remain below the 2008 levels in the Columbus area. EPA concludes that Ohio had demonstrated maintenance of the 1997 annual PM_{2.5} standard in the Columbus area. In addition, for the reasons set forth below, EPA believes that Ohio's submissions, in conjunction with additional supporting information, further demonstrate that the Columbus area will continue to maintain the 1997 annual PM_{2.5} standard at least through 2023. Thus, in anticipation that EPA will complete action on Ohio's redesignation request and maintenance plan in 2013, EPA proposes to conclude

that the state's maintenance plan provides for maintenance for the requisite ten years after redesignation, in accordance with section 175A of the CAA.

The rates of decline in emissions of primary PM_{2.5}, NO_x, and SO₂ emissions from the attainment year, 2008, through 2022 documented in Ohio's maintenance demonstration indicate that emission levels will not only significantly decline between 2008 and 2022, but that reductions in emissions (relative to 2008 levels) will continue through 2023 and beyond. The projected average annual rates of decline are 4,292 TPY per year for NO_x, 5,147 TPY per year for SO₂, and 97 TPY per year for primary PM_{2.5}. These rates of decline are

consistent with monitored and projected air quality trends and with emission reductions achieved through emissions controls and regulations that will remain in place through 2023.

Furthermore, fleet turnover in on-road and non-road vehicles that will continue to occur after 2022 will provide additional significant emission reductions.

In addition, as table 1 demonstrates, monitored PM_{2.5} design value concentrations in the Columbus area are well below the NAAQS in the years beyond 2008. These PM_{2.5} design values are trending downward as time progresses. Based on the future projections of emissions in 2015 and 2022, which show significant emission

reductions in primary PM_{2.5}, NO_x, and SO₂, it is very unlikely that monitored PM_{2.5} concentrations in 2023 and beyond will show violations of the 1997 annual PM_{2.5} standard. The 2010–2012 p.m.2.5 design values documented in table 1, coupled with the projected drops in PM_{2.5} precursor emissions, imply that there will be a PM_{2.5} attainment margin in the Columbus area sufficient to buffer against violations of the 1997 annual PM_{2.5} standard in the unlikely event that emissions rise slightly in the future between 2022 and 2023.

b. CAIR and CSAPR

i. Background—Effect of the August 21, 2012, D.C. Circuit Decision Regarding EPA's CSAPR

EPA recently promulgated CSAPR (76 FR 48208, August 8, 2011) to replace CAIR, which has been in place since 2005. See 76 FR 59517. CAIR requires significant reductions in emissions of SO₂ and NO_x from EGUs to limit the interstate transport of these pollutants and the ozone and PM_{2.5} they form in the atmosphere. See 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded that rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

CSAPR included regulatory changes to sunset (i.e., discontinue) CAIR and CAIR FIPs for control periods in 2012 and beyond. See 76 FR 48322. Although the Columbus area redesignation request and Ohio's PM_{2.5} maintenance plan do not rely on emission reductions associated with CAIR, EPA notes that it is proposing to approve the redesignation request and PM_{2.5} maintenance plan based, in part, on the fact that CAIR is to remain in place until it is replaced by an acceptable interstate transport control rule.

On December 30, 2011, the D.C. Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the Court stayed CSAPR pending resolution of the petitions for review of that rule in *EME Homer City* (No. 11–1302 and consolidated cases). The Court also indicated that EPA was expected to continue to administer CAIR in the interim until judicial review of CSAPR was completed.

On August 21, 2012, the D.C. Circuit issued the decision in *EME Homer City* to vacate and remand CSAPR and

ordered EPA to continue administering CAIR “pending . . . development of a valid replacement.” *EME Homer City*, 696 F.3d at 38. The D.C. Circuit denied all petitions for rehearing on January 24, 2013. EPA and other parties then filed petitions for certiorari to the U.S. Supreme Court, which the Supreme Court granted on June 24, 2013. Nonetheless, EPA intends to continue to act in accordance with the *EME Homer City* opinion.

In light of these unique circumstances and for the reasons explained below, to the extent that attainment and maintenance is due to emission reductions associated with CAIR, EPA is here determining that those reductions are sufficiently permanent and enforceable for purposes of CAA sections 107(d)(3)(E)(iii) and 175A.

As directed by the D.C. Circuit, CAIR remains in place and enforceable until EPA promulgates a valid replacement rule to substitute for CAIR. As noted above, the Columbus area PM_{2.5} redesignation request and maintenance plan does not rely on the emission reductions from CAIR, but attainment of 1997 annual PM_{2.5} standard in the Columbus area did result, in part, from the implementation of CAIR and CAIR will contribute to maintenance in the future. Ohio submitted a CAIR SIP, which was approved by EPA on February 1, 2008 (73 FR 6034). On July 15, 2009, Ohio submitted revisions to its CAIR SIP, which EPA approved on September 25, 2009 (74 FR 48857). In its redesignation request, Ohio notes that in 2009 facilities began implementing control programs to address CAIR, and that CAIR will provide significant reductions in NO_x, SO₂, primary PM_{2.5} emissions until such time as it is replaced by a new transport rule. CAIR was, thus, in place and getting emission reductions when the Columbus area was monitoring attainment of the 1997 annual PM_{2.5} standard during the 2008–2012 period.

To the extent that Ohio is relying on CAIR to support continued attainment in the Columbus area, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the emission reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule to address interstate transport to replace CSAPR and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Thus, CAIR will remain in place until EPA has promulgated a final rule through a notice-and-comment rulemaking

process, states have had an opportunity to draft and submit SIPs in response to it, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating FIPs if appropriate. The Court's clear instruction to EPA is that it must continue to administer CAIR until a valid replacement exists, and thus EPA believes that CAIR emission reductions may be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the Court's instruction provides an additional backstop: By definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to have SIPs that eliminate any significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Moreover, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR “might be more severe now in light of the reliance interests accumulated over the intervening four years.” *EME Homer City*, 696 F.3d at 38. The reliance interests accumulated include the interests of states that reasonably assumed they could rely on reductions associated with CAIR which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for regulatory purposes, such as redesignations. Following promulgation of the replacement rule for CSAPR, EPA will review existing SIPs as appropriate to identify whether there are any issues that need to be addressed.

ii. Maintenance Plan Precursor Evaluation Resulting From Court Decisions

With regard to the redesignation of the Columbus area, in evaluating the effect of the Court's remand of EPA's implementation rule, which included presumptions against consideration of VOC and ammonia as PM_{2.5} precursors, EPA in this proposal is also considering the impact of the decision on the

maintenance plan required under sections 175A and 107(d)(3)(E)(iv) of the CAA. To begin with, EPA notes that the area has attained the 1997 annual PM_{2.5} standard and that the state has shown that attainment of this standard is due to permanent and enforceable emission reductions, as noted above.

EPA proposes to determine that the state's maintenance plan shows continued maintenance of the standard by tracking the levels of the precursors whose control brought about attainment of the 1997 annual PM_{2.5} standard in the Columbus area. EPA, therefore, believes that the only additional consideration related to the maintenance plan requirements that results from the Court's January 4, 2013, decision is that of assessing the potential role of VOC and ammonia in demonstrating continued maintenance in this area. As explained below, based on documentation provided by the state and supporting information, EPA

believes that the maintenance plan for the Columbus area need not include any additional emission reductions of VOC or ammonia in order to provide for continued maintenance of the standard.

Emissions inventories used in the Regulatory Impact Analysis (RIA) for the 2012 p.m.2.5 NAAQS show that VOC and ammonia emissions in the Columbus area are projected to decrease by 19,358 TPY and 119 TPY, respectively, between 2007 and 2020. See table 9 below. While the RIA emissions inventories are only projected to 2020, there is no reason to believe that the projected downward trends would not continue through 2023. Given that the Columbus area is already attaining the 1997 annual PM_{2.5} standard, even with the current levels of VOC and ammonia emissions in this area, the downward trends in VOC and ammonia would be consistent with continued attainment of the 1997 annual PM_{2.5} standard in the Columbus

area. Indeed, projected emission reductions for PM_{2.5} precursors that the state has addressed for purposes of the 1997 annual PM_{2.5} standard (see tables 6 through 8 above) also indicate that the Columbus area should continue to attain the NAAQS following the precursor control strategies that the state of Ohio and other upwind states have already elected to pursue. Even if ammonia emissions were to increase unexpectedly between 2020 and 2023, the overall emissions reductions projected in SO₂, NO_x, primary PM_{2.5}, and VOC (see 72 FR 32257, June 12, 2009) would be sufficient to offset the increase in annual PM_{2.5} concentrations resulting from the hypothetical increase in ammonia emissions. For these reasons, EPA believes that even a reversal of the downward trend in local emissions of ammonia (and VOC) would not cause monitored PM_{2.5} levels to violate the 1997 annual PM_{2.5} standard during the maintenance period.

TABLE 9—COMPARISON OF 2007 AND 2020 VOC AND AMMONIA EMISSIONS TOTALS BY SOURCE SECTOR (TPY) FOR THE COLUMBUS AREA BASED ON RIA EMISSIONS ESTIMATES FOR THE 2012 PM_{2.5} NAAQS

| Source sector | VOC | | | Ammonia | | |
|-----------------------|-----------|-----------|----------------------|----------|----------|----------------------|
| | 2007 | 2020 | Net change 2007–2020 | 2007 | 2020 | Net change 2007–2020 |
| Fires | 77.48 | 77.48 | 0.0 | 5.62 | 5.62 | 0.0 |
| Area | 20,305.24 | 20,643.97 | 338.73 | 4,640.75 | 4,853.36 | 212.61 |
| Non-Road Mobile | 7,574.55 | 4,381.79 | -3,192.76 | 11.20 | 12.80 | 1.6 |
| On-Road Mobile | 25,006.05 | 8,430.70 | -16,575.35 | 807.16 | 423.61 | -383.55 |
| Point | 1,423.57 | 1,495.24 | 71.67 | 242.31 | 292.41 | 50.1 |
| Totals | 54,386.89 | 35,029.18 | -19,357.71 | 5,707.04 | 5,587.80 | -119.24 |

c. EPA's Conclusion for Ohio's Maintenance Demonstration

Based on the information summarized above, we conclude that Ohio has adequately demonstrated maintenance of the 1997 annual PM_{2.5} standard in the Columbus area for a period of ten years from the time that EPA may be expected to complete rulemaking on the state's PM_{2.5} redesignation request.

4. Monitoring Network

Ohio commits to continue monitoring PM_{2.5} levels according to the EPA-approved monitoring plan during the maintenance period, as required to ensure maintenance of the 1997 annual PM_{2.5} standard. If changes are needed in the PM_{2.5} monitoring network, OEPA will work with the EPA to ensure the adequacy of the monitoring network.

5. Verification of Continued Attainment

Continued attainment of the 1997 annual PM_{2.5} standard in the Columbus area depends, in part, on the state's

efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the standard in the Columbus area consists of continued ambient PM_{2.5} monitoring in accordance with the requirements of 40 CFR part 58 and continued tracking of emissions through periodic updates of the PM_{2.5} and PM_{2.5} precursor emissions inventory for the Columbus area, as required by the Federal Consolidated Emission Reporting Rule (codified at 40 CFR part 51 subpart A).

6. Contingency Plan

The contingency plan provisions are designed to correct, as expeditiously as possible, or prevent a violation of the 1997 annual PM_{2.5} standard that might occur after redesignation of an area to attainment of the standard. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the state will promptly correct a violation of the

NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators of the area to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Columbus area to address possible future violations of the 1997 annual PM_{2.5} standard in this area. Under Ohio's plan, if a violation of the 1997 annual PM_{2.5} standard occurs in the Columbus area or if a two-year average of the weighted annual mean

PM_{2.5} concentration at any monitoring site in the area equals or exceeds 15.0 µg/m³. Ohio will implement an "Action Level Response" to conduct an analysis to determine if the unacceptable PM_{2.5} concentration is due to an exceptional event, malfunction, or noncompliance with a source permit condition or a rule requirement. If the air quality problem is found to not be due to one of these situations, OEPA and the local metropolitan planning organization or regional council of government will determine the additional emission control measures needed to assure attainment of the 1997 annual PM_{2.5} standard. Ohio's candidate contingency control measures include, but are not limited to, the following:

- Diesel emission control strategies;
- Alternative fuel requirements, such as liquid propane and compressed natural gas, and diesel retrofit programs for fleet vehicle operations;
- Tighter PM_{2.5}, SO₂, and primary PM_{2.5} emissions offsets for new and modified major sources;
- Controls on impact crushers located at recycle scrap yards using wet suppression;
- Upgrade of wet suppression requirements at concrete manufacturing facilities; and
- Additional NO_x RACT requirements statewide.

Emission control measures that can be implemented in a short time will be selected and will be in place within 18 months after the close of the calendar year that prompted the action level response. Ohio will also consider the timing of the action level trigger and determine if additional, significant new emission control regulations, not currently included as part of the maintenance plan, will be implemented in a timely manner and will negate the need for additional contingency measures. OEPA also notes that the

following NO_x, SO₂, and primary PM_{2.5} source types are potentially subject to additional emission control requirements: (1) Industrial, Commercial, Institutional (ICI) boilers; (2) EGUs; (3) process heaters; (4) internal combustion engines; (5) combustion turbines; (6) sources with emissions exceeding 100 TPY; (7) fleet vehicles; (8) concrete manufacturers; and, (9) aggregate processing plants.

OEPA commits to implement a "Warning Level Response" if any monitor records a weighted annual average PM_{2.5} concentration of 15.0 µg/m³ or greater in a single calendar year. This trigger will result in a study to determine whether this PM_{2.5} concentration indicates a trend toward higher PM_{2.5} concentrations or whether emissions are increasing, threatening to cause future violations of the 1997 annual PM_{2.5} standard. If a worsening PM_{2.5} concentration trend is expected or if a future violation of the 1997 annual PM_{2.5} standard is projected to occur, the control measures needed to reverse the trend will be selected and implemented, taking into consideration the economic and social impacts of the controls and the ease and timing of implementation. Implementation of the controls will take place no later than 12 months after the calendar year in which they are selected and adopted.

EPA believes that Ohio's contingency plan satisfies the pertinent requirements of section 175A of the CAA.

7. Provision for Future Update of the Annual PM_{2.5} Maintenance Plan

As required by section 175A(b) of the CAA, Ohio commits to submit to EPA an updated maintenance plan eight years after EPA redesignates the Columbus area to attainment of the 1997 annual standard to cover an additional 10-year period beyond the initial 10-year maintenance period. As required

by section 175A of the CAA, Ohio has also committed to retain and implement the emission control measures contained in the SIP prior to redesignation. If changes are needed in the SIP control measures, Ohio commits to submit these changes to EPA as requested SIP revisions.

Finally, the state affirms that Ohio has the legal authority to implement and enforce the requirements of the maintenance plan SIP revision and commits to continue the enforcement of all regulations that relate to the emission of all PM_{2.5} precursors in the Columbus area.

E. Has Ohio adopted acceptable MVEBs for the PM_{2.5} maintenance period?

1. How are MVEBs developed and what are the MVEBs for the Columbus area?

Under section 176(c) of the CAA, transportation plans and Transportation Improvement Programs (TIPs) must be evaluated for conformity with SIPs. Consequently, Ohio's PM_{2.5} redesignation request and maintenance plan provide MVEBs, conformance with which will assure that motor vehicle emissions are at or below levels that can be expected to provide for attainment and maintenance of the 1997 annual PM_{2.5} standard. Ohio's redesignation request includes mobile source emission budgets for NO_x and primary PM_{2.5} for 2015 and 2022. Table 10 shows the 2015 and 2022 MVEBs and "safety margins" for the Columbus area. Table 10 also shows the estimated 2015 and 2022 mobile source emissions for the Columbus area. Ohio did not provide MVEBs for SO₂ because it concluded, consistent with EPA's presumptions regarding this PM_{2.5} precursor, that emissions of this pollutant from motor vehicles are not significant contributors to the Columbus area's PM_{2.5} air quality problem.

TABLE 10—2015 AND 2022 MOTOR VEHICLE EMISSION BUDGETS FOR THE CHICAGO AREA (TPY)

| Year | Estimated emissions | | Safety margin | | Motor vehicle emission budgets | |
|------------|---------------------------|-----------------|---------------------------|-----------------|--------------------------------|-----------------|
| | Primary PM _{2.5} | NO _x | Primary PM _{2.5} | NO _x | Primary PM _{2.5} | NO _x |
| | | | | | | |
| 2015 | 759.53 | 21,812.27 | 113.93 | 3,271.84 | 873.46 | 25,084.11 |
| 2022 | 486.20 | 10,597.83 | 72.93 | 1,589.67 | 559.13 | 12,187.50 |

Tables 6, 8, and 10 show substantial decreases in on-road mobile source NO_x and primary PM_{2.5} emissions from 2008 to 2015 and from 2008 to 2022. These emission reductions are expected because newer vehicles subject to more

stringent emission standards are continually replacing older, higher emitting vehicles. EPA is proposing to approve the 2015 and 2022 MVEBs for the Columbus area into the SIP because, based on our review of the submitted,

PM_{2.5} maintenance plan, we have determined that the maintenance plan and MVEBs meet EPA's criteria found in 40 CFR 93.118(e)(4) for determining that MVEBs are adequate for use in transportation conformity

determinations and are approvable because, when considered together with the submitted maintenance plan's projected emissions, provide for maintenance of the 1997 annual PM_{2.5} standard in the Columbus area.

2. What are safety margins?

As noted in table 10, Ohio has included safety margins in the 2015 and 2022 MVEBs. Ohio notes that EPA's transportation conformity regulations allow the use of safety margins in the development of MVEBs for maintenance plans. The safety margins selected by OEPA would provide for a 15 percent increase in mobile source emissions for 2022 above projected levels of these emissions. These safety margins are only a fraction of the margins by which overall emissions in the area are expected to be below emission levels associated with air quality meeting the air quality standard.¹³ Thus, these added safety margins will not result in on-road mobile source emissions exceeding the 2008 on-road mobile source attainment levels, and will not threaten exceedance of the 2008 total attainment level emissions in the Columbus area. Therefore, these safety margins are acceptable under EPA's transportation conformity requirements.

F. Are the 2005 and 2007 base year PM_{2.5}-related emissions inventories for the Columbus area approvable under section 172(c)(3) of the CAA?

Section 172(c)(3) of the CAA requires states to submit a comprehensive, accurate, and current inventory of emissions for nonattainment areas. For PM_{2.5} nonattainment areas, states have typically submitted primary PM_{2.5}, SO₂, and NO_x emission inventories covering one of the years of a three-year period during which an area has monitored violation of the PM_{2.5} standard. Ohio chose to derive PM_{2.5} precursor emissions for 2005 for purposes of meeting the requirements of section 172(c)(3) of the CAA. Ohio documented these emissions and submitted this documentation with the redesignation request for the Columbus area. Ohio also submitted the 2005 base year emissions inventory documentation on July 18, 2008, as an accompanying document with the state's PM_{2.5} attainment demonstration for the Columbus area.

1. EPA's Base Year Emissions Inventory SIP Policy

EPA's SIP policy for base year emissions inventories for the 1997

annual PM_{2.5} standard are specified generally in three policy statements. EPA's main SIP requirements for a base year PM_{2.5}-related emissions inventory are specified in section II.K of EPA's April 25, 2007, implementation rule for the 1997 annual PM_{2.5} standard (72 FR 20586, 20647). This rule requires the base year emissions inventory to be approved by the EPA as a SIP element (72 FR 20647), and requires the emissions inventory to cover the emissions of NO_x, SO₂, VOC, ammonia, and primary PM_{2.5} (72 FR 20648). The coverage of PM_{2.5} precursor emissions and emissions of primary PM_{2.5} is required under 40 CFR part 51 subpart A and 40 CFR 51.1008 (72 FR 20648). Detailed emissions inventory guidance for PM_{2.5} (and other pollutants) is contained in EPA's "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations" (August 2005, EPA-454/R-05-001). Finally, a November 18, 2002, policy memorandum titled "2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, PM_{2.5} and Regional Haze Programs" recommends that the PM_{2.5}-based emissions inventory be developed for a base year of 2002. It is noted that OEPA has generally followed all of these guidelines in the development of the base year emissions inventory for the PM_{2.5} SIP, with the exception that OEPA has chosen to develop a base year emissions inventory for 2005 rather than 2002. 2005 is one of the years of several three-year periods during which the Columbus area violated the 1997 annual PM_{2.5} standard, with 2003-2005 and 2004-2006 being violation periods. Given that 2005 is one of the years in which the Columbus area violated the 1997 annual PM_{2.5} standard, 2005 is an acceptable base year for the required emissions inventories.

2. 2005 and 2007 Base Year PM_{2.5}-Related Emission Inventories for the Columbus Area

Ohio documented the 2005 primary PM_{2.5}, NO_x, and SO₂ emissions in a February 2008 document titled "Ohio 2005 Base Year PM_{2.5} SIP Inventory." This documentation covers the derivation of 2005 PM_{2.5} precursor emissions for the entire state of Ohio, and summarizes the derivation of emissions by source type and major source category. Although the February 2008 emissions inventory documentation covers the derivation of on-road mobile source emissions using EPA's MOBILE6 emissions factor model, this derivation of on-road mobile source

emissions has been supplanted by a subsequent recalculation of the on-road mobile source emissions using EPA's MOVES2010 mobile source emissions model. The revised calculation of the on-road mobile source emissions for the Columbus area is documented in a May 2011 document titled "Central Ohio On-Road Mobile Emissions Estimates." This emissions documentation was included with Ohio's PM_{2.5} redesignation request for the Columbus area.

The derived 2005 emissions totals by major source sector are included in Ohio's May 2011 PM_{2.5} redesignation request. The following summarizes the derivation of the emissions for the major source categories and the emissions totals by major source category for the Columbus area, as documented in OEPA's May 2011 PM_{2.5} request support document.

Emissions and source-specific data for point sources were developed for the 2002 emissions inventories by the OEPA. The primary sources of data for point sources were annual emission reports submitted by individual source facilities, which included detailed emissions data files (STARShip files). Under Ohio's emissions reporting rule, source facilities are required to submit emission reports every year, including 2005. These reports include emissions along with source activity levels and emission control information. The May 2011 emissions documentation summary covers in detail the derivation of emissions for each source type covered as stationary point sources. The Columbus area point source emission totals are specified below, as summarized in Ohio's May 2011 PM_{2.5} redesignation request support document.

Area source emissions were generally derived by multiplying source category-specific emission factors by certain indicator levels of source activity (source surrogates), such as county populations, employment estimates, and commodity sales estimates. The emission estimation techniques for each source category are thoroughly documented in the May 2011 base year emissions inventory documentation. In general, OEPA has followed emission estimation procedures recommended by the EPA. Where appropriate, OEPA has defined the emission estimation approaches used to convert the source category-specific emission factors and source activity levels (derived from the county-specific surrogate/indicator levels, such as population, fuel use, employment, etc.) into county-specific emission levels. The May 2011 emissions inventory documentation does not specify the county-specific

¹³ While EPA's conformity guidance also labels this margin as a safety margin, EPA here is using the term "safety margin" to denote the margin by which Ohio's MVEBs exceed projected emissions.

pollutant emission levels by source type, but simply summarizes the source or surrogate information and emission factor information used to derive the area source emissions. The emissions summarized here were taken from OEPA's May 2011 PM_{2.5} redesignation request documentation.

LADCO used EPA's National Mobile Inventory Model (NMIM) output files and processed these files through their emissions model (generally used to prepare emissions input data files for photochemical modeling of ozone and PM_{2.5}) to estimate 2005 off-road mobile source emissions for all non-road mobile source types except: (1) Railroad locomotives; (2) aircraft operations (including aircraft auxiliary power units, landings, takeoffs, and other

aircraft operating modes); and, (3) commercial marine vessels. LADCO supplied the area source emission estimates to Ohio for inclusion in the 2005 base year emissions inventory. The May 2011 emissions inventory documentation summarizes the sources of input data used to derive output emissions data from NMIM.

For the three area source types not covered by NMIM, Ohio obtained source activity data and emissions from LADCO, who contracted with several consultants to derive emissions specific to areas within the LADCO region, including areas within Ohio.

For the 2005 on-road mobile source emissions estimates, OEPA relied on modeled mobile source VMT supplied by the Mid-Ohio Regional Planning Commission (MORPC), and used EPA's

MOVES2010 mobile source emissions model to calculate the emissions. MORPC used a combination of a travel demand modeling system (which covered much of but not all of the Columbus PM_{2.5} nonattainment area) and Highway Performance Monitoring Systems-derived (HPMS-derived) traffic data (used for portions of the Columbus area not covered by the travel demand modeling) to estimate VMT and speed data by functional roadway class. These data were input into MOVES2010 to derive on-road mobile source emissions for the Columbus area.

Table 11 (taken from OEPA's May 2011 p.m.2.5 redesignation request document) gives the 2005 NO_x, primary PM_{2.5} and SO₂ emissions totals by major source category for the Columbus area.

TABLE 11—2005 FINE PARTICULATE AND PRECURSOR EMISSIONS FOR THE COLUMBUS AREA (TPY)

| Source type | NO _x | Primary PM _{2.5} | SO ₂ |
|-------------------------------|------------------|---------------------------|-------------------|
| Point Sources | 25,188.87 | 1,478.64 | 111,266.53 |
| Area Sources | 5,487.2 | 1,552.43 | 566.95 |
| On-Road Mobile Sources | 53,390.61 | 1,660.33 | 864.22 |
| Off-Road Mobile Sources | 14,609.69 | 1,058.53 | 1,603.24 |
| Totals | 98,656.37 | 5,749.93 | 114,300.88 |

As noted above, EPA's emissions inventory guidelines call for the documentation of all PM_{2.5} precursor emissions for purposes of meeting the requirements of section 172(c)(3) of the CAA for the 1997 annual PM_{2.5} standard. Ohio's 2005 emissions inventory covers the emissions of primary PM_{2.5}, NO_x, and SO₂, but does not cover emissions of VOC and ammonia (NH₃), which are also PM_{2.5} precursors. To rectify this problem, OEPA emailed EPA on April 30, 2013, to supplement its original information on NO_x, primary PM_{2.5}, and SO₂ emissions information with information on 2007 VOC and ammonia emissions for the Columbus area. Table 12 gives these emissions for the major source sectors.

TABLE 12—2007 VOC AND AMMONIA EMISSIONS FOR THE COLUMBUS AREA (TPY)

| Source sector | Ammonia | VOC |
|-------------------------------|----------|-----------|
| Point Sources | 232.67 | 1,212.46 |
| Area Sources | 5,160.67 | 21,415.88 |
| Non-Road Mobile Sources | 11.64 | 8,658.89 |
| On-Road Mobile Sources | 696.38 | 17,883.04 |

TABLE 12—2007 VOC AND AMMONIA EMISSIONS FOR THE COLUMBUS AREA—Continued (TPY)

| Source sector | Ammonia | VOC |
|---------------------|-----------------|------------------|
| Totals | 6,101.37 | 49,170.27 |

We find that the state has thoroughly documented the 2005/2007 emissions for primary PM_{2.5} and PM_{2.5} precursors in the Columbus area. We also find that Ohio has used acceptable techniques and supporting information to derive these emissions. Therefore, we are proposing to approve Ohio's 2005/2007 base year emissions inventory for the Columbus area for purposes of meeting the emission inventory requirements of section 172(c)(3) of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to

attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);

- do 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);

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

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

- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- are 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

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because a determination of attainment is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 7, 2013.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2013-20651 Filed 8-23-13; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 130703586-3586-01]

RIN 0648-BD43

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS hereby proposes to amend the regulations implementing the Harbor Porpoise Take Reduction Plan (Plan). This proposed rule would revise the Plan by eliminating the consequence closure strategy enacted in 2010 based on deliberations by the Harbor Porpoise Take Reduction Team. This action is necessary to prevent the improper triggering of consequence closure areas based on target harbor porpoise bycatch rates that no longer accurately reflect actual bycatch in New England sink gillnets due to fishery-wide changes in fishing practices.

DATES: Submit comments on or before September 10, 2013.

ADDRESSES: You may submit comments on this document, identified by RIN 0648-BD43, by any of the following methods:

- Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal at www.regulations.gov.
- Mail:** Submit written comments to Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS Northeast Region, 55 Great Republic Dr., Gloucester, MA 01930, Attn: Harbor Porpoise Proposed Rule.
- Fax:** 978-281-9394 Attn: Harbor Porpoise Proposed Rule

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will

accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978-282-8482, Kate.Swails@noaa.gov; Kristy Long, NMFS Office of Protected Resources, 301-427-8440, Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the Plan and the take reduction planning process can be downloaded from the Plan Web site at <http://www.nero.noaa.gov/hptrp/>. Copies of the draft Environmental Assessment for this action can be found on the Plan's Web site. The complete text of the regulations implementing the Plan can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.33 or downloaded from the Web site, along with a guide to the regulations.

Background

The Harbor Porpoise Take Reduction Plan (Plan) was implemented in late 1998 pursuant to section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoises (63 FR 66464, December 2, 1998). NMFS amended the Plan in 2010 (75 FR 7383, February 19, 2010) to address increased mortalities of harbor porpoises in New England and Mid-Atlantic commercial gillnet fisheries due to non-compliance with the Plan requirements and observed interactions occurring outside of existing management areas.

The 2010 amendments, based largely on consensus recommendations from the Team, included the expansion of seasonal and temporal requirements within the Plan's management areas, the incorporation of additional management areas, and the creation of a consequence closure strategy in which three closure areas off the coast of New England would prohibit the use of gillnet gear if target rates of harbor porpoise bycatch were exceeded.

The Plan was projected to reduce harbor porpoise bycatch below the potential biological removal (PBR) level without the implementation of the consequence closures. Consequence closures were intended only as a backstop measure to ensure compliance with pinger requirements. The intent of implementing the consequence closure

strategy was to provide an incentive for the gillnet fishing industry to comply with pinger requirements in areas with historically high harbor porpoise bycatch levels resulting from relatively low levels of compliance. It was anticipated that the consequence closures would further reduce harbor porpoise mortalities by virtue of the times and areas chosen for their implementation in areas with poor pinger compliance.

Consequence Closure Strategy

The consequence closure strategy closes specific areas to gillnet gear during certain times of the year if observed average bycatch rates exceed specified target bycatch rates over two consecutive management seasons. Once triggered, Plan regulations state that the consequence closures will remain in place until the Plan achieves the Marine Mammal Protection Act's zero mortality rate goal (ZMRG) for harbor porpoises or until the Team recommends modifications to the Plan.

Three areas of historically high harbor porpoise bycatch were chosen by NMFS and the Team to close if observed bycatch rates exceeded the target rates: The Coastal Gulf of Maine, Eastern Cape Cod, and Cape Cod South Expansion Consequence Closure Areas. NMFS and the Team established the target bycatch rates for these three Plan management areas by examining the bycatch rates (number of observed harbor porpoises

taken per observed amount of landings) that were recorded from observed gillnet hauls from 1999–2007 that had the correct number of pingers on their net.

The Coastal Gulf of Maine Closure Area would be triggered if the observed average bycatch rates of harbor porpoises in the Mid-Coast, Stellwagen Bank, and Massachusetts Bay Management Areas (combined) exceed the target bycatch rate of 0.031 harbor porpoise takes/metric tons of fish landed (takes/mtons) (equal to 1 harbor porpoise taken per 71,117 pounds of fish landed) after two consecutive management seasons. This area would prohibit the use of gillnet gear during the months of October and November, which historically have been the months with the highest amount of observed harbor porpoise bycatch. When this area is not closed, the seasonal requirements of the three overlapping management areas would remain in effect, including the March gillnet closure in the Massachusetts Bay Management Area.

The Cape Cod South Expansion and Eastern Cape Cod Closure Areas would be triggered if the observed average bycatch rate of harbor porpoises in the Southern New England Management Area exceeded the target bycatch rate of 0.023 takes/mtons (equal to 1 harbor porpoise taken per 95,853 pounds of fish landed) after two consecutive management seasons. Both areas would

prohibit the use of gillnet gear annually from February 1 through April 30. When the consequence closure areas are not closed, the seasonal pinger requirements of the overlapping Southern New England Management Area would remain in effect.

Consequence Closure Area Monitoring

Consequence closure area monitoring began with the start of first full management season after implementation of the 2010 amendments. The first monitoring season occurred from September 15, 2010, through May 31, 2011, and the second occurred from September 15, 2011, through May 31, 2012. During this time, the two-year average observed harbor porpoise bycatch rate for the areas associated with the Coastal Gulf of Maine Closure Area exceeded the target bycatch rate, triggering the implementation of the Coastal Gulf of Maine Closure Area (Figure 1). During management seasons two and three (September 15, 2011, through May 31, 2012, and September 15, 2012, through May 31, 2013, respectively), the two-year average observed harbor porpoise bycatch rate for the area associated with the Cape Cod South Expansion and Eastern Cape Cod Closure Areas exceeded the target bycatch rate, triggering the implementation of these two closures to start on February 1, 2014.

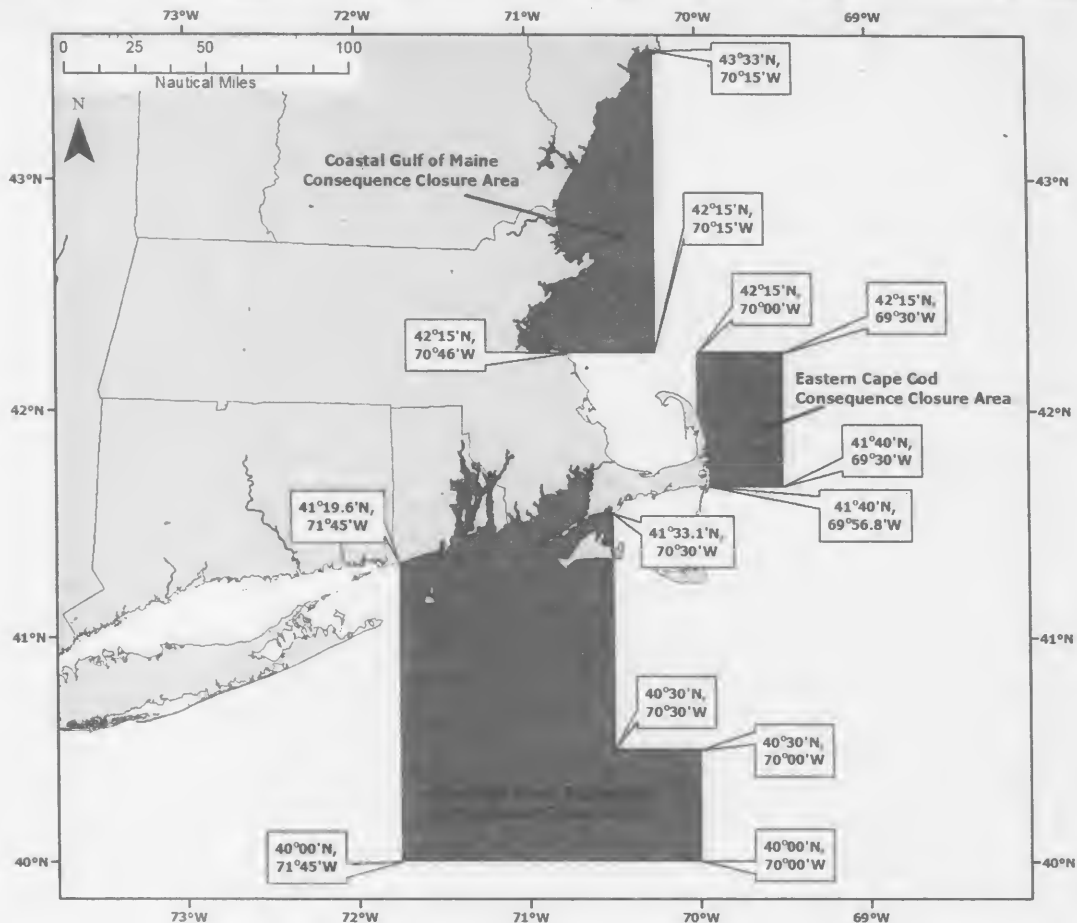


Figure 1. Harbor Porpoise Take Reduction Plan Consequence Closure Areas

Review of the Appropriateness of the Consequence Closure Strategy

In April 2012, NMFS sent letters to gillnet fishermen notifying them of the implementation of the Coastal Gulf of Maine Closure Area beginning October 1, 2012. Following that notification, in August 2012 NMFS received a letter from a fishing industry representative requesting that the agency review harbor porpoise bycatch and fishing effort information in the coastal Gulf of Maine area after the 2010 implementation of the amendments to the Plan and New England Multispecies Fishery Management Plan Amendment 16, which implemented sector management and greatly modified the way New England groundfish fishermen could fish. The letter specifically requested that the timing of the closure be shifted from October and November to mid-

February through March. This request suggested that a conservation benefit to harbor porpoises would occur by shifting the timing, as would an economic benefit to the fishing industry by allowing them to fish in the area during October and November. In considering this request, NMFS examined available harbor porpoise bycatch and fishing information from 2010 through 2012. Within the boundaries of the Coastal Gulf of Maine Closure Area, harbor porpoise bycatch data for that period indicated that a higher number of observed takes occurred during the spring, particularly in February and March, than in the fall (October and November), equating to a higher estimated total bycatch in the spring. Additionally, the bycatch rate during the spring was higher than in the fall. As a result, NMFS published a

notice in the **Federal Register** on October 3, 2012 (77 FR 60319), that shifted the effective period of the Coastal Gulf of Maine Closure Area from October 1 through November 30, 2012, to February 1 through March 31, 2013.

Identifying a Need for Modifications

As noted above, the target bycatch rates are based on the number of observed harbor porpoises caught per metric tons of fish landed between 1999 and 2007 within the areas subject to a consequence closure. Since the advent of sectors, the overall effort generally remained the same and the number of harbor porpoise caught actually decreased and is below PBR (Table 1). However, because fish landings also decreased, the observed bycatch rates increased above the closure area target bycatch rates resulting in the triggering

of the closures. As stated previously, the bycatch rate trigger was intended to function such that the triggering of it meant that the overall bycatch of harbor porpoise was above PBR. Given the

overall reductions in fish landings, however, this calculation no longer holds true.

Preliminary data indicate that the annual 2010–2012 harbor porpoise

bycatch estimates are below PBR and that the 5-year averages from 2011–2012 are also below PBR.

TABLE 1—RECENT HARBOR PORPOISE POPULATION ABUNDANCE, PBR, AND BYCATCH ESTIMATES

| Year | 2009 ¹ | 2010 ² | 2011 ³ | 2012 ³ |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| Population Abundance (coefficient of variance) | 89,054 | 79,883 | 79,883 | 79,883 |
| | (CV = 0.47) | (CV = 0.32) | (CV = 0.32) | (CV = 0.32) |
| Potential Biological Removal | 701 | 706 | 706 | 706 |
| Annual U.S. Gillnet Bycatch | 792 | 644 | 447 | 249 |
| 5-Year Average U.S. Gillnet Bycatch | 877 | 786 | 671 | 630 |

¹Waring *et al.* 2012.

²Waring *et al.* 2013.

³Presented as part of meeting materials during the May 2013 Team meeting.

NMFS convened the Team for meetings to discuss potential amendments to the Plan in November 2012, February 2013, April 2013 (workgroup), May 2013, and June 2013. During those meetings the Team discussed the appropriateness of the consequence closure strategy and discussed potential replacement management measures.

At the May 2013 meeting, the Team agreed that the consequence area target bycatch rates no longer accurately reflect compliant bycatch rates in New England. As described above, although the target bycatch rates for the consequence closure areas have been exceeded, the number of coastwide harbor porpoises caught has declined below the stock's PBR level and harbor porpoise stock abundance is stable. At the conclusion of the May 2013 meeting, the Team did not agree on whether a replacement was needed for the consequence strategy or what that replacement might be. However, a majority of the Team recommended eliminating the current consequence closure strategy from the Plan and continuing Team discussions on what other actions should be taken in lieu of the consequence closure to ensure compliance with the pinger requirements. The Team also recommended that NMFS modify § 229.32(f), *Other Special Measures*, of the Plan to require a consultation with the Team before action is taken to amend the Plan using this provision. Any input received by Team members would be considered before exercising the Other Special Measures provision of the Plan. These recommendations formed the basis of this proposed rule.

At its June 2013 meeting, the Team continued discussions on what other actions should be taken to ensure compliance with pinger requirements. In particular, the Team discussed increasing enforcement efforts to ensure

compliance with pinger requirements in New England. Based on the Team's recommendation, as a mechanism for increasing compliance with pinger requirements in New England, NMFS will examine data collected by fisheries observers regarding pingers on observed hauls, and will provide that data to NOAA's Office of Law Enforcement (OLE). To facilitate enforcement efforts, that data will include the time and area of fishing activity of observed gillnet vessels along with other relevant information, including vessel homeport, registration number etc. NMFS will work with OLE to evaluate any potential enforcement efforts, which may include at-sea operations in collaboration with state joint enforcement agreement partners and the U.S. Coast Guard as well as dockside activities. If as a result of these increased monitoring and enforcement efforts NMFS determines that bycatch is exceeding the PBR level, the Assistant Administrator (after consultation with the Team) may take action to address the situation.

Moving forward, NMFS will continue working with the Team to consider what additional management measures may be necessary to ensure compliance with the pinger requirements. Thus far, NMFS and the Team have formed Monitoring and Enforcement Workgroups to facilitate these discussions.

Classification

The Office of Management and Budget (OMB) has determined that this action is not significant for the purposes of Executive Order 12866.

All of the entities (fishing vessels) affected by this action are considered small entities under the SBA size standards for small fishing businesses. The fisheries affected by this proposed rule are the Northeast sink gillnet and Mid-Atlantic gillnet fisheries. The

population of vessels that are affected by this proposed action includes commercial gillnet vessels fishing in state and federal waters from Maine to New York.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Economic impacts for this action were evaluated as part of the 2009 Final Environmental Assessment (EA) that supported the most recent Plan amendment published as a final rule on February 19, 2010 (75 FR 7383). Although changes to the fishery have occurred since the final rule, this analysis is used to illustrate the difference in economic impacts between the preferred action and the status quo. Although overall commercial landings have changed since 2009, the number of vessels and level of overall fishing effort have remained relatively constant. Therefore, NMFS believes that these data provide a basis for concluding that the proposed action, removing the consequence closures, will not have a significant impact on a substantial number of small entities.

The 2009 EA estimated economic impacts of the preferred alternative (which was adopted in the final rule) before and after triggering the three consequence closure areas. The EA estimated that triggering the three closures (now the status quo) would impact 29.7% (290 vessels) of the total gillnet fleet. Revenues for the affected vessels were also estimated to be reduced by 2–28% (\$2,600–\$26,400) and 1–25% (\$1,500–\$15,300) for small (<40ft) and large (>40ft) vessels, respectively. By removing the regulations implementing these consequence closure areas from the Plan, the proposed action would

prevent this loss of revenue from occurring. As a result, an initial regulatory flexibility analysis is not required and has not been prepared.

References

- Waring GT, Josephson E, Maze-Foley K, Rosel, PE, editors. 2012. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2011. NOAA Tech Memo NMFS NE 221; 319 p.
- Waring GT, Josephson E, Maze-Foley K, Rosel, PE, editors. 2013. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments—2012. NOAA Tech Memo NMFS NE 223; 419 p.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 21, 2013.

Alan D. Risenhoover,
*Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

- 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

- 2. In § 229.33, paragraphs (a)(2)(iii), (a)(3)(iii), (a)(4)(iii), (a)(5)(iii), (a)(6)(iii), and (d) are removed, and paragraph (f) is revised to read as follows:

§ 229.33 Harbor Porpoise Take Reduction Plan Implementing Regulations—Gulf of Maine.

* * * * *

(f) *Other special measures.* The Assistant Administrator may, after consultation with the Take Reduction Team, revise the requirements of this section through notification published in the **Federal Register** if:

(1) NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch below the stock's PBR level.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

[FR Doc. 2013-20759 Filed 8-21-13; 4:15 pm]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 78, No. 165

Monday, August 26, 2013

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

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-79-2013]

Subzone 33D; Application for Subzone Expansion; Mitsubishi Electric Power Products Inc.; Southwestern Pennsylvania

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Regional Industrial Development Corporation, grantee of FTZ 33, requesting additional sites within Subzone 33D on behalf of Mitsubishi Electric Power Products Inc. (MEPPI) in southwestern Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 16, 2013.

Subzone 33D was approved on December 15, 2004 (Board Order 1362, 69 FR 77986, 12/29/2004) and currently consists of four sites: *Site 1* (7 acres) 510-512 Keystone Drive, Warrendale, Allegheny County; *Site 2* (12 acres) 530 Keystone Drive, Warrendale, Allegheny County; *Site 4* (0.48 acres) 2905 Maryland Avenue, North Versailles, Allegheny County; and, *Site 5* (2 acres) 2526 Lovi Road, Freedom, Beaver County. *Site 3* was removed on June 23, 2011 (A(27f)-45-2011).

The applicant is now requesting authority to include thirteen additional sites: *Proposed Site 6* (20.14 acres) 520 Keystone Drive, Marshall, Allegheny County; *Proposed Site 7* (5.29 acres) 547 Keystone Drive, Marshall, Allegheny County; *Proposed Site 8* (3.02 acres) 7 Commerce Drive, Freedom, Beaver County; *Proposed Site 9* (4.3 acres) 200 Productivity Place, Irwin, Westmoreland County; *Proposed Site 10* (1.8 acres) 1 Beynard Way, Irwin, Westmoreland County; *Proposed Site 11* (7.32 acres) 211 Park West Drive, Findlay, Allegheny County; *Proposed*

Site 12 (9 acres) 801 North Pleasant Avenue, Somerset, Somerset County; *Proposed Site 13* (1.12 acres) 58 Eastland Mall, North Versailles, Allegheny County; *Proposed Site 14* (.92 acres) 13B and 14 Avenue B, Leetsdale, Allegheny County; *Proposed Site 15* (.34 acres) 2301 Duss Avenue, Suite 1, Ambridge, Beaver County; *Proposed Site 16* (4.55 acres) 3501 Grand Avenue, Neville, Allegheny County; *Proposed Site 17* (16.4 acres) 108 Plunkett, Jackson, Butler County; and, *Proposed Site 18* (.46 acres) 1061 Main Street, North Huntingdon, Westmoreland County. MEPPI's existing production authority would remain unchanged.

Proposed Site 15 of Subzone 33D is currently part of FTZ 33, Site 17. Approval of this request would remove .34 acres from FTZ 33, Site 17, leaving 79.45 acres remaining.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 7, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 21, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Elizabeth Whiteman at Elizabeth.Whiteman@trade.gov or (202) 482-0473.

Dated: August 16, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-20760 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-127-2013]

Foreign-Trade Zone 123—Denver, Colorado; Application for Subzone, Pillow Kingdom, Inc., Aurora, Colorado

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City and County of Denver, grantee of FTZ 123, requesting subzone status for the facilities of Pillow Kingdom, Inc. (Pillow Kingdom), located in Aurora, Colorado. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 21, 2013.

The proposed subzone would consist of the following site: *Site 1* (34.66 acres) 24000 E. 19th Avenue, Aurora. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 123.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 7, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 21, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via www.trade.gov/ftz.

For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov or (202) 482-0862.

Dated: August 21, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-20768 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1911]

Expansion of Foreign-Trade Zone 75 Under Alternative Site Framework; Phoenix, Arizona

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Phoenix, grantee of Foreign-Trade Zone 75, submitted an application to the Board (FTZ Docket B-87-2012, docketed 12-07-2012) for authority to expand the zone under the ASF to include an additional magnet site, proposed Site 9, within the Phoenix, Arizona U.S. Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the *Federal Register* (77 FR 74457-74458, 12-14-2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to expand FTZ 75 under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the zone, and to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 9 if not activated by August 31, 2018.

Signed at Washington, DC, this 19th day of August 2013.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-20766 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-39-2013]

Foreign-Trade Zone 265—Conroe, Texas: Authorization of Production Activity; Bauer Manufacturing Inc. (Foundation Casings and Tools/Accessories for Pile Drivers and Boring Machinery), Conroe, Texas

On April 18, 2013, the City of Conroe, Texas, grantee of FTZ 265, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Bauer Manufacturing Inc., within FTZ 265—Site 1, in Conroe, 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 (78 FR 25699, 5-2-2013). 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: August 10, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-20751 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-602]

Brass Sheet and Strip from Germany: Rescission of Antidumping Duty Administrative Review; 2012-2013

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the antidumping duty order on brass sheet and strip from Germany for the period March 1, 2012, through February 28, 2013.

DATES: *Effective Date:* August 26, 2013.

FOR FURTHER INFORMATION CONTACT:

George McMahon, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1167.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2013, the Department initiated an administrative review of brass sheet and strip from Germany covering the period March 1, 2012, through February 28, 2013,¹ based on a request by Petitioners.² The review covers ten companies.³

Petitioners timely withdrew their request for an administrative review of these companies on July 30, 2013.

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 *Initiation Notice*. In this case, Petitioners withdrew their request within the 90-day deadline and no other parties requested an administrative review of the antidumping duty order. Therefore, we are rescinding the administrative review of brass sheet and strip from Germany covering the period March 1, 2012, through February 28, 2013, of the ten companies listed in the *Initiation Notice*.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all entries of brass sheet and strip from Germany during the period of review. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained 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 publication of this notice.

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.

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 25418 (May 1, 2013) (*Initiation Notice*).

² Petitioners are: GBC Metals, LLC of Global Brass and Copper, Inc., dba Olin Brass, Heyco Metals, Inc., Aurubis Buffalo, Inc., PMX Industries, Inc. and Revere Copper Products, Inc.

³ See *Initiation Notice*, 78 FR at 25420.

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). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 19, 2013.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013-20756 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before September 16, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13-025. Applicant: University of Virginia, Wilsdorf Hall, P.O. Box 400745, 395 McCormick Drive, Charlottesville, VA 22904-4745. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to identify the

different phases in materials such as metals and alloys, semiconductors, polymers, and biological specimens, as well as the compositions of certain parts of these materials, the cause of failure in some, and the morphology and/or crystallography of specimens fabricated by various processes. The instrument will be used to analyze the specimens in a high, medium, or low vacuum. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: May 24, 2013.

Docket Number: 13-026. Applicant: Yale University, 850 West Campus Drive, Bldg. ISTC, Room 213C, West Haven, CT 06516. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to develop novel platforms based on self-assembled DNA nanostructures for studying cell biology. DNA nanostructures will be designed by computer-aided design software, and the correctly formed nanostructures will be confirmed using the instrument. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 3, 2013.

Docket Number: 13-027. Applicant: United States Army Medical Research Institute of Chemical Defense, 3100 Ricketts Point Road, Aberdeen Proving Ground, MD 21010-5400. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to define the various pathologies associated with exposure to chemical warfare agents, to define a window of opportunity for medical intervention and to assess the success of treatments and countermeasures. The instrument will provide a means of studying the morphology and ultrastructural pathology/cellular morphology of and for characterization of the elemental composition of experimental samples. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: June 19, 2013.

Docket Number: 13-029. Applicant: Arizona State University, P.O. Box 875212, Tempe, AZ 85287-5212. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to observe and understand physical and chemical processes at the most fundamental atomic level. Phenomena to be studied

will include oxidation, reduction, corrosion and nanoparticle growth. The instrument will allow time-resolved *in situ* studies of the dynamic behavior of nanostructured materials, such as complex oxides and metal particle catalysts during exposure to reactive gas environments and elevated temperatures. The instrument is also capable of electron holography, which is a technique that allows nanoscale electric and magnetic fields to be measured and quantified with sub-nanometer resolution. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 9, 2013.

Docket Number: 13-032. Applicant: Howard Hughes Medical Institute, 4000 Jones Bridge Road, Chevy Chase, MD 20815. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to examine the ultrastructural organization of complex biological structures to help elucidate the function of biological specimens such as protein complexes, noninfectious virus, and small cells. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 23, 2013.

Docket Number: 13-033. Applicant: University of Pittsburgh School of Medicine, 3500 Terrace Street, Biomedical Science Tower, S-225, Pittsburgh, PA 15261. Instrument: Electron Microscope. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used to study viruses, bacteria, cells, tissues, and biomaterials to examine their ultrastructure, as well as immunologic studies of biological samples analyzing changes in morphology of particles or tissue or localization of proteins within cells and tissues. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: July 25, 2013.

Dated: August 15, 2013.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2013-20753 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; One Year Assessment of the Social and Economic Impacts of Hurricane Sandy on New Jersey and New York Commercial and Recreational Fishing Industries

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 25, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lisa L. Colburn, (401) 782-3253 or lisa.l.colburn@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This request is for a new information collection.

The Northeast Fisheries Science Center's Social Sciences Branch seeks to conduct a one year assessment of the social and economic impacts from Hurricane Sandy to the commercial and recreational fishing industries in New York and New Jersey. It seeks to collect data on the long term disruption and impediments to recovery of normal business practices to the commercial and recreational fishing industries. It seeks to collect data from commercial and for hire fishermen, marinas, fish dealers, bait and tackle stores, and other businesses dependent on the fishing industry for livelihood. The data will improve research and analysis of potential fishery management actions by understanding the long-term compounding effects of this natural disaster on communities most

dependent on fishing. It is consistent with the Magnuson-Stevens Fishery Conservation and Management Act.

II. Method of Collection

This information will be collected by in person, face-to-face, mail or telephone interviews.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Business or other for-profit organizations; individuals.

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 334.

Estimated Total Annual Cost to Public: \$0 in capital costs and recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 21, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-20682 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC642

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings; Correction

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

ACTION: Notice of change to a public meeting notice.

SUMMARY: The SEDAR 33 assessment of the Gulf of Mexico stocks of gag (*Mycteroperca microlepis*) and greater amberjack (*Seriola dumerili*) will consist of: A Data Workshop; an Assessment process conducted via webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The Review Workshop will take place from 1 p.m. on Monday, February 24, 2014 until 12 p.m. on Thursday, February 27, 2014 in Miami, FL. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Meeting addresses:* The Review Workshop will be held at the Doubletree by Hilton Grande Hotel Biscayne Bay, 1717 N. Bayshore Drive, Miami, FL 33132; (305) 372-0313. All workshops and webinars are open to members of the public. Those interested in participating should contact Ryan Rindone at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing pertinent information. Please request meeting information at least 24 hours in advance.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348-1630; email: ryan.rindone@gulfcouncil.org.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on April 26, 2013 (78 FR 24730). The original notice stated that the Review Workshop would be held on Monday, November 18 until Thursday, November 21, 2013. The date has been changed to February 2014 as listed in the **DATES** section of this notice. All other previously-published information remains unchanged.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for auxiliary aids should be directed to the

SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

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

Dated: August 21, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013-20736 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC830

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a conference call of its Coastal Pelagic Species Management Team (CPSMT) and its Coastal Pelagic Species Advisory Subpanel (CPSAS). There may be opportunities for the public to attend the meeting remotely, and a public listening station will be made available.

DATES: The conference call will be held Thursday, September 12, 2013; from 1 p.m. until 3 p.m. Pacific Daylight Time.

ADDRESSES: The meeting will be held via conference call, with a public listening station available at the NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Dr., La Jolla, CA 92037-1508.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820-2280. For information regarding the public listening station, contact Dale Sweetnam, telephone: (858) 546-7170.

SUPPLEMENTARY INFORMATION: The primary purpose of the conference call is to discuss the September Council meeting agenda items I.1 (List of Fisheries) and I.2 (Unmanaged Forage Fish Protection Initiative). The secondary purpose of the conference call is to discuss preparations for the November Council meeting.

Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dale Sweetnam, at least 5 days prior to the meeting date.

Dated: August 21, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013-20737 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Deposit of Biological Materials.

Form Number(s): None.

Agency Approval Number: 0651-0022.

Type of Request: Revision of a currently approved collection.

Burden: 2,005 hours annually.

Number of Respondents: 2,001 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 1 hour for the average patent applicant respondent to collect and submit the necessary deposit information and approximately 5 hours for the average depository seeking approval to store biological material to gather and submit the necessary approval information.

Needs and Uses: Information on the deposit of biological materials in depositories is required for (a) the USPTO determination of compliance with 35 U.S.C. 2(b)(2) and 112, and 37 CFR 1.801-1.809 and 1.14, where inventions sought to be patented rely on biological material subject to the deposit requirement, including notification to the interested public about where to obtain samples of deposits; and (b) in compliance with 37 CFR 1.803 to demonstrate that the depositories are qualified to store and test the biological

material submitted to them. This collection is used by the USPTO to determine whether or not the applicant has met the requirements of the patent regulations. In addition, the USPTO uses this information to determine the suitability of a respondent depository based upon administrative and technical competence and the depository's agreement to comply with the requirements set forth by the USPTO.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: Nicholas_A_Fraser@omb.eop.gov.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at www.reginfo.gov.

Paper copies can be obtained by:

- **Email:** InformationCollection@uspto.gov. Include "0651-0022 copy request" in the subject line of the message.

- **Mail:** Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 25, 2013 to Nicholas A. Fraser, OMB Desk Officer, via email to Nicholas_A_Fraser@omb.eop.gov or by fax to 202-395-5167, marked to the attention of Nicholas A. Fraser.

Dated: August 21, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013-20709 Filed 8-23-13; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare A Draft Environment Impact Statement for the Proposed Ray Mine Tailings Storage Facility in Pinal County, Arizona

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps) is examining the environmental consequences associated with the

proposed construction, operation, and closure of a new tailings storage facility in eastern Pinal County, Arizona, in connection with Asarco LLC's application for a Department of the Army permit under Section 404 of the Clean Water Act. The proposed tailings storage facility and associated facilities would discharge fill materials into approximately 138 acres of waters of the U.S. and indirectly impact an additional 17 acres through dewatering. The primary federal environmental concerns are the proposed discharges of fill material into waters of the U.S. and the potential for significant adverse environmental effects resulting from such activities. Therefore, to address these concerns in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The action must comply with the Section 404(b)(1) Guidelines (40 CFR Part 230) and not be contrary to the public interest to be granted a Corps permit. The Corps may ultimately make a determination to permit or deny the above project, or permit or deny modified versions of the above project.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action or the scoping of the Draft EIS can be answered by Michael Langley, Corps Senior Project Manager, at (602) 230-6953. Comments regarding scoping of the Draft EIS shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Arizona Regulatory Branch, ATTN: SPL-2011-01005-MWL, 3636 North Central Avenue, Suite 900, Phoenix, Arizona 85012-1939, or michael.w.langley@usace.army.mil. Comments letters sent via electronic mail shall include the commenter's physical address and the project title "Ray Mine Tailings Storage Facility Project" shall be included in the subject line.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background

Information: The 2,350-acre project site is located in eastern Pinal County, Arizona approximately four miles south of the Ray Mine Complex, south of the Gila River, on lands owned by Asarco, on lands owned and managed by the Bureau of Land Management, and on lands currently owned and managed by the Arizona State Land Department that Asarco is seeking to acquire. The project pipelines would run along the Florence-Kelvin Highway from the thickeners at the Ray Mine to the proposed TSF.

Asarco is the owner and operator of the Ray Mine Complex in Pinal County,

Arizona, an open-pit copper mine with an on-site concentrator and leaching facilities. Asarco also owns associated concentrating and smelting facilities located in Hayden, Arizona, approximately 17 miles southeast of the mine. The Ray Mine was originally founded in 1882 as a silver mine with the mining of copper beginning somewhat later.

A Clean Water Act Section 404 permit was issued for construction of the Elder Gulch tailings impoundment at Ray Mine in 1991; modifications to that permit were issued in 1996, 1997, and 1998 for ongoing mining and mitigation activities. In May 2011, a new Section 404 permit was obtained that authorizes continued operation and expansion of the Elder Gulch tailings facility, construction of a stormwater diversion system upgradient of the tailings facility, and continued placement of rock into rock deposition areas previously authorized in the 1991 Section 404 permit (as modified by the subsequent amendments). Prior to the May 2011 Section 404 permit that authorized expansion of the Elder Gulch impoundment, that facility was expected to reach capacity in approximately 2013. Raising the crest elevation of the impoundment to the 2,590 ft level as authorized by the May 2011 Section 404 permit, will allow the existing Elder Gulch tailings impoundment to be used for an anticipated five to seven additional years. The Ray Mine has proven ore reserves that will allow mining to continue well past that timeframe, and additional expansions of the Elder Gulch facility are not technically and environmentally feasible.

2. Proposed Action: Asarco is proposing to construct, operate, and close a tailings storage facility to support continuing copper mining activities at the Ray Mine Complex. The facility would accommodate tailings that would be collected at the mine, transported via a tailings delivery pipeline, and deposited in slurry form at a discharge point east of Ripsey Wash, an ephemeral wash that is a tributary to the Gila River. The facility footprint is estimated at 2,129 acres and currently has an elevational range of approximately 1,800 to 2,400 feet above mean sea level. The facility is designed for an overall storage capacity of 751.3 million tons of tailings and embankment materials with a final crest elevation of 2,440 feet. The proposed facility would be built with centerline and upstream construction methods.

A diversion embankment, stormwater detention pond, and channel would be constructed at the upgradient end of the

facility to divert flows around the facility to the west to Zelleweger Wash. The diversion embankment and stormwater detention pond are designed to handle the 500-year, 24-hour storm event. Water from this impoundment would be pumped and piped to the western diversion channel for conveyance to Zelleweger Wash. A second diversion channel would be constructed along the east side of the facility to drain stormwater runoff from upgradient of the facility to an unnamed tributary wash to the Gila River.

The starter tailings embankment would be constructed at the downgradient end of the facility with a 50-foot-wide berm. Cyclone sands would be used to construct the phased embankments. The ultimate embankment would be constructed to an elevation of 2,440 feet above mean sea level with a tailings deposition elevation just below this elevation.

Some seepage from the tailings impoundment is expected and would infiltrate the alluvial deposits located within Ripsey Wash and its tributaries. Therefore, a seepage collection trench would be constructed within Ripsey Wash downstream of the impoundment to contain the seepage, and a second seepage collection trench will be constructed in a drainage on the east side of the facility. The seepage collection trench will be constructed with a geomembrane liner anchored to bedrock and granular drain rock along the upstream face of the trench to intercept seepage from the tailings facility. A series of riser pipes will be installed within the trench and fitted with submersible pumps to pump collected seepage to the associated reclaimed water ponds.

Asarco is proposing to construct and operate tailings delivery and reclaimed water pipelines as part of the project. The tailings generated from the mill at the Ray Mine would be pumped in slurry form through the tailings delivery pipeline to the proposed facility impoundment area for deposition and a reclaimed water pipeline would be used to pipe reclaimed water back to the Ray Mine for reuse. The pipelines would be constructed along the Florence-Kelvin Highway and connect to the proposed tailings deposition point and reclaimed water ponds located at the proposed facility. The pipelines would be constructed along the existing alignment of the Florence-Kelvin Highway. To address the unlikely event of a pipeline failure, a drain down pond is planned along the pipeline route north of the Gila River for containment of tailings and/or reclaimed water. A pipeline bridge would be constructed at the point

where the pipeline route crosses the Gila River.

A 2.2-mile segment of the Florence-Kelvin Highway, a Pinal County-maintained roadway, would require realignment as a result of constructing the facility. A 2.1-mile section of the road would be relocated north of its current alignment.

The proposed facility would require the relocation of the San Carlos Irrigation Project power line which currently passes through the northern portion of the facility footprint. An approximately 2.3-mile segment of the power line will be moved north of the TSF and rerouted around the western portion of the project area, approximately following the proposed and existing alignment of the Florence-Kelvin Highway. The planned rerouted power line corridor is approximately 3.2 miles in length.

3. *Issues:* There are several potential environmental issues that will be addressed in the Draft EIS. Additional issues may be identified during the scoping process. Issues initially identified for evaluation in the Draft EIS include:

1. Visual/aesthetics impacts from landform alterations,
2. air quality impacts from construction and operation of the facility,
3. cultural resources (prehistoric and historic resources),
4. surface water hydrology and quality,
5. groundwater hydrology and quality,
6. potential land use incompatibility,
7. noise impacts from construction and operation,
8. Impacts to recreation resources,
9. socioeconomic effects,
10. soils and geotechnical stability issues,
11. transportation network impacts, and
12. biological impacts (vegetation, wildlife, waters of the U.S.).

4. *Alternatives:* Several alternatives to the proposed action are being considered in the Draft EIS. The Draft EIS will include a co-equal level of analysis of the No-Action and project alternatives considered. Currently, there are five potential off-site project alternatives being considered along with the proposed action and two variations of the proposed action. These alternatives will be further formulated and developed during the scoping process. Additional alternatives may be developed during scoping that will also be considered in the Draft EIS.

5. *Scoping:* The Corps will conduct two public scoping meetings for the proposed Ray Mine Tailings Storage

Facility Project Draft EIS to receive public comment and to assess public concerns regarding the appropriate scope and preparation of the Draft EIS. Participation in the public meetings by federal, state, local, and tribal agencies and other interested organizations is encouraged. The first meeting will be held on September 24, 2013 beginning at 6:00 p.m. (Arizona Time Zone) at Kearny Junior-Senior High School, 701 Arizona 177, Kearny, Arizona 85137. The second meeting will be held on September 25, 2013 beginning at 6:00 p.m. (Arizona Time Zone) at Apache Junction High School, 2525 South Ironwood Drive, Apache Junction, Arizona 85120. Comments on the proposed action, alternatives, or any additional concerns should be submitted in writing. Written and electronic comment letters will be accepted through October 28, 2013.

The Corps also anticipates formally consulting with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act and with the State Historic Preservation Officer and appropriate Tribal Historic Preservation Officers under Section 106 of the National Historic Preservation Act.

6. *Availability of the Draft EIS:* The Draft EIS is expected to be published and circulated in the fourth quarter of 2014, and a public meeting will be held after its publication.

Dated: August 12, 2013.

David J. Castanon,

Division Chief, Los Angeles District, U.S. Army Corps of Engineers.

[FR Doc. 2013-20733 Filed 8-23-13; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF ENERGY

Extension of Public Comment Period Hydrogen Energy California's Integrated Gasification Combined Cycle Project Preliminary Staff Assessment and Draft Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Extension of public comment period; notice of public hearing.

SUMMARY: The U.S. Department of Energy (DOE) published a notice of availability and public hearing on July 22, 2013 (78 FR 43870) that provided for a comment period ending September 3, 2013. DOE is extending the public comment period to October 1, 2013 and announces public hearings for the *Hydrogen Energy California's Integrated Gasification Combined Cycle Project Preliminary Staff Assessment/Draft*

Environmental Impact Statement (PSA/DEIS) (DOE/EIS-0431D).

DATES: DOE extends the public comment period to October 1, 2013. Comments submitted to California Energy Commission (CEC) or DOE concerning the Hydrogen Energy California Project (HECA) prior to this meeting do not need to be resubmitted as a result of this extension of the comment period.

The PSA/DEIS is available on the internet at <http://www.energy.gov/nepa/downloads/eis-0431-draft-environmental-impact-statement> or on the CEC electronic docket site at <http://www.energy.ca.gov/2013publications/CEC-700-2013-001/CEC-700-2013-001-PSA.pdf>. Copies of the PSA/DEIS are available for public review at the following locations: Beale Memorial Library, 701 Truxtun Avenue, Bakersfield, CA 93301; Holloway-Gonzales Branch Library, 506 E. Brundage Lane, Bakersfield, CA 93307; and Southwest Memorial Library, 8301 Ming Avenue, Bakersfield, CA 93301.

Meetings: OE and CEC will hold joint public hearings as follows:

Tuesday, September 17, 2013, Buttonwillow Recreation and Park District, Multi-purpose Facility, 556 Milo Avenue, Buttonwillow, California 93206, 10:00 a.m. CEC Workshop, 6:00 p.m.–8:00 p.m. Formal Public Comments.

Wednesday, September 18, 2013 (Same location as above), 9:00 a.m.–8:00 p.m. CEC Workshop and Committee conference, 6:00 p.m.–8:00 p.m. Formal Public Comments, (Committee conference may continue after the close of formal public comment).

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project, contact Mr. Fred Pozzuto, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV. Additional information may be requested by email: fred.pozzuto@netl.doe.gov or by telephone at (304) 285-5219, or toll free at 1-(800) 432-8330, ext. 5219. For general information regarding DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585-0103; telephone: (202) 586-4600. The PSA/DEIS is available on the internet at <http://www.energy.gov/nepa/downloads/eis-0431-draft-environmental-impact-statement> or on the CEC electronic docket site at <http://www.energy.ca.gov/>

2013publications/CEC-700-2013-001/CEC-700-2013-001-PSA.pdf. Copies of the PSA/DEIS are available for public review at the following locations: Beale Memorial Library, 701 Truxtun Avenue, Bakersfield, CA 93301; Holloway-Gonzales Branch Library, 506 E. Brundage Lane, Bakersfield, CA 93307; and Southwest Memorial Library, 8301 Ming Avenue, Bakersfield, CA 93301.

Dated: August 20, 2013.

Mark J. Matarrese,

Director, Office of Environment, Security, Safety & Health, Office of Fossil Energy.

[FR Doc. 2013-20713 Filed 8-23-13; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13-53-000.

Applicants: RE Columbia 3 LLC.

Description: RE Columbia 3 LLC

Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/16/13.

Accession Number: 20130816-5124.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: EG13-54-000.

Applicants: RE Columbia, LLC.

Description: RE Columbia, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/16/13.

Accession Number: 20130816-5125.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: EG13-55-000.

Applicants: RE Yakima LLC.

Description: RE Yakima LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/16/13.

Accession Number: 20130816-5126.

Comments Due: 5 p.m. ET 9/6/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13-1910-001.

Applicants: Guzman Power Markets

Description: Market-Based Rate Tariff

#1 revision to be effective 8/20/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5105.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2074-001.

Applicants: E.ON Global

Commodities North America LLC.

Description: Amendment to 1 to be effective 10/1/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5093.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2173-000.

Applicants: Southwest Power Pool, Inc.

Description: 1997R2 City of Mulvane, Kansas NITSA and NOA to be effective 8/1/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5131.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2174-000.

Applicants: Southwest Power Pool, Inc.

Description: Order 719 Compliance Filing—Attachment AE, Section 4.1.2 to be effective 3/1/2014.

Filed Date: 8/16/13.

Accession Number: 20130816-5145.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2175-000.

Applicants: Fairless Energy, LLC.

Description: Compliance Filing—Amended Single MBR Tariff and Chg of DF to DEMI to be effective 8/19/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5158.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2176-000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to OATT & OAR Regional Balancing Operating Reserve Rate Errata to be effective 10/15/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5159.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2177-000.

Applicants: Southwest Power Pool, Inc.

Description: 1641R4 GRDA NITSA and NOA Notice of Cancellation to be effective 6/1/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5160.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2178-000.

Applicants: California Independent System Operator Corporation.

Description: 2013-08-16 SMUD MEEA to be effective 10/16/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5161.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2179-000.

Applicants: Dominion Bridgeport Fuel Cell, LLC.

Description: Compliance Filing—Certificate of Concurrence Chg to DEMI to be effective 8/19/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5169.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2180-000.

Applicants: New England Hydro Transmission Electric.

Description: NEHTEC Agreement with Hydro-Quebec TransEnergie re HVDC

Interconnection to be effective 7/29/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5181.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2181-000.

Applicants: Southwest Power Pool, Inc.

Description: 2023R1 Midwest Energy, Inc. NITSA and NOA Notice of Cancellation to be effective 6/1/2013.

Filed Date: 8/16/13.

Accession Number: 20130816-5182.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2182-000.

Applicants: Entergy Arkansas, Inc.

Description: Collation Value Correction Filing to be effective 8/1/2010.

Filed Date: 8/19/13.

Accession Number: 20130819-5000.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2183-000.

Applicants: Elwood Energy, LLC.

Description: Compliance Filing—Amended Cert of Concurrence Chg to DEMI to be effective 8/19/2013.

Filed Date: 8/19/13.

Accession Number: 20130819-5001.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2184-000.

Applicants: Kincaid Generation, L.L.C.

Description: Compliance Filing—Amended Cert of Concurrence Chg to DEMI to be effective 8/20/2013.

Filed Date: 8/19/13.

Accession Number: 20130819-5002.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2185-000.

Applicants: Dominion Nuclear Connecticut, Inc.

Description: Compliance Filing—Amended Certificate on Concurrence Chg to DEMI to be effective 8/20/2013.

Filed Date: 8/19/13.

Accession Number: 20130819-5003.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2186-000.

Applicants: Duke Energy Progress, Inc.

Description: Duke Energy Progress, Inc. submits its Revised Depreciation Rates under ER13-2186.

Filed Date: 8/16/13.

Accession Number: 20130816-5186.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2187-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. files this calculation of the Cost of New Entry value (CONE) applicable to the Local Resource Zones (LRZ) recently established in the MISO Southern Region.

Filed Date: 8/16/13.

Accession Number: 20130816-5187.

Comments Due: 5 p.m. ET 9/6/13.

Docket Numbers: ER13-2188-000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Pacific Gas and Electric Company of the Crystal Springs Pump Station Facilities Charge Agreement [RS No. 156] for the City and County of San Francisco.

Filed Date: 8/16/13.

Accession Number: 20130816-5196.

Comments Due: 5 p.m. ET 9/6/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13-597-000.

Applicants: Caterpillar Inc.

Description: Form 556—notice of self-certification of qualifying cogeneration facility of Caterpillar Inc.

Filed Date: 8/16/13.

Accession Number: 20130816-5204.

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: August 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013-20691 Filed 8-23-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-3048-006.

Applicants: Longview Fibre Paper and Packaging, Inc.

Description: Notice of Non-Material Change in Status of Longview Fibre Paper and Packaging, Inc.

Filed Date: 8/19/13.

Accession Number: 20130819-5060.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2189-000.

Applicants: Southwest Power Pool, Inc.

Description: 2509 Eva Wind, LLC GIA Cancellation to be effective 8/2/2013.

Filed Date: 8/19/13.

Accession Number: 20130819-5066.

Comments Due: 5 p.m. ET 9/9/13.

Docket Numbers: ER13-2190-000.

Applicants: Southwest Power Pool, Inc.

Description: 2198R10 Kansas Power Pool NITSA and NOA to be effective 8/1/2013.

Filed Date: 8/19/13.

Accession Number: 20130819-5067.

Comments Due: 5 p.m. ET 9/9/13.

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: August 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013-20692 Filed 8-23-13; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA-03-2013-0146; FRL 9900-23-Region 3]

Notice of Administrative Settlement Agreement Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs ("Proposed Agreement") associated with the Central Chemical Superfund Site, Hagerstown, Washington County, Maryland was executed by the Environmental Protection Agency ("EPA") and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Milton N. Stamper, ("Settling Party"). The Proposed Agreement would require Settling Party to reimburse EPA \$15,000.00 for response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before thirty (30) days after the date of publication of this notice.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robin E. Eiseman (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Central Chemical Superfund Site, Proposed Settlement Agreement" and "EPA Docket No. CERCLA-03-2013-0146," and should be forwarded to Robin E. Eiseman at the above address.

FOR FURTHER INFORMATION CONTACT: Robin E. Eiseman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2612; eiseman.rob@epa.gov

Dated: August 9, 2013.

Karen Melvin,

Acting Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2013-20666 Filed 8-23-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA-03-2013-0145; FRL 9900-34-Region 3]

Notice of Administrative Settlement Agreement Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), notice is hereby given that a proposed administrative settlement agreement for recovery of response costs ("Proposed Agreement") associated with the Central Chemical Superfund Site, Hagerstown, Washington County, Maryland was executed by the Environmental Protection Agency ("EPA") and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Herman F. Stamper, ("Settling Party"). The Proposed Agreement would require Settling Party to reimburse EPA \$2,500.00 for response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before thirty (30) days after the date of publication of this notice.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robin E. Eiseman (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "Central Chemical Superfund Site, Proposed Settlement Agreement" and "EPA Docket No. CERCLA-03-2013-0145," and should be forwarded to Robin E. Eiseman at the above address.

FOR FURTHER INFORMATION CONTACT:

Robin E. Eiseman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814-2612; eiseman.rob@epa.gov

Dated: August 9, 2013.

Karen Melvin,

Acting Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2013-20646 Filed 8-23-13; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection(s) Being Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502-3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). 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 estimates; 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 Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 25, 2013. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202-395-5167 or via Internet at Nicholas_A_Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission. To submit your PRA comments to the FCC by email send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Judith B. Herman, Office of Managing Director, FCC, at 202-418-0214.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (Commission) is seeking emergency approval from the Office of Management and Budget (OMB) for this revised information collection by September 25, 2013.

OMB Control Number: 3060-0600.

Title: Application to Participate in a FCC Auction.

Form Number: FCC Form 175.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 500 per year (estimated average for 3 years for all respondents under the currently approved collection), with an estimated 350 of such respondents required to respond to the revised collection following its approval.

Estimated Time per Response: 90 minutes (estimated average time for respondents to report information requested on FCC Form 175 under the currently approved collection). The Commission estimates that the additional certification under the revised will not measurably increase the estimated average amount of time to complete FCC Form 175 across the range of respondents.

Frequency of Response: On occasion reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for the currently approved

information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C. 4(i), 309(j)(5), and 1.2105, 1.2110, 1.2112 of the Commission's rules, 47 CFR 1.2105, 1.2110, 1.2112. Statutory authority for the revised information collection is contained in Section 6004 of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96) (2012 Spectrum Act), 47 U.S.C. 1404.

Estimated Total Annual Burden: 750 hours.

Total Annual Costs: \$0

Nature and Extent of Confidentiality: Information collected on FCC Form 175 is made available for public inspection, and the Commission is not requesting that respondents submit confidential information on FCC Form 175. Respondents seeking to have information collected on FCC Form 175 withheld from public inspection may request confidential treatment of such information pursuant to 0.459 of the Commission's rules, 47 CFR 0.459.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this revised information collection to OMB under its emergency processing procedures. The Commission proposes to revise the currently approved information collection to include an additional certification that will implement Section 6004 of the 2012 Spectrum Act, 47 U.S.C. 1404. The Commission's auction rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing process, and enhance the use of competitive bidding to assign Commission licenses in furtherance of the public interest. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in a Commission auction. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if applicable, is eligible for the status as a particular type of auction participant requested. The revised collection will enable the Commission to confirm that

a potential auction participant meets the criteria set forth in Section 6004 of the 2012 Spectrum Act, 47 U.S.C. 1404, by requiring that applicant to certify on FCC Form 175, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction or receiving a grant. The Commission plans to continue to use the FCC Form 175 for all upcoming spectrum auctions, including those required or authorized to be conducted pursuant to the 2012 Spectrum Act, collecting only the information necessary for each particular auction. Thus, the additional certification that is the subject of this revised collection will not be required for all auctions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013-20873 Filed 8-23-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Wednesday, August 28, 2013, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.
 Memorandum and resolution re: Final Rule Regarding the Retention of Records of an Insured Depository Institution in Receivership.

Memorandum and resolution re: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart K—Recordkeeping and Confirmation Requirements for Securities Transactions.

Memorandum and resolution re: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart A—Restrictions on Post-Employment Activities of Senior Examiners.

DISCUSSION AGENDA: Memorandum and resolution re: Second Notice of Proposed Rulemaking to Implement Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Credit Risk Retention).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit <http://www.vodinium.com/goto/fdic/boardmeetings.asp> to view the event. If you need any technical assistance, please visit our Video Help page at: <http://www.fdic.gov/video.html>.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703-562-2404 (Voice) or 703-649-4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202-898-7043.

Dated: August 21, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013-20763 Filed 8-21-13; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Fox Chase Bancorp, Inc.*, Hatboro, Pennsylvania; to retain voting shares of Philadelphia Mortgage Advisors, Plymouth, Pennsylvania, and thereby engage in originating first and second mortgages for resale into the secondary market and to third party investors, pursuant to section 225.28(b)(1).

Board of Governors of the Federal Reserve System, August 21, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013-20705 Filed 8-23-13; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-13-13AFV]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 or send comments to LeRoy Richardson, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden 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 the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The National Ambulatory Medical Care Survey (NAMCS): National Electronic Health Record Survey (NEHR)—NEW—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on "utilization of health care" in the United States. The purpose of the National Electronic Health Record Survey (NEHR) is to collect data annually from office-based physicians to measure progress in adopting electronic health records (EHRs) into their practices. Questions about the use of EHRs have been asked in the National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920-0234) since 2001. NAMCS NEHRs has been conducted as a mail survey supplement under NAMCS since 2008. NCHS is now seeking OMB approval to make NAMCS NEHRs an independent survey. The content will be similar to what was previously collected. A three-year approval is requested.

NAMCS NEHRs target universe consists of all non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

NAMCS NEHRs is the principal source of data on national and state-level EHR adoption in the United States. In 2008 and 2009, the sample size was 2,000 physicians annually. Starting in 2010, the annual sample size was

increased five-fold, from 2,000 physicians to 10,302 physicians. The increased sample size allows for more reliable national estimates as well as state-level estimates on EHR adoption.

NAMCS NEHRs, a voluntary survey, collects information on characteristics of physicians and their practices; the functionalities that are available in those practices' EHR systems; and information on physicians' intent to apply for meaningful use incentive payments. Physician Identification Number is collected to link NAMCS NEHRs data with available administrative data. These data, together with data from previous years, may be used to monitor the adoption of EHR as well as assessing what factors are associated with EHR adoption.

In addition to the regular NEHRs questionnaire, which will be fielded annually, in 2014 half the sample will receive the expanded NAMCS NEHRs which has additional questions related to effects that EHRs have on clinical workflow and efficiencies, as well as questions on access, quality, and costs associated with the delivery of health care. All 2014 NEHRs respondents (to either questionnaire) may receive the expanded survey in 2015 and 2016, as a follow-up to evaluate the effect of EHR adoption on the delivery of health care over time.

The table below provides the average annual burden for this survey. The first line represents an average of the half sample for 2014 and full samples for 2015 and 2016 that receive the regular NEHRs questionnaire. The second line represents the 2014 half sample that will receive the expanded questionnaire. The third line represents the full 2014 sample that will be followed up with the expanded questionnaire in 2015 and 2016. All of these are averaged over three years.

Users of NAMCS NEHRs data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Form name | Sample size | Number of responses per respondent | Hours per response | Total burden (hours) |
|-------------------------------|----------------------|-------------|------------------------------------|--------------------|----------------------|
| Office-based physicians | Regular NEHRs | 8,585 | 1 | 20/60 | 2,862 |
| Office-based physicians | Expanded NEHRs | 1,717 | 1 | 30/60 | 859 |

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

| Type of respondent | Form name | Sample size | Number of responses per respondent | Hours per response | Total burden (hours) |
|-------------------------------|-----------------------------------|-------------|------------------------------------|--------------------|----------------------|
| Office-based physicians | NEHRS expansion (Follow-up) | 6,868 | 1 | 30/60 | 3,434 |
| Total | | | | | 7,155 |

LeRoy A. Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Center for Disease Control and
Prevention.

[FR Doc. 2013-20644 Filed 8-23-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention**

[30Day-13-13ADJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery—NEW—Centers for Disease Control and Prevention (CDC), Office of Surveillance, Epidemiology, and Laboratory Services (OSEL), Public Health Surveillance and Informatics Program Office (PHSIPO), Informatics Research and Development Activity (IRDA).

As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the CDC has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

To request additional information, please contact Kimberly S. Lane, Centers for Disease Control and Prevention, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

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

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

The Agency received no comments in response to the 60-day notice published in the *Federal Register* on December 22, 2010 (75 FR 80542).

This is a new collection of information. Respondents will be screened and selected from Individuals and Households, Businesses, Organizations, and/or State, Local or Tribal Government. Below we provide CDC's projected annualized estimate for the next three years. There is no cost to respondents other than their time. The estimated annualized burden hours for this data collection activity are 550.

| Type of collection | Average number of respondents per activity | Annual frequency per response | Average number of activities | Average hours per response |
|--|--|-------------------------------|------------------------------|----------------------------|
| Online surveys, Telephone Surveys, Focus Groups, In person observation/testing | 1,100 | 1 | 1,100 | 30/60 |

LeRoy Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2013-20645 Filed 8-23-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-13-13RE]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639-7570 or send an email to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

Proposed Project

Public Health Systems, Mental Health and Community Recovery Project—New—Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project stems from, and aligns with, publication of the Office of Public Health Preparedness and Response's (OPHPR) "National Strategic Plan for Public Health Preparedness and

Response" which provides overall direction for Centers for Disease Control and Prevention's (CDC) preparedness and response portfolio, including programmatic direction across OPHPR's four divisions. The focus of this project is to generate findings useful for future preparedness planning and response in order to develop strategies and interventions aimed at mitigating the impact of adverse events. In April 2011, one of the largest tornado outbreaks ever recorded, a "Super Outbreak," occurred in the southeastern United States, resulting in more than 300 deaths and an estimated \$10 billion in damages. This large-scale multistate tragedy offers a unique opportunity to study how communities with similar cultural and geographic features yet different public health and mental health emergency response systems could provide access to care around the same crisis. The outcomes of these efforts can inform the field of what effect these differences had on the recovery patterns of each of these communities. By doing so, we can begin to elucidate best practices for robust community preparedness and recovery with attention to types of services that most effectively promote the natural resilience of survivors. Two primary research questions will guide the proposed study:

1. How did the Alabama and Mississippi State and local public health and mental health (PH/MH) systems prepare for, respond to, and support recovery after the April 2011 tornados?
2. To what extent have these communities recovered and what is the overall health and quality of life of individuals affected by these events?

CDC requests OMB approval to collect information for two years.

To address these questions, CDC, in collaboration with ICF International, will conduct a mixed method evaluation utilizing key informant interviews of public health and mental health agency staff and other leaders from the community and household survey data in each of the four regions in Mississippi and Alabama to assess community recovery. Specifically, the study design includes two main components (qualitative and quantitative) designed to comprehensively examine the PH/MH system response to and community recovery and resilience from disasters.

The total estimated burden for the 98 one-time qualitative interviews for public health/mental health professionals and community leaders is 98 hours (98 respondents × 1 hour/response). Interviews will be conducted during an in-person site-visit to the region to reduce travel and time burdens on the respondents. Respondents unable to participate during the site visit may participate via telephone. In addition, the total estimated burden for the quantitative computer-assisted interviews are based on 1,313 screener respondents and 860 survey respondents in each of the four tornado effected regions; the screener will take approximately 2 minutes to complete and the survey will take approximately 25 minutes to complete. (Study Screener: 4 counties × 1,313 study screeners = 5,252 participants screened; 5,252 participants × 2/60 minutes = 175 hours; Household Survey for General Public: 4 counties × 860 respondents = 3,440 respondents; 3,440 respondents × 25/60 minutes = 1,433 hours).

There are no costs to respondents other than their time.

The total estimated annual burden hours are 1,706.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs.) |
|--|--|-----------------------|------------------------------------|---------------------------------------|
| Mental Health/Public Health Agency Staff | Key Informant Interview Guide PH/MH Agency Staff & Key Informant Interview Guide Consent Form. | 53 | 1 | 1 |
| Community Organization Leaders | Key Informant Interview Guide Community Organization Respondents & Key Informant Interview Guide Consent Form. | 45 | 1 | 1 |
| General public from disaster affected communities. | Household Survey for General Public and Consent. | 3,440 | 1 | 25/60 |
| General public from disaster affected communities. | Household Survey for General Public Study Screener. | 5,252 | 1 | 2/60 |

LeRoy Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2013-20643 Filed 8-23-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0450]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Abbreviated New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 25, 2013.

ADDRESSES: To ensure that comments on the information collection are received,

OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to oir_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910-0669 and title "Abbreviated New Animal Drug Applications." Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Abbreviated New Animal Drug Applications—Section 512(b)(2) and (n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2) and (n)(1)) (OMB Control Number 0910- 0669)—Extension

On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Restoration Act (GADPTRA) (Pub. L. 100-670). Under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by GADPTRA, any person may file an abbreviated new animal drug application (ANADA) seeking

approval of a generic copy of an approved new animal drug. The information required to be submitted as part of an abbreviated application is described in section 512(n)(1) of the FD&C Act. Among other things, an abbreviated application is required to contain information to show that the proposed generic drug is bioequivalent to, and has the same labeling as, the approved drug referenced in the abbreviated application. FDA allows applicants to submit a complete ANADA or to submit information in support of an ANADA for phased review followed by the submission of an Administrative ANADA when FDA finds that all the applicable technical sections for an ANADA are complete. FDA requests that an applicant accompany ANADAs and requests for phased review of data to support ANADAs with the Form FDA 356v to ensure efficient and accurate processing of information to support approval of the generic new animal drug.

In the Federal Register of April 30, 2013 (78 FR 25279), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received; however the comment was not responsive to any of the four topics solicited by the notice. Therefore, FDA does not address the comment here.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ANADAs: ESTIMATED ANNUAL REPORTING BURDEN

| FD&C act section 512 (b)(2) | FDA form | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|----------|-----------------------|------------------------------------|------------------------|-----------------------------|-------------|
| ANADA | 356v | 18 | 1 | 18 | 159 | 2,862 |
| Phased Review With Administrative ANADA | 356v | 3 | 5 | 15 | 31.8 | 477 |
| Total | | | | | | 3,339 |

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

ANADA paperwork burden (section 512(b)(2) of the FD&C Act). Over the past 5 fiscal years, from October 2007 through September 2012, FDA has received an average of 21 ANADAs per year. FDA estimates that preparing the paperwork required under 21 U.S.C. 360b(n)(1) to be contained in an ANADA, whether all of the information is submitted with the ANADA or the applicant submits information for phased review followed by an Administrative ANADA that references that information, will take approximately 159 hours. (FDA is estimating that each ANADA that uses

the phased review process will have approximately five phased reviews per application. Therefore, assuming that three respondents will take advantage of the phased review option per year and an average of five phased reviews are submitted per application, times 31.8 hours per phased review, equals 477 total hours per year or 159 hours per application.)

Although over the last 5 fiscal years all sponsors chose to submit traditional ANADAs, some sponsors did indicate an interest in using the phased review option in the future. FDA believes that, with time, more and more sponsors will

take advantage of the phased review option as it provides greater flexibility and estimates that there will be three respondents for the phased review option. FDA also estimates that sponsors of ANADAs take approximately 25 percent less time to put together the information to support an ANADA than a new animal drug application (NADA) because they only need to provide evidence of bioequivalence and not the data required in a NADA to support a full demonstration of safety and effectiveness.

Form FDA 356v. FDA requests that an applicant fills out and sends in a Form FDA 356v with an ANADA, and with requests for phased review of data to support ANADAs, to ensure efficient and accurate processing of information to support the approval of a generic new animal drug.

Records and reports that are required post approval are described in 21 CFR 514.80, and that paperwork is already covered by that rule in OMB control number 0910-0284.

Dated: August 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-20712 Filed 8-23-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0878]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on our proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the procedure by which a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit information to us upon which it has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe.

DATES: Submit either electronic or written comments on the collection of information by October 25, 2013.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>.

Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910-0330)—Extension

Section 413(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21

U.S.C. 350b(a)) provides that at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient, a manufacturer or distributor of dietary supplements or of a new dietary ingredient is to submit to us (as delegate for the Secretary of Health and Human Services) information upon which the manufacturer or distributor has based its conclusion that a dietary supplement containing a new dietary ingredient will reasonably be expected to be safe. Part 190 (21 CFR part 190) implements these statutory provisions. Section 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit to the Office of Nutrition, Labeling, and Dietary Supplements (ONLDS) notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6(b) requires that the notification include the following: (1) The complete name and address of the manufacturer or distributor, (2) the name of the new dietary ingredient, (3) a description of the dietary supplements that contain the new dietary ingredient, and (4) the history of use or other evidence of safety establishing that the dietary ingredient will reasonably be expected to be safe.

The notification requirements described previously are designed to enable us to monitor the introduction into the food supply of new dietary ingredients and dietary supplements that contain new dietary ingredients, in order to protect consumers from the introduction of unsafe dietary supplements into interstate commerce. We use the information collected under these regulations to help ensure that a manufacturer or distributor of a dietary supplement containing a new dietary ingredient is in full compliance with the FD&C Act. We are currently developing an electronic means for submitting this information.

Description of Respondents: The respondents to this collection of information are firms in the dietary supplement industry, including dietary supplement and dietary ingredient manufacturers, packagers and repackagers, holders, labelers and re-labelers, distributors, warehouses, exporters, and importers.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

| 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response (in hours) ² | Total hours |
|----------------|-----------------------|------------------------------------|------------------------|---|-------------|
| 190.6 | 55 | 1 | 55 | 20 | 1,100 |

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe that there will be minimal burden on the industry to generate data to meet the requirements of the premarket notification program because we are requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the FD&C Act. In the past, commenters argued that our burden estimate is too low. We revisited this issue and believe their burden estimate included the time it takes to research and generate safety data for a new dietary ingredient. However, sec. 190.6(a) requires each manufacturer or distributor of a dietary supplement containing a new dietary ingredient, or of a new dietary ingredient, to submit notification of the basis for their conclusion that said supplement or ingredient will reasonably be expected to be safe. Section 190.6 requests simply the extraction and summarization of the safety data that should have already been developed by the manufacturer or distributor. Thus, we estimate that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the FD&C Act will require a burden of approximately 20 hours of work per submission.

We estimate that 55 respondents will submit one premarket notification each and that it will take a respondent 20 hours to prepare the notification, for a total of 1,100 hours. The estimated number of premarket notifications and hours per response is an average based on our experience with notifications received during the last 3 years and information from firms that have submitted recent premarket notifications.

Dated: August 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-20711 Filed 8-23-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-N-0973]

Agency Information Collection Activities; Proposed Collection; Comment Request; Animal Feed Network (Pet Event Tracking Network and LivestockNET)—State, Federal Cooperation To Prevent Spread of Pet Food and Animal Feed Related Diseases

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the paperwork burden to the public of the Animal Feed Network, which includes the Pet Event Tracking Network (PETNet) and LivestockNET, for reporting of pet food or animal feed related instances, respectively.

DATES: Submit either electronic or written comments on the collection of information by October 25, 2013.

ADDRESSES: Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50-400T, Rockville, MD

20850, 301-796-5733, domini.bean@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Pet Event Tracking Network—State, Federal Cooperation To Prevent Spread of Pet Food Related Diseases—and Livestock.NET—21 U.S.C. 342, 21 U.S.C. 343, Section 1002(b) of the FDA Amendments Act of 2007 (Pub. L. 110-85, 121 Stat. 823) (2007)—OMB Control Number 0910-0680

On August 1, 2011, the Pet Event Tracking Network (PETNet) was launched by FDA and its partners in the

Partnership for Food Protection (PPF). PETNet is a secure, Web-based network that allows information to be exchanged more freely and efficiently between FDA and other Federal and State regulatory agencies. PETNet allows the exchange of information about pet food related incidents, such as illness associated with the consumption of pet food or pet food product defects. PETNet is only accessible by government employees with membership rights, and each member has equal access to the data in the system. At its launch, the system had over 200 members representing 4 Federal agencies, all 50 states, and 3 U.S. territories. Using the shared information, State and Federal agencies can work together to quickly determine if regulatory actions are needed to prevent or quickly limit adverse effects associated with pet food products.

Since its launch, PETNet has seen increased usage among members. Two years following the launch of the system, there have been reports entered by two Federal agencies and multiple states. Approximately 60 percent of the entries are from Federal agency members and 40 percent by State agency members. The majority of entries in PETNet are associated with dog food products, followed by cat food products, products affecting species "other" than those available in the drop down menu choices, and small mammal products. As familiarity with PETNet has increased, there has been increased usage and entries from members.

PETNet was originally developed for pet animals only, but after its initial launch in 2011, there have been ongoing

requests to expand the system to include livestock animals, aquaculture species, and horses. Such an early alert system does not currently exist to share information related to illness associated with consumption of adulterated food or product defects for these species. LivestockNET has been developed to serve as a similar early alert system for feed-related illness and product defects associated with feed for livestock animals, aquaculture species, and horses.

LivestockNET and PETNet will be Web-based portals with the same functionality, but the questions asked for each portal will be specific for each. Users of the individual portals are expected to be the same officials from Federal, State, and Territorial agencies. Because of the similarity of the portals and the intended audience for both, the two individual portals will be housed in an overall system titled the Animal Feed Network. PETNet and LivestockNET will be able to be accessed individually in the Animal Feed Network, once the user logs in to the system.

Use of the Animal Feed Network, including the reporting of incidents by non-FDA members, will continue to be voluntary. The Animal Feed Network is a Web-based system, based in a proprietary system using CORESHIELD technology, and will be accessible only to members via password. PETNet and LivestockNET will make use of standardized electronic forms that have been custom developed for the individual portals. The two forms share the following common data elements, the majority of which are drop down

menu choices: Product details (name of feed, lot code, product form, and the manufacturer or distributor/packer (if known)), the species affected, number of animals exposed to the product, number of animals affected, body systems affected, product problem/defect, date of onset or the date product problem was detected, the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting member (i.e., name, telephone number will be captured automatically when member logs in to the system). For the LivestockNET form, additional data elements specific to livestock animals will be captured: Product details (indication of whether the feed is a medicated feed, product packaging, and intended purpose of the feed), class of the animal species affected, and production loss. For PETNet, the only additional data field is the animal life stage. The form would be filled out and submitted by a member in the specified portal of the Animal Feed Network. Once the entry is submitted, it will be available to other members. Thus, the information will be entered and received by Animal Feed Network members in as close to real time as possible. FDA and the PPF have designed the form itself to contain only the essential information necessary to alert Animal Feed Network members about animal feed and pet food related incidents.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN¹

| 21 U.S.C. section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|-----------------------|------------------------------------|------------------------|-----------------------------|-------------|
| 21 U.S.C. 342, 21 U.S.C. 343, Section 1002(b) of the FDA Amendments Act of 2007/PETNet. | 20 | 5 | 100 | 0.25 (15 minutes) | 25 |
| Ibid./LivestockNET portal | 20 | 5 | 100 | 0.25 (15 minutes) | 25 |
| Total Hours | | | | | 50 |

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that each State will report to the Animal Feed Network (i.e., fill out the PETNet or LivestockNET form to alert other members about a pet food or animal food related incident, respectively) approximately 5 times per year for each portal. This estimate represents the maximum number of reports that FDA expects a State to submit in a year, and in many cases the number of reports submitted by a State

will probably be far less. FDA believes that, given the PETNet form has 15 items and the LivestockNET form has 19 items, with most being drop down fields and not all fields being required for submission, 15 minutes is a sufficient amount of time to complete the form. State regulatory officials responsible for animal feed and pet food already possess computer systems and have the Internet access necessary to participate

in the Animal Feed Network, and thus there are no capital expenditures associated with the reporting.

Regarding recordkeeping, State regulatory officials who report in the Animal Feed Network receive the reportable information from consumers in their States in the course of their customary and regular duties. Further, these individuals already maintain records of such consumer complaints in the course of their duties, which are

sufficient for the purposes of reporting in the PETNet and LivestockNET portals of the Animal Feed Network. Therefore, FDA believes that the proposed collection of information does not have additional recordkeeping requirements.

Dated: August 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-20710 Filed 8-23-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0724]

Documents to Support Submission of an Electronic Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability on the Agency Web site of revised final versions of the following four documents that support making regulatory submissions in electronic format using the electronic Common Technical Document (eCTD) specifications: "The eCTD Backbone Files Specification for Module 1," version 2.2 (which includes the U.S. regional document type definition (DTD), version 3.2); "The Comprehensive Table of Contents Headings and Hierarchy," version 2.2; "Specifications for eCTD Validation Criteria," version 3.0; and "Example Submissions using eCTD Backbone Files Specification for Module 1," version 1.2. Technical files that support these documents are also available on the Agency Web site. A complete summary of the revisions made is included in the updated documents. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.2 by June 2014, and will give 30 days' advance notice to industry.

ADDRESSES: Submit written requests for single copies of the documents to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002 or Office of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-

addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the documents.

FOR FURTHER INFORMATION CONTACT: Constance Robinson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1105, Silver Spring, MD 20993, 301-796-1065, email: constance.robinson@fda.hhs.gov; or Joseph Montgomery, Center for Biologics Evaluation and Research, Food and Drug Administration, 11400 Rockville Pike, HFM-165, Rm. 4155, Rockville, MD 20857, 301-827-1332, email: joseph.montgomery@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The eCTD is an International Conference on Harmonisation (ICH) standard based on specifications developed by ICH and its member parties. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003, and the eCTD has been the standard for electronic submissions to CDER and CBER since January 1, 2008. The majority of new electronic submissions are now received in eCTD format. Since adoption of the eCTD standard, it has become necessary to update the administrative portion of the eCTD (Module 1) to reflect regulatory changes, provide clarification of business rules for submission processing and review, refine the characterization of promotional marketing and advertising material, and facilitate automated processing of submissions. FDA previously announced availability of final versions of technical documentation in a **Federal Register** notice dated February 13, 2013 (Docket No. FDA-2011-N-0724). The Agency has revised the final documentation and is making available revised versions of the following documents:

- "The eCTD Backbone Files Specification for Module 1, version 2.2," which provides specifications for creating the eCTD backbone file for Module 1 for submission to CDER and CBER (This document should be used in conjunction with the guidance for industry *Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Applications and Related Submissions Using the eCTD Specifications*, which will be revised as part of the implementation of the updated eCTD backbone files

specification (<http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM072349.pdf>)).

- "The Comprehensive Table of Contents Headings and Hierarchy," version 2.2, which reflects updated headings that are specified in the document entitled "The eCTD Backbone Files Specification for Module 1," version 2.2

- "Specifications for eCTD Validation Criteria," version 3.0
- "Example Submissions using eCTD Backbone Files Specification for Module 1," version 1.2

Supporting technical files are being made available on the Agency Web site.

A complete summary of the revisions made are included in the updated documents. The revisions include the following:

eCTD Backbone Files Specification for Module 1

- changed DTD version references from 3.1 to 3.2, where applicable replaced the copy of DTD Version 3.1 in Appendix I with DTD Version 3

- revised text, revised Table 1, and added Table 13 to indicate the new required attribute *material-id* and the new optional attribute *issue-date* which applies to m1-15-2-1

The Comprehensive Table of Contents Headings and Hierarchy added two new attributes for 1.15.2.1

Specifications for eCTD Validation Criteria incorporated changes to US eCTD Module 1

Example Submissions using eCTD Backbone Files Specification for Module 1 modified example 7 to reference the Form FDA 356h in the Admin section

- modified examples 13 through 17 to reference the material-id and issue date attributes as applicable, and include the Promotional Labeling and Advertising Regulatory Contact

FDA is not prepared at present to accept submissions utilizing this new version of the eCTD Backbone Files Specification for Module 1, version 2.2, because eCTD software vendors need time to update their software to accommodate this information and because its use will require software upgrades within the Agency. FDA estimates it will be able to receive submissions utilizing Module 1 Specifications 2.2 by June 2014, and will give 30 days advance notice to industry.

II. Electronic Access

Persons with access to the Internet may obtain the documents at either <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm253101.htm>, <http://www.regulations.gov>, or <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>.

Dated: August 20, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-20697 Filed 8-23-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration

[Docket No. FDA-2007-D-0369] (Formerly Docket No. 2007D-0168)

Draft Guidance for Industry on Bioequivalence Recommendations for Risperidone Injection; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled "Draft Guidance on Risperidone." The guidance provides specific recommendations on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for risperidone injection.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 25, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft 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.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research (HFD-600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9326.

SUPPLEMENTARY INFORMATION:
I. Background

In the **Federal Register** of May 31, 2007 (72 FR 30388), FDA announced the availability of a draft guidance for industry entitled "Bioequivalence Recommendations for Specific Products," which explained the process that would be used to make product-specific bioequivalence (BE) recommendations available to the public on FDA's Web site at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>. As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and to provide a meaningful opportunity for the public to consider and comment on those recommendations. FDA finalized that guidance and announced its availability in the **Federal Register** of June 11, 2010 (75 FR 33311). This notice announces the availability of revised draft BE recommendations for risperidone injection.

New drug application 021346 for Risperdal Consta (risperidone) Long-Acting Injection was initially approved by FDA in October 2003. In February 2010, FDA issued a draft guidance for industry on BE recommendations for generic risperidone injection (Draft BE Recommendations for Risperidone Injection). FDA is now issuing a revised version of the Draft BE Recommendations for Risperidone Injection (Revised Draft BE Recommendations).

In February 2011, Johnson & Johnson Pharmaceutical Research and Development, L.L.C. submitted a citizen petition requesting that FDA require that any ANDA referencing Risperdal Consta (risperidone) Long-Acting Injection meet certain requirements, including requirements related to demonstrating BE (Docket No. FDA-2011-P-0086). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the Revised Draft BE Recommendations in responding to the citizen petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for risperidone injection. 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 statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to <http://www.regulations.gov>. 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>.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: August 21, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-20696 Filed 8-23-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health
Implementation of the Revised International Guiding Principles for Biomedical Research Involving Animals

SUMMARY: The National Institutes of Health (NIH) is providing guidance to Public Health Service (PHS) awardee institutions on implementation of the revised International Guiding Principles for Biomedical Research Involving Animals ("Guiding Principles"). The NIH is seeking input from the public on any concerns they may have regarding the revised Guiding Principles.

DATES: Public concerns regarding the revised Guiding Principles must be submitted electronically at <http://grants.nih.gov/grants/rfi/rfi.cfm?ID=35> by September 30, 2013 in order to be considered.

FOR FURTHER INFORMATION CONTACT:

Office of Laboratory Animal Welfare,
Office of Extramural Research, National
Institutes of Health, Suite 360, 6705
Rockledge Drive, Bethesda, MD 20892-
7982, phone: 301-496-7163, email:
olaw@od.nih.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

The NIH Office of Laboratory Animal Welfare (OLAW) oversees PHS-funded animal activities by the authority of the Health Research Extension Act of 1985 (<http://grants.nih.gov/grants/olaw/references/hrea1985.htm>) and the PHS Policy on Humane Care and Use of Laboratory Animals (PHS Policy; <http://grants.nih.gov/grants/olaw/references/phspol.htm>). The PHS Policy requires that institutions have an approved Animal Welfare Assurance before conducting activities involving live vertebrate animals. Institutions outside the United States that receive PHS funding are required to have a Foreign Assurance (<http://grants.nih.gov/grants/olaw/sampledoc/foreign.htm>) that commits the institution to follow the International Guiding Principles for Biomedical Research Involving Animals ("Guiding Principles"). The Guiding Principles were revised in December 2012 by a partnership between the Council for International Organizations for Medical Science (CIOMS) and the International Council for Laboratory Animal Science (ICLAS).

PHS-Assured institutions outside the United States are encouraged to adopt the revised Guiding Principles as soon as possible, and full implementation is expected after October 1, 2013. OLAW will confirm an institution's adoption of the Guiding Principles at the next renewal of the Foreign Assurance.

II. Electronic Access

The December 2012 revision of the Guiding Principles is available for download at http://grants.nih.gov/grants/olaw/Guiding_Principles_2012.pdf (PDF).

Dated: August 19, 2013.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2013-20740 Filed 8-23-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 16, 2013.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, Msc 5452, Bethesda, MD 20892, (301) 594-8843, barnordm@extra.niddk.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 20, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-20658 Filed 8-23-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: September 16-17, 2013.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700-B Rockledge Drive, MSC-7616, Bethesda, MD 20892-7616, 301-496-2550, Romochandran@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Centers of Excellence for Translational Research (CETR) (U19).

Date: September 17-19, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-402-3938, lr228v@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-20659 Filed 8-23-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service 2013 Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service 2013 Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Colleen Barros, Chair;
John Czajkowski;
Michael Gottesman;
Camille Hoover;
Sally Hockey;
Mona Rowe;
Lawrence Tabak.

For further information about the NIH Performance Review Board, contact the Office of Human Resources, Workforce Relations Division, National Institutes of Health, Building 31, Room B3C07, Bethesda, Maryland 20892, telephone 301-402-9203 (not a toll-free number).

Dated: August 19, 2013.

Francis S. Collins,
Director, National Institutes of Health.
[FR Doc. 2013-20739 Filed 8-23-13; 8:45 am]
BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board (DTAB) will meet on September 10 and 11, 2013 from 10:00 a.m. to 2:00 p.m. E.D.T. via web conference. The DTAB will convene in both open and closed sessions on these two days.

On September 10, 2013, from 10:00 a.m. to 11:45 a.m., the meeting will be open to the public. The meeting will include presentations on hair color and contamination.

The public is invited to attend the open session via web conference. Due to the limited call-in capacity, registration is requested. Public comments are welcome. To register, make arrangements to attend, obtain the web conference call-in numbers and access codes, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees Web site at <http://nac.samhsa.gov/Registration/meetingsRegistration.aspx> or contact the CSAP DTAB Designated Federal Official, Dr. Janine Denis Cook (see contact information below).

On September 10, 2013, from 11:45 a.m. to 2:00 p.m., and September 11, 2013, from 10:00 a.m. to 2:00 p.m., the Board will meet in closed session to discuss proposed revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs. Therefore, this portion of the meeting is closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, Section 10(d).

Meeting information and a roster of DTAB members may be obtained by accessing the SAMHSA Advisory Committees Web site, <http://www.nac.samhsa.gov/DTAB/meetings.aspx>, or by contacting Dr. Cook.

Committee Name: Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention Drug Testing Advisory Board.

Dates/Time/Type: September 10, 2013, from 10:00 a.m. to 11:45 a.m. E.D.T.: OPEN. September 10, 2013, from 11:45 a.m. to 2:00 p.m. E.D.T.: CLOSED. September 11, 2013, from 10:00 a.m. to 2:00 p.m. E.D.T.: CLOSED.

Place: SAMHSA Office Building, 1 Chokey Cherry Road, Rockville, Maryland 20857.

Contact: Janine Denis Cook, Ph.D., Designated Federal Official, CSAP Drug Testing Advisory Board, 1 Chokey Cherry Road, Room 7-1043, Rockville, Maryland 20857, Telephone: 240-276-2600, Fax: 240-276-2610, Email: janine.cook@samhsa.hhs.gov.

Janine Denis Cook,

Designated Federal Official, DTAB, Division of Workplace Programs, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2013-20732 Filed 8-23-13; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-0138]

Merchant Mariner Medical Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee (MEDMAC) will meet on September 24-25, 2013 to discuss matters relating to medical certification determinations for issuance of merchant mariner credentials, medical standards and guidelines for physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meeting will be open to the public.

DATES: MEDMAC will meet on Tuesday, September 24, and Wednesday, September 25, 2013, from 8:00 a.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Sarratt Student Center, Room #216-220, Vanderbilt University, 2302 Vanderbilt Place, Nashville, TN 37235.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Ashley Holm, the MEDMAC Alternate Designated Federal Officer (ADFO), 202-372-1128 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" section below. Comments must be submitted in writing to the Coast Guard on or before September 14, 2013, and must be identified by USCG-2011-0138 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

- **Hand delivery:** Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202-366-9329.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the *Federal Register* (73 FR 3316). If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please provide an electronic copy to the ADFO, no later than September 14, 2013. Your materials will be placed on the MEDMAC Web site <https://homeport.uscg.mil> to be made available to the members of the committee and the public.

Docket: For access to the docket to read background documents or comments related to this notice, go to <http://www.regulations.gov> and enter "USCG-2011-0138" in the "SEARCH" box.

A public comment period will be held on September 24, 2013, from approximately 9:05 a.m. to 9:25 a.m., and on September 25, 2013, from approximately 4:40 p.m. to 5:00 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific tasks and issues are discussed by the committee. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Ashley Holm, the MEDMAC ADFO, at telephone 202-372-1128 or email Ashley.e.holm@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, 5 U.S.C. App. (Pub. L. 92-463). The MEDMAC is authorized by 46 U.S.C. 7115 as amended by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111-281) and advises the Secretary on matters related to (a) Medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

Day 1, September 24

- (1) Remarks from Vanderbilt Dayani Center Representatives, Ms. Teresa Roberts and Ms. Barbara Ory.
- (2) Opening comments by Designated Federal Officer (DFO), Captain K. P. McAvoy.
- (3) Remarks from the Director of Inspections and Compliance, Captain J. C. Burton.
- (4) Review of Last Full Committee Meeting's Minutes.
- (5) Public Comments.
- (6) Presentation from the American Epilepsy Society.
- (7) Presentation from American Chiropractic Association MEDMAC Discussion/Recommendation
- (8) Working Groups report out.
- (9) Working Groups addressing the following task statements may meet to deliberate—

(a) Task Statement 1, Revision of Navigation and Vessel Inspection Circular (NVIC) 04-08. The NVIC can be found at <http://www.uscg.mil/hq/cg5/nvic/> Medical and Physical Guidelines for Merchant Mariner Credentials.

(b) Task Statement 4, Revising the CG-719K Medical Evaluation Report Form for mariner physicals. The form can be found at <http://www.uscg.mil/nmc>.

(c) Task Statement 5, Creating medical expert panels for the top medical conditions to analyze and determine proper implementation of required medical testing and minimum compliance.

(d) The Committee may receive new task statements from the Coast Guard, review the information presented on each issue, deliberate and formulate recommendations for the Department's consideration.

Day 2, September 25

- (1) Continue work on Task Statements.
- (2) By mid-afternoon, the Working Groups will report, and if applicable, make recommendations for the full committee to consider for presentation to the Coast Guard. The committee may vote on the working group's recommendations on this date. The public will have an opportunity to speak after each Working Group's Report before the full committee takes any action on each report.
- (3) Public Comments.
- (4) Closing remarks/plans for next meeting.

Dated: August 8, 2013.

J. C. Burton,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2013-20674 Filed 8-23-13; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2013-0031]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Availability of FY 2014 Arrangement

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Each year, the Federal Emergency Management Agency (FEMA) is required by the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement) to notify private insurance companies (Companies) and to make available to the Companies the terms for subscription or re-subscription to the Arrangement. In keeping with that requirement, this notice provides the terms to the Companies to subscribe or re-subscribe to the Arrangement.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, Deputy Associate Administrator for Federal Insurance, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Room 720, Arlington, VA 20598-3020, 202-646-3429 (phone), 202-646-3445 (facsimile), or Edward.Connor@fema.dhs.gov (email).

SUPPLEMENTARY INFORMATION: Under the Write-Your-Own (WYO) Program Financial Assistance/Subsidy Arrangement (Arrangement), 85 (as of June 2013) private sector property insurers sell flood insurance policies and adjust flood insurance claims under their own names based on an Arrangement with the Federal Insurance and Mitigation Administration (FIMA) published at 44 CFR part 62, Appendix A.

The WYO insurers retain an expense allowance and remit the remaining premium to the Federal Government. The Federal Government pays flood losses and pays loss adjustment expenses based on a fee schedule. In addition, under certain circumstances reimbursement for litigation costs, including court costs, attorney fees, judgments, and settlements, are paid by

FEMA based on documentation submitted by the WYO insurers.

The complete Arrangement is published in 44 CFR part 62, Appendix A. Each year, FEMA is required to publish in the **Federal Register** and make available to the Companies the terms for subscription or re-subscription to the Arrangement. 44 CFR part 62, Appendix A, Article V.B.

Signatory Companies should remain aware that all requirements of the Arrangement, including, but not limited to, financial accounting in issues involving all transactions, must be met. As set forth in Article II.A.1. of Appendix A to part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement, the Company is responsible for meeting all fiduciary responsibilities for control and disbursement of funds in connection with policy administration. This includes ensuring that all accounting for policy administration is correct. If errors are made in policy administration, the Company shall be responsible for reimbursing any incorrect allocations, assessment or other moneys compensated to that company by the Federal Government.

The Company is responsible for ensuring that all activities meet the requirements of this Arrangement and of the NFIP Financial Control Plan, 44 CFR part 62, Appendix B. The NFIP WYO Standards Committee may take remedial action in the event any such conduct is not corrected.

FEMA will send a copy of the offer for the FY 2014 Arrangement, together with related materials and submission instructions, to all private insurance companies participating under the current FY 2013 Arrangement.

Any private insurance company not currently participating in the WYO Program but wishing to consider FEMA's offer for FY 2014 may request a copy by writing: DHS/FEMA, Federal Insurance and Mitigation Administration, Attn: Edward L. Connor, Deputy Associate Administrator for Federal Insurance, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Room 720, Arlington, VA 20598-3020, or contact Edward

Connor at 202-646-3445 (facsimile), or Edward.Connor@fema.dhs.gov (email).

David L. Miller,

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

[FR Doc. 2013-20668 Filed 8-23-13; 8:45 am]

BILLING CODE 9110-11-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-78]

30-Day Notice of Proposed Information Collection: Disclosure of Adjustable Rate Mortgages (ARMs) Rates

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* September 25, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 17, 2013.

A. Overview of Information Collection

Title of Information Collection: Disclosure of Adjustable Rate Mortgages (ARMs) Rates.

OMB Approval Number: 2502-0322.

Type of Request: Extension of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Mortgagees must make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable-rate mortgage ARM consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under TILA, Regulation Z," at 15 U.S.C. 1601, 12 CFR 22618.

Respondents (describe): FHA Approved Lenders.

Estimated Number of Respondents: 3,231.

Estimated Number of Responses: 215,306.

Frequency of Response: Occasion.

Average Hours per Response: .05.

Total Estimated Burdens: 10,765.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 20, 2013.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013-20741 Filed 8-23-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5683-N-79]

30-Day Notice of Proposed Information Collection: Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: September 25, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: OIRA_Submission@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on June 17, 2013.

A. Overview of Information Collection

Title of Information Collection: Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment.

OMB Approval Number: 2502-0414.

Type of Request: Extension of a currently approved collection.

Form Number: HUD-27050-B.

Description of the need for the information and proposed use: Mortgage

Insurance Termination is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This information is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. This information is submitted on via the internet or EDI and is used to directly pay eligible homeowners. This condition occurs when the form passes the criteria of certain system edits. As the result the system generates a disbursement to the eligible homeowner for the refund consisting of the unused portion of the paid premium. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information the premium collection/monitoring function would be severely impeded and program data would be unreliable. Under streamline III when the form is processed and but does not pass the series of edits the system generates in these cases the Application for Premium Refund or Distributive Share Payment to the homeowner to be completed and returned to HUD for father processing for the refund. In general a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated.

Respondents (describe): Individuals or households.

Estimated Number of Respondents: 56,000.

Estimated Number of Responses: 725,000.

Frequency of Response: On Occasion.

Average Hours per Response: 5.

Total Estimated Burdens: 66,500.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) 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) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD

encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 20, 2013.

Colette Pollard,

*Department Reports Management Officer,
Office of the Chief Information Officer.*

[FR Doc. 2013-20742 Filed 8-23-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

[LLWO220000-L10200000.00000000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from individuals, households, farms, and businesses interested in cooperating with the BLM in constructing or maintaining range improvement projects that enhance or improve livestock grazing management, improve watershed conditions, enhance wildlife habitat, or serve similar purposes. The Office of Management and Budget (OMB) has assigned control number 1004-0019 to this collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before September 25, 2013.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004-0019), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202-395-5806, or by electronic mail at oir_submission@omb.eop.gov. Please provide a copy of your comments to the BLM.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.
Fax: to Jean Sonneman at 202-245-0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate "Attn: 1004-0019" regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: You may contact Kimberly Hackett at 202-912-7216. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1-800-877-8339, to leave a message for Ms. Hackett. You may also review the information collection request online at <http://www.reginfo.gov/public/do/PRAMain>.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501-3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required in 5 CFR 1320.8(d), the BLM published a 60-day notice in the *Federal Register* on April 9, 2013 (78 FR 21147), and the comment period ended June 10, 2013. The BLM received no comments.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB Control Number 1004-0019 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Grazing Management; (43 CFR part 4120).

Forms:

- Form 4120-6, Cooperative Range Improvement Agreement; and
- Form 4120-7, Range Improvement Permit.

OMB Control Number: 1004-0019.

Summary: This collection pertains to range improvements on public lands managed by the BLM. Range improvements enhance or improve livestock grazing management, improve watershed conditions, enhance wildlife habitat, or serve similar purposes. At times, the BLM may require holders of grazing permits or grazing leases to install range improvements to meet the terms and conditions of their permits or leases. Operators may also come to the BLM with proposals for range improvements. Often the BLM, operators, and other interested parties work together and jointly contribute to construction of range improvements in order to facilitate improved grazing management or enhance other multiple uses. Cooperators may include lenders which provide the funds that operators contribute for improvements.

Frequency of Collection: On occasion.

Estimated Annual Responses: 1,310.

Estimated Annual Burden Hours: 1,940.

Estimated Annual Non-hour Costs: None.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2013-20738 Filed 8-23-13; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000 L16520000.XX0000]

Notice of Meeting, Rio Grande Natural Area Commission

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission will meet as indicated below.

DATES: The meeting will be held from 10 a.m. to 3:30 p.m. on September 19, 2013.

ADDRESSES: Rio Grande Water Conservation District, 10900 East U.S. Highway 160, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, BLM Front Range District Office, 3028 Main Street, Canon City, CO 81212. Phone: (303) 239-3861. Email: ksullivan@blm.gov. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr-2). The nine-member Commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan for non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics for this meeting include an update on the management plan, a discussion on what to do with abandoned structures in the Natural Area and a discussion of the status and issues associated with trespass impoundment. The public may offer oral comments at 10:15 a.m. or written statements, which may be submitted for the Commission's consideration. Please send written comments to Kyle Sullivan at the address above by September 3, 2013. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Commission meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: www.blm.gov/co/st/en/fo/slvfo.html.

John Mehlhoff,

BLM Colorado Associate State Director.

[FR Doc. 2013-20714 Filed 8-23-13; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-NER-BOHA-13708; PPMPSPD1Z.YM0000; PPNEBOHAS1]

Boston Harbor Islands Advisory Council Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice announces a meeting of the Boston Harbor Islands Advisory Council. The agenda includes discussion of 2016 celebration planning for the 300th Anniversary of Boston Light, 20th Anniversary of Boston Harbor Islands National Recreation Area (NRA), and Centennial of the National Park Service, and park updates including a review of the 2013 summer season.

DATES: September 11, 2013, 6:00 p.m. to 8:00 p.m. (Eastern).

Location: Partnership Office, 15 State Street, 8th Floor Conference Room, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Kelly Fellner, DFO, Boston Harbor Islands National Recreation Area, 15 State Street, Suite 1100, Boston, MA 02109; telephone (617) 223-8669; email: Kelly_Fellner@nps.gov.

SUPPLEMENTARY INFORMATION: This meeting open to the public. Those wishing to submit written comments may contact the Designated Federal Official (DFO) for the Boston Harbor Islands Advisory Council, Kelly Fellner, by mail at National Park Service, 15 State Street, Suite 1100, Boston, MA 02109. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Advisory Council was appointed by the Director of the National Park Service pursuant to Public Law 104-333. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the implementation of a management plan and park operations. Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

Dated: August 20, 2013.

Shirley Sears,

Acting Chief, Office of Policy.

[F.R. Doc. 2013-20721 Filed 8-23-13; 8:45 am]

BILLING CODE 4310-WV-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-13732;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 3, 2013. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202-371-6447. Written or faxed comments should be submitted by September 10, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 7, 2013.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

DISTRICT OF COLUMBIA

District of Columbia

Grace Evangelical Lutheran Church, 4300 16th St., NW., Washington, 13000712
U.S. Civil Service Commission Building, 1724 F St., NW., Washington, 13000713

ILLINOIS

Cook County

Drucker, Robert and Suzanne, House, 2801 Iroquois Rd., Wilmette, 13000715

Du Page County

Glen Ellyn Downtown North Historic District, Roughly Main St., Crescent Blvd., & Pennsylvania Ave., Glen Ellyn, 13000716
Glen Ellyn Downtown South Historic District, Roughly Main & Duane Sts., Hillside Ave., Glen Ellyn, 13000717

La Salle County

Ottawa East Side Historic District, Roughly between the Illinois & Fox Rivers, Shabbona & Green Sts., Ottawa, 13000718

Will County

Beecher Mausoleum, Jct. of IL 1 & Horner Ln., Beecher, 13000714
Downtown Plainfield Historic District, Lockport bounded by Division & Main Sts., Plainfield, 13000719

INDIANA

Allen County

Wildwood Park Historic District, (Park and Boulevard System of Fort Wayne, Indiana MPS) Roughly bounded by Freeman St., Illinois Rd., W. Jefferson & Portage Blvds., Lindenwood & Ardmore Aves., Fort Wayne, 13000720

Daviess County

McCall Farmstead, 4914 E. 800 N., Plainville, 13000721

Lake County

Horace Mann Historic District, (Historic Residential Suburbs in the United States, 1830-1960 MPS) Roughly bounded by W. 5th, 8th & 7th Aves., Cleveland & Roosevelt Sts., Gary, 13000722
Jefferson Street Historic District, (Historic Residential Suburbs in the United States, 1830-1960 MPS) Roughly bounded by Washington St., 37th, 35th, Jefferson & Madison Aves., Gary, 13000723

Marion County

Oaklandon Historic District, 6300 & 6400 blks. Oaklandon Rd., 6400 blk. Maple & 11716 Oshawa Sts., Lawrence, 13000724

Monroe County

Matthews Stone Company Historic District, 6293 N. Matthews Dr., 6445 W. Maple Grove Rd., Ellettsville, 13000725

St. Joseph County

Marquette School, (Indiana's Public Common and High Schools MPS) 1905 College Ave., South Bend, 13000726
West LaSalle Avenue Historic District, W. LaSalle Ave. between William St. & Martin Luther King Dr., South Bend, 13000727

KANSAS

Grant County

Lower Cimarron Spring (Boundary Increase), (Santa Fe Trail MPS) W. side of US 270, Ulysses, 13000728

LOUISIANA

Caddo Parish

Fairfield Building, The, 1600-1612 Fairfield Ave., Shreveport, 13000729
Petroleum Tower, 425 Edwards St., Shreveport, 13000730

Madison Parish

Tallulah Post Office, 606 Snyder St., Tallulah, 13000731

Orleans Parish

Frey, L.A. and Sons, Meatpacking Plant, 3925 Burgundy St., New Orleans, 13000732

Rapides Parish

Boyce Methodist Church, 309 Londonderry Ave., Boyce, 13000733

MISSISSIPPI**Bolivar County**

Mound Bayou Historic District, Roughly bounded by Martin Luther King Ave., Mound Bayou Cemetery, South & Davis Sts., Mound Bayou, 13000735

De Soto County

Hernando Water Tower, NE. corner of Lusher & Church Sts., Hernando, 13000736

Hinds County

Evers, Medgar, Historic District, Roughly bounded by Margaret Walker Alexander St., W. of Missouri & E. of Miami Sts., Jackson, 13000737

Tanglewood, 301 Jefferson St., Clinton, 13000738

Jackson County

Orange Avenue Historic District (Boundary Increase), (Pascagoula MPS) 600 & 700 blk. of Live Oak St., Pascagoula, 13000739

Leflore County

Wildwood Plantation Commissary and Shop, Cty. Rd. 626, Money, 13000734

PENNSYLVANIA**Allegheny County**

Allegheny Commons, Roughly bounded by Stockton St., Brighton Rd., North, Cedar & Ridge Aves., Pittsburgh, 13000740
Mooncrest Historic District, Roughly bounded by University Blvd., Lee Dr., Thorn Run, Fern Hollow & Old Thorn Run Rds. (Moon Township), Coraopolis, 13000741

Bradford County

Universalist Meeting House of Sheshequin, 6752 Sheshequin Rd. (Sheshequin Township), Sheshequin, 13000742

Carbon County

Palmerton Historic District, Roughly bounded by Ave. A, Harvard Ave., 8th & Tomb Sts., Palmerton, 13000743

Philadelphia County

McDowell Memorial Presbyterian Church, 2040 Cecil B. Moore Ave., Philadelphia, 13000744

Sullivan County

Eagles Mere Historic District (Boundary Increase), Roughly bounded by PA.42. Borough boundary, Loyalsock State Forest & Eagles Mere Golf Club, Eagles Mere Borough, 13000745

Tioga County

Blackwell Methodist Episcopal Church, 117 Blackwell Sq. (Morris Township), Blackwell, 13000746

TENNESSEE**Macon County**

Red Boiling Springs Bank, 100 Main St., Red Boiling Springs, 13000747

WASHINGTON

Skamania County Lawetlat'la, Gifford Pinchot NF, Cougar, 13000748

WISCONSIN**Clark County**

Cornelius, Charles and Theresa, House, 118 Clay St., Neillsville, 13000749

Milwaukee County

Cudahy Chicago and North Western Railway Depot, 4647 S. Kinnickinnic Ave., Cudahy, 13000750

Waukesha County

Schauwitzer, Carl and Therese, House, S84 W17698 Woods Rd., Muskego, 13000751

[FR Doc. 2013-20667 Filed 8-23-13; 8:45 am]

BILLING CODE 4312-51-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-13-021]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 30, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 731-TA-1224 and 1225 (Preliminary) (Ferrosilicon from Russia and Venezuela). The Commission is currently scheduled to complete and file its determinations on or before September 3, 2013; views of the Commission are currently scheduled to be completed and filed on or before September 10, 2013.

5. Outstanding action jackets: none.
In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: August 22, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013-20862 Filed 8-22-13; 4:15 pm]

BILLING CODE 7020-02-P

JUDICIAL CONFERENCE OF THE UNITED STATES**Meeting of the Judicial Conference Committee on Rules of Practice and Procedure**

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: October 11, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: University of Maine School of Law, 246 Deering Avenue, Portland, Maine 04102.

FOR FURTHER INFORMATION CONTACT:

Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: August 20, 2013.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2013-20669 Filed 8-23-13; 8:45 am]

BILLING CODE 2210-55-P

JUDICIAL CONFERENCE OF THE UNITED STATES**Meeting of the Judicial Conference Committee on Rules of Practice and Procedure**

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of Open Meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 3-4, 2013.

Time: 8:30 a.m. to 5:00 p.m.

ADDRESSES: Seton Hall University School of Law, One Newark Center, Newark, New Jersey 07102.

FOR FURTHER INFORMATION CONTACT:

Jonathan C. Rose, Secretary and Chief Rules Officer, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502-1820.

Dated: August 20, 2013.

Jonathan C. Rose,

Secretary and Chief Rules Officer.

[FR Doc. 2013-20670 Filed 8-23-13; 8:45 am]

BILLING CODE 2210-55-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Park System Resource Protection Act

On August 15, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Minnesota in the lawsuit entitled *United States v. Thomas Lombard and Catherine Lombard*, Civil Action No. 13-cv-02214 (PJS/SER).

The United States of America, on behalf of the United States Department of the Interior, National Park Service ("NPS"), filed a claim against Defendants Thomas Lombard and Catherine Lombard ("Defendants") to recover park system resource damages, assessment costs, and response costs pursuant to the Park System Resource Protection Act, 16 U.S.C. 1911 *et seq.*, for destruction of, loss of, or injury to park system resources of the Saint Croix National Scenic Riverway (hereafter "Riverway") in Minnesota resulting from the Defendants' unauthorized cutting of trees on NPS land in the Riverway. Under the proposed Consent Decree, Defendants' will pay a penalty of \$20,000 for park system resource damages, assessment costs, and response costs as alleged in the Complaint. Additionally, the proposed Consent Decree requires the Defendants to provide NPS access to Defendants' property to plant, water, and monitor replacement trees, and conduct other appropriate activities. Defendants will also supply water and equipment to water the trees.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Thomas Lombard and Catherine Lombard*, D.J. Ref. No. 90-5-1-09379. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Sent them to: |
|---------------------|---|
| By email | pubcomment-ees.enrd@usdoj.gov . |
| By mail | Assistant Attorney General, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611. |

During the public comment period, the Consent Decree may be examined and downloaded at this justice

Department Web site: <http://www.usdoj.gov/enrd/ConsentDecrees.html>. We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ-ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2013-20694 Filed 8-23-13; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

Antitrust Division**Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Product Declaration Collaborative, Inc.**

Notice is hereby given that, on July 18, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Health Product Declaration Collaborative, Inc. ("HPD") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tara Blank (individual), Ridgefield, WA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HPD intends to file additional written notifications disclosing all changes in membership.

On February 12, 2013, HPD filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14837).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013-20686 Filed 8-23-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division**Notice Pursuant to the National Cooperative Research and Production Act of 1993—Members Of SGIP 2.0, Inc.**

Notice is hereby given that, on July 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Members of SGIP 2.0, Inc. ("MSGIP 2.0") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Reliant Energy Retail Services, Inc., Houston, TX; The University of Tokyo, Bunkyo-ku, Tokyo, JAPAN; U.S. Department of Energy, Washington, DC; Lawrence Berkeley National Laboratory (LBNL), Berkeley, CA; MITRE Corp., McLean, VA; Raytheon Trusted Computer Solutions, Herndon, VA; Tri-County Electric Cooperative, Inc., Hooker, OK; ARC Technical Resources, Inc., San Jose, CA; CENACE, Quito, EQUADOR; City of Watertown, Watertown, WI; Pacific Data Bank Security, Delta, British Columbia, CANADA; North American Energy Standards Board (NAESB), Houston, TX; Oak Ridge National Laboratory (ORNL), Oak Ridge, TN; ComRent International, Upper Marlboro, MD; Sensus, Raleigh, NC; Sandia National Laboratories, Albuquerque, NM; Ward Bower Innovations LLC, Albuquerque, NM; Consumers Energy Company, Jackson, MI; National Renewable Energy Laboratory (NREL), Golden, CO; Analysis Group, Inc., Boston, MA; Alliance for Telecommunications Industry Solutions (ATIS), Washington, DC; and Korea Smart Grid Association (KSGA), Seocho-gu, Seoul, REPUBLIC OF KOREA, have been added as parties to this venture.

In addition, Battelle Pacific Northwest Lab, has changed its name to Pacific Northwest National Laboratory (PNNL), Richland, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSGIP 2.0 intends to file additional written notifications disclosing all changes in membership.

On February 5, 2013, MSGIP 2.0 filed its original notification pursuant to

Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 2013 (78 FR 14836).

The last notification was filed with the Department on April 26, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 28, 2013 (78 FR 31976).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013-20688 Filed 8-23-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium

Notice is hereby given that, on July 22, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Warheads and Energetics Consortium ("NWECC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Airtronic USA, Inc., Elk Grove Village, IL; Applied Sonics Incorporated, Denver, CO; Blackhawk Management Corporation, Houston, TX; C-2 Innovations, Inc., Stow, MA; CACI, Inc.—Federal, Chantilly, VA; Combustion Propulsion and Ballistic Technology Corp., State College, PA; Dynamet Technology Inc., Burlington, MA; Eureka Aerospace, Inc., Pasadena, CA; Hughes Associates, Inc., Baltimore, MD; IAP Research, Inc., Dayton, OH; Integrated Production Systems, Inc., Arlington, TX; Intertek Laboratories, Inc., Stirling, NJ; Jet Industrial Electronics, Oak Ridge, NJ; K2 Solutions Inc., Southern Pines, NC; LRAD Corporation, San Diego, CA; Metamagnetics Inc., Canton, MA; mPhase Technologies, Inc., Norwalk, CT; MS Technology, Inc., Oak Ridge, TN; OPTRA, Inc., Topsfield, MA; PCP Ammunition Company LLC, Vero Beach, FL; Polaris Sensor Technologies, Inc., Huntsville, AL; Radiance Technologies, Inc., Huntsville, AL; SciCast International, Inc., Bechtelsville, PA; Serco, Inc., Reston, VA;

Simulations, LLC, Simsbury, CT; SURVICE Engineering Company, LLC, Belcamp, MD; and Wavefront LLC, Basking Ridge, NJ, have been added as parties to this venture.

Also, Brinkman International, Inc., Rochester, NY; Charles F. Day & Associates, LLC, Davenport, IA; Dindl Firearms Manufacturing, Inc., Newton, NJ; Hi-Shear Technology Corporation, Torrance, CA; Polestar Technologies, Inc., Needham Heights, MA; Prototype Productions, Inc., Ashburn, VA; R4 Incorporated, Eatontown, NJ; Sentel Corporation, Alexandria, VA; Strategic Innovative Solutions, LLC, Ringwood, NJ; Syntronics, LLC, Fredericksburg, VA; Touchstone Research Laboratory, LTD, Triadelphia, WV; and TRAX International Corporation, Las Vegas, NV, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NWECC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NWECC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on February 19, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 2013 (77 FR 54611).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013-20687 Filed 8-23-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on July 24, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Connected Media Experience, Inc. ("CMX") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, Songbird, Inc., San Francisco, CA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on February 5, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 1, 2013 (78 FR 13896).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013-20689 Filed 8-23-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11-48]

Kevin Dennis, M.D., Decision and Order

On April 12, 2011, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Kevin Dennis, M.D. (hereinafter, Respondent), of Franklin, Tennessee. The Show Cause Order proposed the revocation of Respondent's DEA Certification of Registration and the denial of his application to renew his registration on the ground that his "continued registration is inconsistent with the public interest." ALJ Ex. 1, at 1 (citing 21 U.S.C. 823(f)).

More specifically, the Show Cause Order alleged that from September 2007 through July 2009, Respondent "prescribed controlled substances to individuals located in Colorado, Mississippi, North Carolina, South Carolina and Tennessee via the Internet based on online questionnaires, submissions of unverified medical records, and/or telephone consultations without a medical examination." *Id.* The Show Cause Order alleged that Respondent "failed to establish a valid physician-patient relationship" as required by various state laws and that in issuing the prescriptions Respondent

violated Federal law because he acted outside of the usual course of professional practice and lacked a legitimate medical purpose. *Id.* at 2 (citing 21 CFR 1306.04(a); other citations omitted). The Show Cause Order further alleged that while Respondent is licensed to practice medicine in Tennessee, he violated multiple state laws because he prescribed controlled substances to residents of States where he is not licensed to practice medicine. *Id.* (citations omitted). Finally, the Show Cause Order alleged that Respondent violated Tennessee law by prescribing phentermine, a schedule IV controlled substance, to members of his immediate family. *Id.* (citing Tenn. Code Ann. §§ 63-6-214(b)(1), (4) and (12)).

Respondent requested a hearing on the allegations and the matter was placed on the docket of the Office of Administrative Law Judges. ALJ Ex. 2. Thereafter, an Administrative Law Judge (ALJ) conducted a hearing on August 30 and 31, 2011, in Nashville, Tennessee. ALJ Recommended Decision (hereinafter, also ALJ), at 4. At the hearing, the Government elicited testimony from several witnesses and submitted various documents into the record; Respondent testified in his own defense and submitted his resumé for the record. Following the hearing, both parties filed briefs containing their proposed findings of fact, conclusions of law, and argument.

On November 3, 2011, the ALJ issued his recommended decision. Therein, the ALJ rejected the Government's allegations that Respondent had prescribed controlled substances over the internet to numerous persons who were not Tennessee residents, finding credible Respondent's testimony that he did not issue any of the prescriptions (and that the prescriptions were forged) and that the Government's contrary evidence was unsubstantiated hearsay. ALJ at 37-38. While there was also evidence that Respondent had issued prescriptions over the internet and without performing physical examinations, the ALJ found credible Respondent's testimony that he did so pursuant to an arrangement in which he was acting "as an on-call covering physician" for patients who needed a prescription refill when their doctor was unavailable. *Id.* at 39. The ALJ further found that the Government had failed to show that Respondent was required to perform a physical examination to prescribe to Tennessee residents, finding credible Respondent's testimony that "he did not give new diagnoses to the patients"; that he "only provided refills" and "did not prescribe new

medications"; and that "he only issued prescription refills after he conducted the telephone consultations with the patient, reviewed the patient's medical file and verified that the patient's primary care physician was unavailable to see the patient." *Id.*

The ALJ further found that Respondent had prescribed phentermine to family members, including his sister, wife and mother-in-law. *Id.* at 41. However, the ALJ also found credible Respondent's testimony that upon being confronted by a pharmacist that it was unlawful to prescribe to family members, he stopped doing so. *Id.* The ALJ also found that Respondent had provided a UPS box as the address of his registered location even though at the time he was practicing medicine at several physical locations and that this was a violation of 21 U.S.C. 822(e). *Id.* at 41-42.

Finally, the ALJ found that Respondent had fully accepted responsibility for his misconduct and demonstrated that he will not engage in future misconduct. The ALJ thus concluded that while the Government had established "a *prima facie* case that Respondent has committed acts inconsistent with the public interest by unlawfully prescribing controlled substances to immediate family members and by failing to maintain a proper registered practice location," he had rebutted the Government's *prima facie* case. *Id.* at 44.

The Government filed exceptions to the ALJ's recommended decision. Thereafter, the record was forwarded to me for final agency actions.

Having considered the entire record and the Government's Exceptions, I adopt the ALJ's findings that the Government proved that Respondent unlawfully prescribed a controlled substance to a family member and failed to update his registered location with the Agency. I also adopt the ALJ's finding that the Government did not prove that Respondent violated the CSA's prescription requirement by prescribing controlled substances through the Internet to Tennessee residents because it did not establish that his conduct violated the State's regulation. However, for reasons explained below, I reject the ALJ's finding that the Government did not prove that Respondent improperly prescribed controlled substances without a valid doctor-patient relationship to persons who were not residents of Tennessee. Moreover, even were I to adopt the ALJ's finding that Respondent did not issue or authorize the issuance of the out-of-state prescriptions, under agency precedent—

which was ignored by the ALJ—Respondent was nonetheless liable for them because he provided his registration number to Secure Telemed's employees and failed to exercise any supervision over their use of his registration. I further reject the ALJ's finding that Respondent has rebutted the Government's *prima facie* showing that his continued registrations would be inconsistent with the public interest.

Findings of Fact

Respondent is the holder of a DEA Certificate of Registration, which authorizes him to dispense controlled substances in schedules II through V as a practitioner. GX 1. Respondent's registration was due to expire on June 30, 2009. *Id.* However, on June 16, 2009, Respondent submitted a renewal application. GX 2. Accordingly, Respondent's registration remains active pending the issuance of this Decision and Final Order. 5 U.S.C. 558(c).

The Investigation of Respondent

Respondent came to the attention of the Agency in the spring of 2008, when DEA Investigators in Nashville, Tennessee started receiving complaints from other DEA offices, as well as pharmacies throughout the country, that the pharmacies were receiving prescriptions issued by Respondent which appeared to be suspicious. Tr. 115-16. Investigators eventually determined that the prescriptions were being issued through an internet scheme known as Telemed Ventures.¹ *Id.* at 117.

Under the scheme, persons would go online and fill out a questionnaire, providing their name, address phone number, as well as their height, weight, and estimated blood pressure. *Id.* According to an Agency Investigator, sometimes patients would fax in their medical records; however, other patients said they did not do so. *Id.* at 119. Patients would then be put in touch with a physician, who would conduct a phone consultation with the patient and issue a prescription. *Id.* Initially, the prescriptions were transmitted either electronically or by fax to a fulfillment pharmacy, which dispensed the medication. *Id.* at 119-20. However, after DEA started cracking down on fulfillment pharmacies, the prescriptions were sent directly to the patients, who took them to their local pharmacies. *Id.* at 120.

During the course of the investigation, DEA Investigators conducted an

¹ The scheme was also known as Secure Telemedicine and Fortune Telemed. Tr. 117. Throughout the hearing, the parties referred to it as "Secure," "Secure Telemed," and "Secure Telemedicine," as does this Decision.

inspection of Contract Pharmacy Services, a pharmacy located in Colorado, which filled prescriptions as part of the Secure Telemed scheme. *Id.* at 121. During the inspection, the pharmacist cooperated with DEA and identified the names of various physicians whose prescriptions he had filled, to include Respondent. *Id.* The pharmacist also provided the Investigators with a spreadsheet of various prescriptions he had filled which were attributed to Respondent. The spreadsheet listed several dozen controlled substance prescriptions for drugs (primarily for schedule III combination drugs of hydrocodone and acetaminophen), which the pharmacy dispensed to persons located in Mississippi and South Carolina between September 19 and October 30, 2007. *See* GX3.

Using the spreadsheets, the Nashville-based Investigators asked other DEA offices to interview several of the persons who were listed as having had obtained controlled substances in October 2007, from the pharmacy, based on prescriptions issued by Respondent. Tr. 127. Those interviewed included K.S., a resident of Terry, Mississippi, and C.T., a resident of Clinton, Mississippi, to each of whom the pharmacy dispensed a prescription for 90 tablets of hydrocodone/apap 10/500mg; as well as A.L., a resident of Richland, Mississippi, to whom the pharmacy dispensed a prescription for 90 tablets of hydrocodone/apap 10/650mg. GX 3, at 1. Each of the interviews was conducted in the September/October 2009 timeframe. Tr. 73, 77, 81.

A Mississippi-based Investigator testified that she interviewed K.S., who related that she had obtained the prescription from an online pharmacy by filling out a form and that she had faxed her medical records to a Web site. K.S. further stated that she had "received a phone call from someone identifying [him]self as Dr. Dennis, contacting her about her online form." Tr. 73-74. According to the Investigator, K.S. further stated that she had never met Dr. Dennis and had not been physically examined by him. *Id.* at 74. K.S. further stated that she had received the prescriptions by email and fax and that she had filled the prescriptions at a local Walgreens. *Id.* at 75.

The Investigator also interviewed A.L., who also told of filling out an online form through a Web site known as Fortune Telemed and faxing medical record to the Web site. *Id.* at 78-79. A.L. stated that she had "received a phone call from someone stating they were from Dr. Dennis' office," *id.* at 78, and

that she had no personal contact with Respondent. *Id.* at 79. A.L. further stated that she received six to seven prescriptions from Respondent, some of which were filled at a pharmacy in Miami, and some of which she filled at a local Wal-Mart. *Id.* at 80-81.

The Investigator also participated in an interview of C.T., who also related that he had filled out a form at a Web site, faxed his medical records to the Web site, and "received a phone call from someone identifying [himself] as Dr. Dennis." *Id.* at 82. C.T. further stated that he never met Respondent, and that he had received two to three prescriptions from him which he filled at a local Walgreens. *Id.* at 84.

With respect to each of these three persons, the Investigator acknowledged that they did not volunteer Respondent's name and that she had told them that she was investigating a Dr. Dennis. *Id.* at 85. She further acknowledged that none of them would be able to identify Respondent if they testified in court. *Id.* at 87. Moreover, none of the witnesses identified an email address or fax number that was used to send them the prescriptions and the Investigator acknowledged that the prescriptions could have been created by Secure Telemed. *Id.* at 88.

An Investigator from the Columbia, South Carolina DEA office testified that on June 3, 2008, she was contacted by an Inspector from the South Carolina Bureau of Drug Control regarding two prescriptions issued under Respondent's registration (for 60 tablets of Valium and 60 tablets of hydrocodone/apap 10/325mg and dated May 30, 2008), which H.B., a resident of Chapin, South Carolina presented for filling at a local pharmacy. *See* Tr. 94-95; GX 14. According to the DI, the pharmacy had contacted the state inspector because the prescriptions had been issued to a known drug seeker or doctor shopper and had been written by an out-of-state physician. Tr. 95-96. The DI testified that she had spoken with both the pharmacist and a pharmacy technician regarding the prescriptions, and that the pharmacist told her that the pharmacy had a policy of contacting "every out-of-state physician." *Id.* at 97.

According to the DI, the pharmacist had initially attempted to call Respondent using the phone number which was listed on the prescription as Respondent's but was unable to reach him because his mailbox was full. *Id.* at 98. However, the pharmacist looked for another phone number for Respondent and was eventually able to speak with

him and did so on June 2, 2008.² *Id.* at 97.

The DI testified that the pharmacist told her that she asked Respondent if H.B. was his patient and to verify that he had written the prescriptions and the quantities; Respondent told the pharmacist that H.B. was his patient. *Id.* Moreover, the DI further testified that the pharmacist said that Respondent verified that he had written the prescription and the quantity. *Id.* at 99. And according to the DI, Respondent told the pharmacist that he "had a record on H.B." but "had never seen her in person." *Id.* at 98-99. Finally, the pharmacist told the DI that when she questioned Respondent about this, he stated that he had been "assured" by his Medical Director "that prescribing to out-of-state patients was legal in all except two states." *Id.* at 99. The DI further testified that the pharmacy had not filled the prescriptions.³ *Id.* at 96.

The DI further testified that she had compiled a spreadsheet based on data she obtained from the South Carolina Prescription Monitoring Program (PMP) of the prescriptions which were issued by Respondent and filled by South Carolina pharmacies, and that she had noted on the document the distance between the patient's residence and Respondent's location. *Id.* at 105, 109; GX 17. The DI verified the data by contacting all of the pharmacies and asking whether the prescription had been presented and whether it had been filled. Tr. 107-08. She also stated that she had obtained a faxed copy of all of

² One of the prescriptions contains a different handwritten phone number with the same area code as that listed for Respondent's phone number. GX 14, at 2. According to the testimony of the DI, the phone number was on the document at the time she received it from the pharmacy. Tr. 103. The DI did not, however, know "where that number would call." Tr. 103. However, several other prescriptions in the record, which Respondent does not dispute having written, list the same phone number which was handwritten on the prescription issued to H.B. Compare GX 13, at 2-5, with GX 14, at 2. *See also* Tr. 215 (testimony of Nashville-based Investigator identifying phone number as Respondent's phone number at his Lebanon, Tennessee practice).

The DI further testified that she had received copies of the two prescriptions from the pharmacy on June 3, 2008. Tr. 94. Consistent with this testimony, both prescriptions have a fax header indicating that they were faxed from the pharmacy on June 3, 2008. *See* GX 14, at 1-2.

³ In her testimony, the DI stated that she had interviewed the pharmacist the week before the hearing. Tr. 99 & 103. The record does not, however, clearly establish that the statements attributed to Respondent were also related by the pharmacist to the DI in June 2008, after the DI had received the report from the State and contacted the pharmacy to obtain the prescriptions. *See generally* Tr. 93-103. Nor, with respect to the pharmacist's August 2011 statements, did the Government put on any evidence tending to show that the pharmacist had an accurate recollection of the 2008 incident and her phone conversation.

the prescriptions and that "[o]n many of them, "there is a notation written on them from the pharmacists that were working that day that they were verified with Kevin Dennis." *Id.* at 111. The spreadsheet documents more than seventy controlled-substance prescriptions, nearly all of which were for hydrocodone, which were issued under Respondent's DEA registration and which were dispensed between January 2 and July 18, 2008. Consistent with the DI's testimony, the spreadsheet does not list the two prescriptions for H.B. as having been filled.

The Government also introduced into evidence copies of numerous other prescriptions which it alleged Respondent had issued through Telemed, as well as printouts from both the Tennessee and Mississippi prescription drug monitoring programs listing prescriptions which were dispensed and attributed to Respondent. GX 5 & 6. These included multiple prescriptions for 90 tablets of hydrocodone/apap 10/325 issued to K.P. of Fort Mill, South Carolina on December 13, 2007, as well as January 7, February 4, March 3, April 4, April 30, and May 23, 2008. GX 15, at 9–16. Each of the prescriptions included Respondent's cell-phone number, *id.*, and the January 7 prescription bears the handwritten notation: "these are valid per Dr. Dennis" along with his DEA number.⁴ *See id.* at 10. Regarding this note, an Agency Intelligence Research Specialist, who obtained the prescriptions from the dispensing pharmacy, testified that she was told that the note was made "by the actual pharmacist after calling and confirming whether the prescription was valid or not." Tr. 59. The Research Specialist testified that she obtained these prescriptions from a K-Mart Pharmacy in North Carolina. Tr. 40.

These included multiple prescriptions for hydrocodone/apap 10/500mg. issued to patient E.F., who resided in the same town (Franklin, Tennessee) where Respondent practiced. GX12. According to the Government's lead Investigator, a local pharmacist had found the prescriptions to be suspicious⁵ and contacted a state drug task force because

they contained a reference number and bar code and had been faxed into the pharmacy. Tr. 166.

The prescriptions were dated April 4, May 7, June 11, and July 10, 2008. GX 12. While the first three prescriptions contain the notation "filled" with a date, the latter prescription bears the notation "refused to fill 7/16 called Doctor & patient" and was marked with an x across the face of the prescription. *Id.* According to the Investigator, this note was written by the pharmacist. Tr. 167.

In addition, a report from the Tennessee PMP lists several other hydrocodone prescriptions which were dispensed by Tennessee pharmacies to E.F. pursuant to prescriptions attributed to Respondent; these include prescriptions which were dispensed on November 13 and December 11, 2007; January 29, and February 28, and August 4, 2008.⁶ *See* GX 6, at 9. Notably, the PMP report does not list a dispensing as having occurred in July 2008. *See id.*

The DI further testified that in August 2008, after obtaining the prescriptions, he had contacted E.F. seeking to interview her. Tr. 170. The Investigator explained to E.F. that he had determined "that she was obtaining medications over the internet." *Id.* While E.F. initially offered to call the Investigator back to arrange for an interview, she ultimately became "very hard to get a hold of." *Id.* About a year later, the Investigator went to her house and found her. *Id.* at 171. E.F. eventually agreed to an interview which was conducted at her house. *Id.* at 172.

During the interview, E.F. stated that she had a long history of migraine headaches and admitted that sometime in late 2007, she had gone online and started ordering medications through a Web site which she referred to as "Telemed something." *Id.* She further stated that she had sent in medical records from both her primary care physician and neurologist and that after calling a 1–800 number for the Web site, she was told that she would be called by a physician. *Id.*

E.F. stated that she then received a phone call from a person who identified himself as Kevin Dennis and that she generally talked with Respondent whenever she needed a prescription. *Id.* at 173. E.F. further stated that she had asked Respondent if she needed to be seen by him, and that Respondent stated that he did not need to see her as long as he was reviewing her medical records

and talking to her on the phone. *Id.* at 174.

The DI also testified that a state investigator had provided him with a copy of the medical record E.F.'s primary care doctor maintained on her. *Id.* at 203. Upon reviewing the file, the Investigator found that there was no documentation that she was being prescribed controlled substances by another physician. *Id.* at 203–04; *see also* GX 22. Nor is there any evidence in the file of Respondent's having contacted E.F.'s primary care doctor. *See* GX 22.

The DI further testified that he had spoken with E.F.'s primary care doctor (Dr. B.) and asked him whether he had ever contracted with an organization to provide cross-coverage for his patients. Tr. 205. Dr. B. explained that because there are "numerous internal medicine physicians" at his practice, there would be no need to have a physician outside the practice cover for him. *Id.* Finally, Dr. B. said that he had never heard of Respondent. *Id.*

The Investigator also interviewed S.W., a Nashville resident, who according to the Tennessee PMP report, obtained prescriptions for hydrocodone and phentermine which were filled under Respondent's DEA registration. Tr. 135; GX 6, at 27. According to the PMP report, on December 17, 2007, as well as January 15 and February 14, 2008, Respondent issued to S.W. prescriptions for both 90 tablets of hydrocodone/apap 10/325 and thirty tablets of phentermine 30mg. GX 6, at 27. According to the Investigator, although S.W. acknowledged having ordered hydrocodone through Telemed she could not remember the name of the prescribing physician. Tr. 135, 164. However, the Investigator was eventually able to identify Respondent as the prescribing physician. *Id.* at 164.

During an interview, S.W. stated that she ordered drugs over the internet and had been doing so "for years" because it was "easier to get" some of the medications she wanted such as "diet pills" as "her primary care physician really didn't want to prescribe the type of things she wanted." *Id.* at 163–65. S.W. further stated that she never had a physical exam and never met the physician. *Id.* at 164. She also stated that she filled the prescriptions at a local Wal-Mart. *Id.*

S.W. provided the Investigator with the name of her primary care physician (Dr. H.). *Id.* at 165. Subsequently, the Investigator interviewed Dr. H. and asked him whether he would contract with an organization outside of his practice to provide on-call or cross-coverage for his patients. *Id.* at 207. Dr.

⁴ This exhibit also includes copies of prescriptions issued for Naproxen which were issued on the same dates as the hydrocodone ones were. *See* GX 15, at 1–8.

⁵ According to the DI, the circumstances which raised the pharmacist's suspicion included that the prescriptions contained a reference number, a box with a bar code, and had been faxed into the pharmacy. Tr. 166. The DI testified that the reference number was "a way for Telemed to keep track of the prescription [it] sent." *Id.* at 253. Numerous prescriptions in the record contain these hallmarks.

⁶ The PMP report shows that E.F. filled her prescriptions at three different pharmacies.

H. explained that this would not occur because there were other physicians in his practice who covered for him if he was not available. *Id.* In addition, Dr. H. stated that he had never heard of Secure Telemedicine or any other organizations with a similar name. *Id.* at 207–08. Nor had Dr. H. ever heard of Respondent. *Id.* at 208.

During the investigation, the Government also found evidence that Respondent was prescribing controlled substances, specifically phentermine 37.5mg, to family members including his wife, sister, and mother-in-law. See GX 19, at 12–13, 17, 19, 21–23 (Rxs issued to wife); GX 20, at 2–6, 10–13 (Rxs issued to sister); GX 21, at 2, 4–10 (Rxs issued to mother-in-law); Tr. 175–79, 181–82, 201. The DI further stated that upon going to a Sam's Club Pharmacy in Franklin, Tennessee to retrieve the prescriptions which Respondent's wife and sister had filled there, the Pharmacy Manager related a 2009 incident in which he had challenged Respondent's wife and sister about the prescriptions. Tr. 185. According to the Pharmacy Manager, Respondent's wife and sister had filled prescriptions for diet pills at the pharmacy on several previous occasions and he had "always assumed that they were sisters." *Id.* However, upon reviewing the prescriptions, the Pharmacy Manager had "put two and two together" and concluded that one of the women "might be" Respondent's wife. *Id.*

When the women returned to pick up their prescriptions, the Pharmacy Manager confronted them, telling them that it was against state law and Medical Board policy for a physician to prescribe to a family member. *Id.* Respondent's wife became agitated and said that she would just "go get the doctor and we'll clear this up." *Id.* at 186. The women left and later returned with Respondent. The Pharmacy Manager, who declined to fill the prescriptions, explained the situation to Respondent, who stated that "he understood and left without incident." *Id.*

On June 26, 2009, Respondent went to the Nashville DEA office to discuss with the Investigator and his Supervisor why the Agency had not renewed his registration. *Id.* at 189, 421. After being advised of his right to remain silent and that he was not under arrest, Respondent was informed that DEA was investigating him for prescribing controlled substances to persons in other States and with whom he did not establish a legitimate doctor-patient relationship. *Id.* at 190; see also *id.* at 422 (testimony of Supervisory Investigator: "I advised him that DEA

was conducting an investigation of information we had received that he had been involved in issuing prescriptions to persons that he had never met, nor ever examined in other states and that it appeared that would be without a legitimate medical purpose, and that was the reason we were conducting the investigation. . . .").

Respondent stated that he "kind of knew what this was about" and pulled out of his pocket, "some sort of employment document with Secure Telemedicine." *Id.* at 190. However, the DI did not make a copy of the document. *Id.* at 357. According to Respondent, the document "was actually a liability form" that had the "name of [the] company, their malpractice insurance carrier, along with the name of seven other doctors," *id.* at 356, as well as the dates of its insurance policy. *Id.* at 358.

Respondent then volunteered that he quit working for Secure Telemedicine after receiving a phone call from a pharmacy in South Carolina questioning one of his prescriptions and after the entity's Medical Director "could not provide verification that he could do this legally in other states." *Id.* at 194; see also *id.* at 197 (testimony that Respondent "indicated that he left Secure Telemedicine because he didn't feel like it was the ethical thing to do and that they couldn't provide him the legal documentation to make him feel comfortable to continue working for them"); *id.* at 425 (Supervisory Investigator's testimony to same effect). Moreover, according to both Investigators, Respondent stated that he was surprised to receive the phone call from the South Carolina pharmacy because "it was his understanding that all these prescriptions went to a fulfillment [or clearinghouse] pharmacy." *Id.* at 198; see also *id.* at 424. According to the Investigator, Respondent never denied that he had issued prescriptions to out-of-state persons during the interview and said he had worked for Secure Telemed from "around November [20]07 through March 2008." *Id.* at 195. However, in his testimony, Respondent denied ever having told the Investigators that he had issued prescriptions to out-of-state persons and asserted that he told them that he had limited his internet prescribing to Tennessee residents. Specifically, Respondent testified that:

I communicated to the investigators at that time that I was a Tennessee-licensed physician and that I was not authorized, and I was only notified by the South Carolina pharmacist that a prescription arrived in South Carolina. I did not communicate to the investigators that I had "prescribed or

dispensed medications outside the State of Tennessee."

Id. at 396. According to Respondent, when he was confronted by an Investigator as to whether he had issued internet prescriptions for out-of-state patients, he stated that he did not "know of any online pharmacy activities," and added: "I don't know if it's an online pharmacy or not, but I've been associated with Secure Telemedicine. I've been an On-Call Coverage Consultant for that organization for a period of time." *Id.* at 397. Respondent again maintained that he told the Investigator that he "did not give Secure Telemedicine authorization to dispense or prescribe medications outside the State of Tennessee. I did not give them that authorization," *id.* at 398, and that at the time of the interview, he was unaware that any other prescription (beside the one that he was called about by the South Carolina pharmacist) had been issued to non-Tennessee residents using his DEA registration. *Id.* at 403.

According to the Investigator, Respondent further stated that "[i]t was his understanding that all these prescriptions went to a fulfillment [or clearinghouse] pharmacy. So, when he received a call directly from a pharmacy in South Carolina, it took him by surprise." *Id.* at 198. See also *id.* at 424 (testimony of Supervisory Investigator who also attended the interview: "he said that he had been contacted by a pharmacist from South Carolina concerning one of his prescriptions and questioning that prescription and that he was surprised because he thought that all his prescriptions went through a clearinghouse pharmacy").

Respondent also stated that at the time he worked for Secure Telemedicine, he worked in an emergency room and had a practice in Lebanon and that he sent out his resume' online to "find some locum tenens work" to supplement his income. *Id.* at 195–96; 296. Respondent admitted that he never saw the patients to whom he prescribed and did not conduct physical examinations. *Id.* at 196. Rather, he would review a patient's record online and conduct a telephonic consultation with the patients before issuing a prescription; he further admitted that he prescribed such controlled substances as hydrocodone, Norco (a branded hydrocodone drug), and Xanax, as well as such non-controlled drugs as naproxen and ibuprofen. *Id.* at 196.

Respondent testified on his own behalf. Regarding his work for Secure Telemedicine, Respondent testified that he became aware of Secure Telemed

through "a web search for locum tenens work" and that he did not interview "face-to-face" with them and had never been to its office, which he understood to be located in Miami; rather, he interviewed by phone. *Id.* at 295–97. Respondent nonetheless entered into an agreement with Secure towards the end of September 2007. *Id.* at 298.

Respondent maintained that he "was to become an on-call covering physician, considered under [Secure Telemedicine's] Consult-A-Doc program" and that he would provide shift coverage on an eight-hour basis. *Id.* According to Respondent, he "would inform the company of the shifts that [he was] available in advance such that [he] would be available to cover on-call for physicians after hours or when a physician is just unavailable to be able to manage the care of their patients." *Id.*

Respondent further asserted that under the Consult-A-Doc program, patients would call into Secure Telemedicine, and that he would be notified through what was "called a dashboard" that a patient was seeking a consultation, and that he could either accept or decline the call. *Id.* at 299. Respondent maintained that if he accepted the call, his activities were limited to triaging a patient call in non-emergency situations and that if a patient's situation involved an emergency, he would direct the patient to go to the emergency room or an urgent care center. *Id.* at 299–300.

Respondent asserted that he would "never give a new diagnosis" to "any patient" and that upon completion of the call, he would update the patient's record in the electronic medical records system (EMR). *Id.* at 300. Respondent maintained that "if the patient requested and they were talking in a way such that they had a chronic ailment, such as a pain ailment," the patient was placed back in the queue because "there had to be verification of their records." *Id.* at 301. Respondent then asserted that he would then "[c]all the patient's primary care doctor, the doctor that's prescribing the medication, talk to that office, find out information about that office and find out about their unavailability." *Id.*; see also *id.* at 303.

Respondent maintained that "[s]ome doctors who are in private practice,

mostly private practice, a lot of them don't have call coverage or they have problems finding physicians with call coverage." *Id.* Respondent then added that while working for Secure Telemedicine, he "really didn't have any contact" with any group practice where "they communicate to me that this program was part of them." *Id.*

Respondent asserted that with respect to solo practitioners, "if the office staff stated that Doctor ABC was actually on vacation and he will not be back for at least five days but be back next week, that extended period of time then qualified the patient for that particular medication after reviewing the records with the staff." *Id.* at 302. Respondent stated that he would never initiate a new medication for a patient and that he would "always make sure that the doctor [was] truly unavailable" before prescribing a controlled substance. *Id.*

Respondent further testified that he only accepted on-call coverage for Tennessee physicians, and that he only consulted with the patients of Tennessee physicians. *Id.* at 303. He then explained that upon determining that a hydrocodone prescription needed to be refilled, he would update the EMR to note that he had reviewed the patient's record, that he had contacted the office of the patient's physician and determined that the "physician was not available to this patient" and that he would then push a button on a computer to send this information to Telemed, which would prepare the prescription. *Id.* at 304. In his testimony, Respondent emphasized that he did not actually prepare or sign the prescriptions. *Id.*; see also *id.* at 414. He also stated that he did not keep any records of his prescribing activities for Telemed, *id.* at 305, because they were the property of Secure Telemedicine. *Id.* at 384.

When asked to square his failure to retain patient files for those to whom he prescribed with his obligation as a physician to maintain a patient record, Respondent testified that:

I was not the [primary care physician]. I was only the on-call covering physician; therefore, it's not my responsibility at that time to have or operate in a fashion as though I am that patient's primary doctor. I was only an on-call covering physician.

Id. at 385.

Moreover, he did not forward a copy of the prescriptions he wrote to the patient's primary care physician claiming that this was the responsibility of Secure Telemedicine. *Id.* at 384. Asked by the Government whether he ever communicated with the patient's primary care physician regarding

prescriptions he had written Respondent maintained that the information was in the electronic medical record and was sent through Secure Telemedicine. *Id.* at 388. And when asked whether he had ever verified with someone at Secure Telemedicine that it had notified a patient's primary care physician regarding his having written a prescription, Respondent replied: "I don't know of any instance where they did not. I was not told that information and I did not question that particular—I did not pose that question to them." *Id.* at 389. Strangely, Respondent acknowledged that he did not remember having ever been called by the primary care physician of a patient he had prescribed to through Secure Telemed, notwithstanding that his name would have been on the consult note. *Id.* at 408–09.

Regarding his decision to terminate his arrangement with Secure Telemedicine, Respondent testified that on about April 4, 2008, he received a phone call from a South Carolina pharmacist, who he asserted was "a male pharmacist," Tr. 364, questioning a prescription that had his DEA number and information on it. *Id.* at 308. Respondent asserted that he "was not aware that [he] had written prescriptions for any patients outside the State of Tennessee" and that he "asked the pharmacist to not fill that prescription" and to send him a copy of it. *Id.*; see also *id.* at 368 ("I communicated with him [the pharmacist] that I was unaware that there was any patient I've ever prescribed any medication for or wrote a prescription for in the State of South Carolina."). According to Respondent, the pharmacist agreed not to fill the prescription. *Id.* at 308. Respondent did not, however, recall the name of the pharmacy or the city it was located in. *Id.* at 369. Moreover, Respondent did not notify DEA that his registration had been used to issue the prescription. *Id.* at 371, 374.

Respondent testified that "the same day," he contacted Secure Telemed's Medical Director, and asked him "how is it that a prescription . . . has gotten outside the State of Tennessee to a patient in South Carolina?" and said that he had "never approved anything like that." *Id.* at 308. Continuing, Respondent testified that he asked Secure Telemed's Medical Director:

Can you give me some legalities or something in writing showing that, you know, this isn't happening or how is it happening? What are the laws concerning a doctor in Tennessee having the right to have

⁷ In his letter requesting a hearing, Respondent asserted that "Secure contracted with primary care physicians in Tennessee and other jurisdictions to provide coverage by other licensed physician in their respective jurisdictions when the primary care physician was unavailable to attend to the needs of their established patients for ongoing conditions." ALJ Ex. 2. However, at the hearing, Respondent produced no evidence to support the assertion that Tennessee physicians contracted with Secure.

a prescription written to a patient in any state outside of Tennessee?

I was very upset by that conversation, that this actually occurred, but I said I wanted to see a copy of it. I really wanted to see one, because I really hadn't seen any, because I hadn't produced any. I didn't know what they looked like.

And he stated he would get back with me, he would call me, he would investigate and research this, and he would provide some documents to me that protected me and protected the company pertaining to any Tennessee physician if they were to prescribe outside the State. I never received those documents from [him], and I discontinued providing any service for them probably within two weeks.

Id. at 308–09.

Respondent further acknowledged that he had provided Secure Telemedicine with his DEA registration number, as well as other documents, which had his signature on them. *Id.* at 310. He then expressly denied having told DEA Investigators that the reason he quit Secure Telemed was because they could not justify his continued prescribing of medications to out-of-state patients. *Id.* at 310–11. Rather, he reiterated that the reasons he quit Secure Telemed were for the reasons explained in the block-quote above. *Id.* at 311. Respondent did not, however, create any written correspondence documenting his decision to terminate his relationship with Secure Telemedicine. *Id.* at 375–77.

Respondent then denied having prescribed for “anybody other than patients that were treated by Tennessee physicians [that he was] on call for.” *Id.* at 311. And when questioned by his counsel if “the one [prescription] in South Carolina, that’s the first you heard about it?,” Respondent replied “[t]hat is correct,” then added: “And I had never seen a prescription as well.” *Id.* Respondent then maintained that he had never seen any of the prescriptions until the Government provided them following the initiation of this proceeding. *Id.*

After denying that he ever took a call from a patient that lived in South Carolina, Colorado or Washington State, *id.* at 305, Respondent then proceeded to deny having issued all but one all of the prescriptions for out-of-state patients.⁸ *Id.* at 312–23 (denying issuance of prescriptions in GXs 3, 5, 8, 9, 10 11); *id.* at 324–30 (denying issuance of prescriptions in GXs 12, 14); *id.* at 336–41 (denying issuance of prescriptions in GXs 16, 17, and 18).

⁸ The only exception was for a prescription contained in GX 7. According to Respondent, although the patient provided a Colorado address, she was in the music business and had been a patient in Respondent’s Tennessee practice. Tr. 314.

Moreover, he further denied having authorized Telemed to issue the various prescriptions. *Id.*

Regarding the hydrocodone prescriptions issued to E.F. (GX 12), who resided in Franklin, Tennessee, and which included a July 10, 2008 prescription with the notation that the pharmacist had “Refused to fill, 7/16, called doctor and patient,” Respondent acknowledged that “[i]t’s possible” he received a call about the prescription and that at the time, he was working in the ER and was “quite busy.” Tr. 324–25. Respondent testified that he “tend[s] not to answer calls because of the nature of the hospital” and added that “[i]t’s always possible that I could have received a call, and I could have answered this and spoken to this pharmacist, and told them not to fill the prescriptions.” *Id.* at 325. However, Respondent did not have a “positive recollection” of the incident. *Id.*

Respondent then denied having issued, as well as having authorized anyone to issue, each of the prescriptions that E.F. obtained through Secure Telemed. *Id.* Respondent added that during the interview with DEA Investigators, he had told them that the only time he received a call regarding a prescription was for the call that came from the South Carolina pharmacist. *Id.* at 326; *see also id.* at 363 (acknowledging that it is “always possible” that he received a phone call from a pharmacist about E.F. but stating that he did not “have any recollection, and I’ve never seen this patient, I’ve never talked to this patient.”); *id.* at 367. Later, on redirect examination, Respondent testified that he would not have issued prescriptions through the internet to E.F. because “[m]y office was available within a proximity where this patient can come right to my office so I can examine them physically. I can see what’s going on with the medical conditions” and “I would have no need to do this.” *Id.* at 404.

Regarding the May 30, 2008 prescriptions for hydrocodone and valium issued to H.B. of Chapin, South Carolina, and which were presented to the Chapin Pharmacy, Respondent denied writing them or issuing them in any way. Tr. 330. He also denied authorizing them “in any way.” *Id.*

Respondent also denied writing, authorizing, or otherwise causing the issuance of the numerous hydrocodone prescriptions issued to K.P., of Fort Mill, South Carolina. *Id.* at 333–34. As found above, a January 7, 2008 prescription bears the handwritten notation: “These are valid per Dr. Dennis” along with his DEA registration number. GX 15, at 10. Respondent

nonetheless denied having authorized or validated the prescription. Tr. 333–34. Moreover, on cross-examination, he denied having received any other phone calls from any pharmacists about prescriptions other than the phone call he claimed to have received from a South Carolina pharmacist in April 2008. *Id.* at 364. And when asked if he knew how the notation got on the prescription, Respondent testified:

I have no idea how the notation arrived there, but it doesn’t appear to be a pharmacist. By pharmacy rule of law, any notation written on a prescription must contain their initials and it must contain the date of that communication and/or alteration of the prescription. By pharmacy law they must do this. This one does not contain any initials by a pharmacist, does not contain a date.

Id. at 334.

Respondent did not, however, cite to any specific provision of North Carolina law or the Pharmacy Board regulations in either his testimony or his brief, which requires that such a notation that a prescription has been verified must be initialed and dated. And even if the prescription should have been initialed and/or dated, given that Respondent has “no idea how the notation arrived” on the prescription, I find that the testimony of the Agency Intelligence Research Specialist, who obtained the prescription, that the note was made by “the actual pharmacist after calling and confirming whether the prescription was valid” to constitute substantial evidence that the note was made by the pharmacist, and consistent with pharmacy practice, was likely done so by the pharmacist in the process of reviewing the prescription and determining whether to fill it.⁹

Respondent further denied having issued any of the prescriptions listed on the spreadsheet of prescriptions which an Agency Investigator had compiled from the South Carolina PMP report. Tr. 339–40. Moreover, on cross-examination, the Government showed Respondent the printout from the Tennessee PMP (GX 6) showing the controlled substance prescriptions dispensed pursuant to prescriptions issued under his DEA registration and asked him to identify the patients he had prescribed to through Secure Telemedicine. *Id.* at 392. While a recess was then taken to allow Respondent to

⁹ Respondent’s counsel also attempted to call into question the notation by observing that it used “the plural ‘these’” and Respondent testified that he did not “know what ‘these’ mean.” Tr. 334. However, as found above, the record also includes a copy of a Naproxen prescription which was issued on the same date as the hydrocodone prescriptions which bears the notation. *See* GX 15, at 2. Thus, K.P. had been provided with two prescriptions.

review the exhibit, upon the reconvening of the hearing, Respondent was "unable to identify any of those patients." *Id.* at 394.

Finally, Respondent asserted that the patients he prescribed to through Secure Telemedicine were essentially one-time patients. As he testified, "The patients that I saw on this on-call coverage, the ones that I actually communicated with from what my recollection is was a one-time call, because the patients had a doctor and I would not be responsible and I would not rewrite something for them. So I didn't expect to even see that patient or communicate with that patient again at any given time." *Id.* at 406. See also *id.* at 386 (testifying that "[t]he patient needed to see their own doctor and be seen by their primary care doctor. If I were to take on the responsibility to prescribe medication on a monthly basis, then I'm taking over the patient's primary care doctor's responsibility.").

Thus, other than the phentermine prescription he had issued for his former patient who had moved to Colorado, see GX 7, the only prescriptions in the record which Respondent admitted to issuing were the phentermine prescriptions for his wife, sister, and mother-in-law. Tr. 343-47. While Respondent questioned whether his mother-in-law came within the State's prohibition on prescribing to an immediate family member, he nonetheless ceased prescribing to her (as well as his wife and sister). *Id.* 347-48. He further testified that he understood the gravity of this situation. *Id.* at 348.

As for his internet prescribing, Respondent testified that he "will never get involved with any entity that even looked similarly as though they were doing business in any sort on the internet, ever." *Id.* at 349. He further stated that he had made mistakes, that the mistakes were apparent and clear, that he has learned from his mistakes and took responsibility for them. *Id.* Continuing, Respondent stated:

I in no way or form intended or willfully, knowingly participated in any situation that placed me or placed patients in particular at risk. I just didn't do that. I've learned today, throughout this whole process yesterday and today and throughout this whole investigation that you can't do these things. You have to be more diligent, you have to do some research, stay with those credible organizations like I'm currently with now * * * organizations where you can truly see how you're benefitting patients the right way with your gift of medicine.

* * * * *

More important than a DEA number is my name, my name, my credibility. My parents gave me that name and it's hard to see myself

being so stupid to have participated with a company that misused and used me.

Id. at 349-50.

The Government's Exceptions

As discussed above, the ALJ found Respondent fully credible on all of the material issues including his testimony that he did not issue or authorize the issuance of the prescriptions to persons who resided outside of Tennessee and that his prescribing activities were limited to providing on-call services for Tennessee physicians. ALJ at 32-39. The Government takes exception to these findings. More specifically, the Government argues that the ALJ failed to give proper weight to the inculpatory statements Respondent made during the June 2009 interview with DEA Investigators. Exceptions at 5-7. The Government also takes exception to the ALJ's finding that the Secure Telemed prescriptions were issued without his knowledge or consent and argues that the ALJ ignored other evidence of record, including the statements of the South Carolina pharmacist regarding her June 2008 phone call to Respondent regarding the prescriptions issued to H.B., evidence showing that Respondent was called about a prescription for K.P., who was a South Carolina resident and verified the prescription, the phone number evidence, and the fact that Respondent never reported the misuse of registration. *Id.* at 7-19.

Discussion

Section 304(a) of the Controlled Substances Act (CSA) provides that a registration to "dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4) (emphasis added). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

- (1) The recommendation of the appropriate State licensing board or professional disciplinary authority.
- (2) The applicant's experience in dispensing . . . controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health and safety.

Id. § 823(f).

"[T]hese factors are . . . considered in the disjunctive." *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). It is well settled that I "may rely on any one or a combination of factors and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked." *Id.*; see also *MacKay v. DEA*, 664 F.3d 808, 816 (10th Cir. 2010); *Volkman v. DEA*, 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I "need not make explicit findings as to each one." *MacKay*, 664 F.3d at 816 (quoting *Volkman*, 567 F.3d at 222 (quoting *Hoxie*, 419 F.3d at 482)).¹⁰

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for revocation or suspension pursuant to 21 U.S.C. 824(a) are met. 21 CFR 1301.44(e). However, "once the [G]overnment establishes a prima facie case showing a practitioner has committed acts which render his registration inconsistent with the public interest, the burden shifts to the practitioner to show why his continued registration would be consistent with the public interest." *MacKay*, 664 F.3d at 817 (citing *Medicine Shoppe-Jonesborough*, 73 FR 364, 387 (2008) (citing cases)).

In this matter, it is undisputed that Respondent retains an active Tennessee Medical License (factor one) and that he has not been convicted of an offense related to the manufacture, distribution, or dispensing of a controlled substance (factor three). However, while I adopt the ALJ's findings of fact and legal conclusions that neither factor one (the recommendation of the state licensing board), nor factor three (Respondent's conviction record under laws related to the manufacture, distribution or dispensing of controlled substances), supports the revocation of Respondent's registration, it has long been settled that neither factor is dispositive. See *MacKay*, 664 F.3d at 817; see also *Jayam Krishna-Iyer*, 74 FR 459, 461 (2009); *Edmund Chein*, 72 FR 6580, 6593 n.22 (2007), *pet. for rev. denied* 533 F.3d 828 (DC Cir. 2008); *Mortimer B. Levin*, 55 FR 8209, 8210 (1990). Rather, the primary focus of this proceeding is whether, as

¹⁰In short, this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct. *Jayam Krishna-Iyer*, 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay*, 664 F.3d at 821.

alleged by the Government, Respondent violated the CSA's prescription requirement, 21 CFR 1306.04(a), as well as the laws of several States, by issuing prescriptions to patients he did not physically examine and with whom he did not establish a legitimate doctor-patient relationship, as well as by engaging in the unauthorized practice of medicine by prescribing to residents of States where he was not authorized to practice medicine. Gov. Br. at 23–24 (citations omitted). In addition, the Government alleges that Respondent violated Tennessee law when he issued phentermine prescriptions to his wife, sister, and mother-in-law. *Id.* at 24–25 (citing Tenn. Code Ann. §§ 63–6–214(b)(1), (4) and (12)).

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

Under a longstanding DEA regulation, a prescription for a controlled substance is not "effective" unless it is "issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR 1306.04(a). This regulation further provides that "[a]n order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances." *Id.*

As the Supreme Court recently explained, "the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Gonzalez v. Oregon*, 546 U.S. 243, 274 (2006) (citing *United States v. Moore*, 423 U.S. 122, 135 (1975)).

"Under the CSA, it is fundamental that a practitioner must establish a bonafide doctor-patient relationship in order to act 'in the usual course of . . . professional practice' and to issue a prescription for a 'legitimate medical purpose.'" *Joseph Gaudio*, 74 FR 10083, 10090 (2009) (citing *Moore*, 423 U.S. at 141–43). Moreover, at the time of the events at issue here, whether a doctor and patient have established a bona fide doctor-patient relationship under the CSA was generally a question of state law. *Id.*; see also *Kamir Garcés-Mejías*, 72 FR 54931, 54935 (2007); *United*

Prescription Services, Inc., 72 FR 50397, 50407 (2007); *Dispensing and Purchasing Controlled Substances Over the Internet* (DEA Guidance Document), 66 FR 21181, 21182–83 (2001).

"Moreover, '[a] physician who engages in the unauthorized practice of medicine' under state laws 'is not 'a practitioner acting in the usual course of . . . professional practice'" under the CSA." *Gaudio*, 74 FR at 10090 (quoting *United Prescription Services*, 72 FR at 50407). As the Supreme Court explained shortly after the CSA's enactment, "[i]n the case of a physician," the CSA "contemplates that he is authorized by the State to practice medicine and to dispense drugs in connection with his professional practice." *Moore*, 423 U.S. at 140–41. This rule derives from the plain text of the statute which defines the term "practitioner" to mean "a physician . . . licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices . . . to . . . dispense . . . a controlled substance," 21 U.S.C. 802(21), and the term "dispense" to mean "to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner." 21 U.S.C. 802(10). Thus, a controlled-substance prescription issued by a physician who lacks the license or other authority necessary to practice medicine within a State is unlawful under the CSA. See 21 CFR 1306.04(a); cf. 21 CFR 1306.03(a)(1) ("A prescription for a controlled substance may be issued only by an individual practitioner who is . . . [a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession.").

The ALJ rejected all of the Government's contentions regarding Respondent's prescribing for Secure Telemed, apparently crediting his testimony denying having issued, as well as having authorized the issuance, of each of the Secure Telemed prescriptions presented by the Government. ALJ at 37. While the ALJ properly discounted some of the hearsay evidence relied upon by the Government to refute Respondent's denial of having issued the prescriptions, I find that there is sufficient other reliable evidence of record to support the finding that Respondent issued (or approved the issuance of) many of the prescriptions. Indeed, the evidence with respect to how Secure Telemed operated is consistent with what DEA has encountered in numerous other investigations of unlawful internet prescribing rings, and given the absence of any evidence corroborating

Respondent's testimony that he acted as an on-call physician, covering for other Tennessee physicians after hours or when they were unavailable to manage the care of their patients, I conclude that his testimony is so inherently implausible that no reasonable factfinder could find it to be credible.¹¹

As found above, with respect to the prescriptions issued to the three Mississippi residents, the Government elicited the testimony of an Agency Investigator regarding the statements they made during interviews to the effect that, after faxing their medical records to a Web site, they had received phone calls from someone identifying himself as Respondent, and were subsequently prescribed hydrocodone without meeting him and undergoing a physical exam. However, the Investigators conducted these interviews approximately two years after the prescriptions were issued and the Investigator who testified regarding the interviews acknowledged that none of these three persons initially named Respondent and none could identify an email address or fax number that was used to send them the prescriptions. In addition, the Investigator offered no testimony that any of these individuals' statements were reduced to writing and sworn. Thus, by themselves, these statements do not bear sufficient indicia

¹¹ I am mindful of the fact that the ALJ observed the demeanor of the various witnesses and found Respondent's testimony credible. However, as the Supreme Court has explained, "[t]he findings of the examiner are to be considered along with the consistency and inherent probability of [the] testimony." *Universal Camera Corp., v. NLRB*, 340 U.S. 474, 496 (1951). As explained below, Respondent's testimony was contradicted by other evidence and contained numerous material inconsistencies. Cf. *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985) (challenge to district court finding under clearly erroneous standard) ("This is not to suggest that the trial judge may insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it."); *United States v. Lathern*, 665 F.3d 1351, 1354 (DC Cir. 2012).

Of course, the standard applicable in this matter is not the clearly erroneous standard, but rather, whether the Agency's decision is nonetheless supported by substantial evidence on the record as a whole. *Universal Camera*, 340 U.S. at 492 ("The responsibility for decision thus placed on the Board is wholly inconsistent with the notion that it has the power to reverse an examiner's findings only when they are 'clearly erroneous.'"); see also *Chirino v. NTSB*, 849 F.2d 1525, 1530 (DC Cir. 1988) ("In our view, the Board's determination that Chirino's testimony was 'inherently incredible' supplied the requisite basis under the NTSB's applicable rules to overturn the contrary findings of the ALJ.").

of reliability to be considered substantial evidence.

However, this is not the only evidence that supports a finding that Respondent did, notwithstanding his denial, issue prescriptions, through Secure Telemed, to out-of-state residents. As found above, the record contains seven prescriptions for 90 tablets of hydrocodone/apap 10/325 issued to K.P. of Fort Mill, South Carolina, each of which included Respondent's cell-phone number. Most significantly, a January 7, 2008 prescription bears the handwritten notation: "these are valid per Dr. Dennis" along with his DEA number. The testimony establishes that the notation was on the prescription when it was obtained by a DEA Intelligence Analyst, who was told that it was made by the actual pharmacist who called and verified the prescription.¹²

While in his findings of fact, the ALJ found that Respondent "denied ever verifying that he issued the prescriptions to K.P., as indicated by [the] notation," ALJ at 24 (citing Tr. 333-34; GX 15, at 10), in his legal conclusions, the ALJ did not even mention the prescription and its notation, let alone explain why he apparently gave it no weight.¹³ However, I conclude that the notation is consistent with that which a pharmacist would make contemporaneously with having verified a prescription. And I further hold that the notation supports the inference that Respondent did not object to the dispensing of the prescription and that Respondent was engaged in issuing prescriptions through Secure Telemed for persons who resided outside of Tennessee.

The Government also introduced into evidence controlled substance prescriptions for hydrocodone and Valium issued under Respondent's DEA registration to H.B., who was a resident of South Carolina, which were presented to the Chapin Pharmacy in Chapin, South Carolina. Regarding these prescriptions, the Government also elicited the testimony of a DEA Investigator regarding the out-of-court statements made to her by an Inspector for the South Carolina Bureau of Drug

Control and the pharmacist. According to the DI, the State Inspector had contacted her shortly after he was contacted by the pharmacist about the prescriptions, because H.B. was a known doctor-shopper.

As found above, the DI testified that the pharmacist had told her that she attempted to call Respondent because the pharmacy had a policy of contacting "every out-of-state physician," and that when she initially attempted to call him using the phone number on the prescription, she received a message that his mailbox was full. The pharmacist, however, eventually reached Respondent on a different phone number and one of the prescriptions included a hand-written phone number which matches the phone number listed on several of the prescriptions Respondent admittedly issued to family members.

According to the DI, Respondent verified that H.B. was his patient, that he had written the prescription and the quantity. Moreover, Respondent stated that while he had a record on H.B., he admitted that he "had never seen her in person." Respondent then stated that he had been assured by his Medical Director "that prescribing to out-of-state patients was legal in all except two states."

The ALJ found these statement did not constitute substantial evidence, reasoning that the Government had not shown a lack of bias on the part of the pharmacist, that the statements were neither signed nor sworn to, and that there was an absence of evidence "corroborating the substantive content of the hearsay, namely that [the pharmacist] actually spoke with Respondent in or about June 2008." ALJ at 36. While I ultimately agree with the ALJ's conclusion that the statements cannot constitute substantial evidence, I disagree with much of his reasoning.

"[H]earsay may be substantial evidence depending on its truthfulness, reasonableness, and credibility; hearsay statements are highly probative where declarants are disinterested witnesses, statements are essentially consistent, and counsel had access to the statements prior to agency hearing") *Bobo v. United States Dep't of Agric.*, 52 F.3d 1406, 1414 (6th Cir. 1995) (quoting *Hoska v. United States Dep't of the Army*, 677 F.2d 131, 138 (DC Cir. 1982)); *Johnson v. United States*, 628 F.2d 187, 190-191 (DC Cir. 1980). See also *Echostar Comm. Corp. v. FCC*, 292 F.3d 749 (DC Cir. 2002) (hearsay can constitute substantial evidence where there are "satisfactory indicia of reliability" of statements).

Contrary to the ALJ's finding, the evidence shows that the pharmacist was a disinterested witness to the event. While the ALJ reasoned that the issue of bias is not entirely speculative because "[a] pharmacist would generally be motivated to inform DEA of compliance with applicable laws and regulations," ALJ at 35 (citing 21 CFR 1306.04(a)), the ALJ was unconvinced by the Investigator's testimony that the prescriptions were not dispensed. ALJ at 35. As reason for rejecting the Investigator's testimony, the ALJ observed that the prescriptions "bear no . . . objective markings consistent with a rejected prescription" and the absence of a notation on the prescriptions reflecting the substance of the pharmacist's "conversation with Respondent, to include such basic information as time, date, telephone number and signature of the pharmacist." *Id.* at 36.

However, the ALJ ignored the Investigator's testimony that as early as June 3, 2008, she was contacted about the prescriptions by the State Inspector, whom the pharmacist had initially called about the prescriptions. In addition, the ALJ ignored the Investigator's testimony that she contacted the pharmacy and obtained the prescriptions that same day, which is corroborated by the fax header on the prescriptions.

As related by the Investigator, the contents of the pharmacist's conversation with Respondent clearly established that Respondent had failed to perform a physical examination on H.B. and that the two prescriptions lacked a legitimate medical purpose and were issued outside of the usual course of professional practice. See *United States v. Nelson*, 383 F.3d 1227 (10th Cir. 2004). Thus, by relating the phone conversation the pharmacist had with Respondent to the Agency's Investigator, the pharmacist would have exposed herself to criminal (as well as administrative) liability if she had, in fact, filled the prescriptions. Beyond this, unexplained by the ALJ is why a person who had committed a criminal act by filling the prescriptions would then voluntarily (and without solicitation) report themselves to the law enforcers.

Here, the Investigator testified that the prescriptions were not filled. Moreover, the Investigator obtained from the South Carolina PMP a list of the prescriptions which were dispensed by South Carolina pharmacies which were issued under Respondent's registration. The Investigator testified that she then verified the data by obtaining the actual prescriptions from the respective

¹² As found above, K.P. also obtained a Naproxen prescription which was dated January 7, 2008. Thus, the notation's use of the word "these" can be explained by the fact that pharmacist was verifying both prescriptions.

¹³ While at hearing, Respondent contended that the notation did not comply with law and regulations because it was not initialed and dated, he did not cite to any provision of either North Carolina law or the State's Pharmacy Board rules requiring that a pharmacist do this upon verifying a prescription. Nor does his brief cite to any such provision.

pharmacies and prepared a spreadsheet. The spreadsheet does not, however, list any dispensings by the Chapin Pharmacy of prescriptions issued under Respondent's registration, let alone dispensings to this particular person (H.B.).

The ALJ discounted the clear and unequivocal testimony of the Investigator, reasoning that the prescriptions lacked any markings that they had been rejected (such as having been crossed-out), as well as any notations regarding the phone conversation. It is true that sometimes a pharmacist will line-through a prescription, or otherwise may note on it, that she has refused to fill it. However, there is no evidence in this record establishing that where a pharmacist declines to fill a prescription, she is required under either the South Carolina Board of Pharmacy's regulations or the standards of pharmacy practice to either line-through the prescription or make a notation on it. Indeed, given the undisputed evidence that the pharmacist reported the incident to the State authorities contemporaneously with the incident¹⁴ and provided copies of the prescriptions to them at the time of her report, one must wonder why it would then be necessary to line out the prescriptions or document the phone conversation on them.¹⁵

The ALJ further surmised that that it was "uncertain as to which telephone number Ms. Owen used to confirm the prescription, leaving significant doubt as to whether a call was placed to Respondent or someone associated with Telemed." ALJ at 36. In support of this reasoning, the ALJ noted the testimony of the Investigator that the pharmacist was not sure which phone number she had used to reach Respondent. *Id.* The ALJ further explained that he gave "little to no weight to the telephone number written on the bottom of" one of H.B.'s prescriptions, because the DI testified that she did "not know specifically where that number would call." *Id.* at n.41 (quoting Tr. 103).

The ALJ's reasoning is simply a makeweight as only two phone numbers are listed on the prescriptions and there is substantial evidence that both phone numbers were used by Respondent. As for the number that was printed on the prescriptions, it was undisputed that this was either Respondent's (or his

wife's cell-phone) number. And as for the number handwritten at the bottom of one of the prescriptions, notwithstanding the DI's testimony that she did "not know specifically where that number would call," Tr. 103, the record establishes that Respondent used this number on the prescriptions he issued to family members. Given the absence of any other phone numbers on the prescriptions, I am reasonably confident that the pharmacist did, in fact, reach Respondent and not someone at Secure Telemed.

However, there are other reasons why the pharmacist's statements that Respondent verified writing the prescription for H.B. and did not physically examine her cannot be given weight. While the DI testified that she had contacted the pharmacy in June 2008 upon receiving the report from the State Inspector and that she obtained the prescriptions, she offered no testimony that she had interviewed the pharmacist on that occasion, and her testimony suggests that the pharmacist's statements were not made to her until the interview she conducted one week before the hearing, more than three years after the incident. Nor did the DI offer any testimony to support the conclusion that the pharmacist accurately recollected the incident,¹⁶ and most importantly, the statements attributed to Respondent. Thus, the hearsay statements of the pharmacist cannot be deemed to be sufficiently reliable to constitute substantial evidence.

Nonetheless, there is other substantial evidence which supports the conclusion that Respondent, notwithstanding his denial of having done so, wrote or authorized the prescriptions issued to the non-Tennessee residents. The same DI testified that she had prepared a spreadsheet of the prescriptions that were filled by the South Carolina pharmacies (GX 17).

Moreover, the DI testified that while she initially obtained a printout from the South Carolina PMP, she then proceeded to obtain copies of the prescriptions from the pharmacies to verify the information contained in the PMP report. On cross-examination, Respondent's counsel asked the Investigator whether "other than

[Respondent's] name being on those, you don't have any information from any other source that he actually personally issued those prescriptions?" Tr. 111. The Investigator testified that "[o]n many of the faxed prescriptions that [were] presented at my South Carolina pharmacies, there is [a] notation written on them from the pharmacists that were working that day that they were verified with" Respondent.¹⁷ *Id.* The ALJ entirely ignored this testimony.

In addition, according to both Agency Investigators who interviewed him in June 2009, Respondent volunteered information to the effect that following the receipt of a phone call from a South Carolina pharmacy questioning a prescription, he quit Secure Telemedicine after the entity's Medical Director "could not provide verification that he could do this legally in other [S]tates." Tr. 194; *see also id.* at 425 (testimony that Respondent said that "he had become concerned that . . . this wasn't right, . . . he was not involved in the right thing to do because Secure Telemedicine could not provide documentation to him that it was legal to operate in . . . the other [S]tates."). Obviously, if Respondent was only writing prescriptions for Tennessee residents, there was no need for him to verify with Secure's Medical Director whether it was legal to write prescriptions for patients in other States.

Both Investigators also testified that Respondent was told that he was under investigation for prescribing controlled substances to persons in other States and with whom he did not establish a legitimate doctor-patient relationship, and that Respondent replied that he "kind of knew what this was about." Tr. 190; *see also id.* at 422 ("I thought I knew why you wanted to talk to me."). In addition to Respondent's statement set forth above, the Investigators testified that Respondent admitted to having worked for Secure Telemedicine and stated that he was surprised to receive a phone call from a South Carolina pharmacy because it was his understanding that all of the prescriptions were being filled by a fulfillment pharmacy.¹⁸ Moreover,

¹⁷ To refute the DI's testimony, Respondent could have requested a subpoena requiring the Government to produce the actual prescriptions and sought a continuance of the proceeding. He did not.

¹⁸ Here again, if Respondent was writing prescriptions only for Tennessee patients, it begs the question of why it was his understanding that the Secure Telemed scheme was using a fulfillment pharmacy, such as the pharmacy which was located in Colorado. *See* Tr. 121. As the Agency's Investigator explained, the use of a fulfillment

¹⁴ The prescriptions were dated May 30, 2008, and the testimony indicated that the pharmacist was not able to speak to Respondent until June 2, 2008. According to a 2008 calendar, May 30th was a Friday, and June 2nd was a Monday.

¹⁵ Indeed, she may have done so after faxing the prescriptions to the Investigator.

¹⁶ It may be that the pharmacist made a record of the incident. However, no such evidence was put forward by the Government. It may also be that the circumstances of the incident were so unusual, that the pharmacist accurately recalled Respondent's statements. Yet no evidence was put forward to support such a finding. It may also be that the pharmacist related Respondent's statements to the State Inspector; if so, the Government could have called the State Inspector or better yet the pharmacist herself.

according to both Investigators, at no point during the interview did Respondent claim that his internet prescribing activities were limited to Tennessee residents, *id.* at 423, or deny that he had prescribed to out-of-state patients. *Id.* at 195.

The ALJ declined to give weight to the testimony of the Investigators reasoning that "the Government presented no evidence that any of the investigators specifically asked Respondent whether he issued out-of-state prescriptions while he worked at Telemed." ALJ at 38.¹⁹ In addition, the ALJ reasoned that "Respondent was not provided with any of the prescriptions in question during his . . . interview." *Id.*

Yet, the evidence is clear that Respondent was told that he was being investigated for prescribing controlled substances to out-of-state patients with whom he did not establish a doctor-patient relationship. While this statement may not have been framed as a question, it nonetheless was an accusation, and indeed, Respondent was under no illusion that it was not such, as immediately prior to it, he had been told that he had the right to remain silent and was not under arrest.²⁰ And given its serious nature, one would expect that if it was not true, Respondent would have "clearly challenge[d] the accuracy of the accusation." *McCormick on Evidence* § 160, at 426 (Edward W. Cleary, ed., 3d ed. 1984). Yet he did not do so.

Moreover, the two Investigators further testified that Respondent volunteered that he quit working for Secure Telemed after its Medical Director "could not provide verification that he could do this legally in other states." Tr. 194; *see also id.* at 425. This testimony is entirely consistent with Respondent's failure to challenge the Investigators' accusation. Indeed, given the vehemence of his denial at the hearing of having written prescriptions for out-of-state patients or having authorized their issuance, one must wonder why a similarly forceful denial did not occur during the June 2009

interview. And because it is clear that Respondent knew what the nature of the accusation was, it is of no consequence that the Investigators did not show him any specific prescriptions.

The ALJ likewise ignored the inherent implausibility of Respondent's testimony regarding his employment as "an on-call covering physician" under Secure Telemed's "Consult-A-Doc program." Tr. 298. According to Respondent, he would inform the company of when he was available "to cover on-call for physicians after hours or when a physician [was] just unavailable to manage the care of their patients."²¹ *Id.*

In his letter requesting a hearing, Respondent asserted that "Secure contracted with primary care physicians in Tennessee . . . to provide coverage by other licensed physicians in their respective jurisdiction when the primary care physician was unavailable to attend to the needs of their established patients." ALJ Ex. 2. Yet, if Tennessee physicians were entering into contracts with Secure, it begs the question of why Respondent was not informed, at the start of his shift, of the names of the doctors for whom he was providing on-call coverage. Notably, in describing his activities for Secure, Respondent offered no testimony to the effect that he was told at the start of his shifts the names of the physicians for whom he was providing on-call coverage, and indeed, Respondent testified that he would review the patient's medical record and then verify with the office of the patient's primary care doctor that the latter was unavailable.

Respondent also testified that the patients had already provided their medical records to Secure Telemedicine at the time he took their phone call. Unexplained by Respondent is why the patients would have known to obtain their medical records if he was merely covering for a physician "after hours." *Id.* Likewise, Respondent testified that his activities were limited to "triag[ing]" patients in "non-emergency situations" and that he only issued refills for them. *Id.* at 299–300, 302. Yet if he was only providing coverage "after hours," it does not seem likely that he could have verified at that time with the office of the patient's primary care physician that the latter was unavailable and Respondent did not explain why, if he was only triaging patients "in a non-emergency situation," he did not simply instruct the patients to contact their primary care physician the next morning.

Respondent further asserted that there would be occasions where a patient's

primary care physician would be on vacation and not be back until the "next week." *Id.* at 302. Given his testimony that he only issued refills for patients with "a chronic ailment," *id.* at 301, here again, Respondent offered no explanation as to why the patient's primary care doctor would not know in advance of when he/she would be on vacation and provide the patient with either a refill or an additional prescription to ensure that the patient had an adequate quantity of medication and did not run out.

Moreover, when confronted with evidence that the primary care physicians of two Tennessee patients to whom he prescribed had never heard of him and that they had other physicians in their group who would take calls for them, Respondent then denied either writing the prescriptions or explained that he "really didn't have any contact" with any group practice. *Id.* at 301. However, Respondent claimed that "[s]ome doctors who are in private practice . . . a lot of them don't have call coverage or they have problems finding physicians with call coverage." *Id.* Were I to credit Respondent's testimony, I would have to believe that the physicians he purportedly took calls for, had contracted with an entity that was not even located in Tennessee, and entrusted it to place the care of their patients in the hands of physicians they did not know, let alone had never met.²¹ And while Respondent maintained that he had prepared a consult note for each patient for whom he wrote a prescription, and asserted that Secure Telemed forwarded the note on to the patient's primary care physician, he did not recall having ever been called by the primary care physician of a Secure Telemed patient. *Id.* at 408–09. Nor did he testify that he called the patients' primary care physicians to inform them that he had issued a prescription to their patients.

Notably, Respondent produced no evidence to corroborate any of his far-fetched story. *See Chirino v. NTSB*, 849 F.2d at 1530. He did not maintain patient records, *see* Tenn. Comp. R. & Regs. R. 0880–02–.14(2)(b)(3), nor even document any of the phone calls he claimed to have made to the offices of the patient's primary care physicians. And when asked to review the Tennessee PMP report and identify any of the persons who were Secure Telemed patients, he could not identify a single one.

²¹ Also unexplained is why the physicians would entrust the care of their patients to physicians who were unlikely to have privileges at the same hospitals where they had privileges.

pharmacy was a common feature of unlawful internet prescribing schemes. *Id.* at 120.

¹⁹ The ALJ did not, however, find the testimony of either Investigator to be incredible. *See generally* ALJ at 36.

²⁰ Notably, Respondent did not remain silent in the face of the accusation. As for the ALJ's assertion that Respondent's failure to deny the accusations is not entitled to weight because the accusation was not framed as a question, the ALJ cited no authority to support this proposition. *See United States v. Ward*, 377 F.3d 671, 675 (7th Cir. 2004) ("[A] statement may be adopted as long as the statement was made in the defendant's presence, the defendant understood the statement, and the defendant has the opportunity to deny the statement but did not do so.") (emphasis added).

I therefore conclude that Respondent's testimony is so inherently implausible that no reasonable factfinder could find it to be true. *Anderson*, 470 U.S. at 575; *Lathern*, 665 F.3d at 1354; *Chirino*, 849 F.2d at 1530. I thus reject the ALJ's findings that Respondent credibly denied either issuing or authorizing the issuance of any controlled substance prescriptions to persons located outside of the State of Tennessee.²²

I therefore hold that because Respondent failed to perform a physical examination of the patients located in Mississippi, North Carolina, and South Carolina, he did not establish a legitimate doctor-patient relationship with them and thus lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing controlled substances to them.²³ See Miss. Code Ann. § 41-29-137; North Carolina Medical Board, *Contact with patients before prescribing*, at 1 (Nov. 1999); S.C. Code Ann. § 40-47-113.

Moreover, "[a] physician who engages in the unauthorized practice of medicine is not a 'practitioner acting in the usual course of . . . professional

practice.' . . . A controlled-substance prescription issued by a physician who lacks the license necessary to practice medicine within a State is therefore unlawful under the CSA." *United Prescription Services, Inc.*, 72 FR 50397, 50407 (2007)) (citations omitted). See also 21 U.S.C. 802(21) ("[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices . . . to . . . dispense . . . a controlled substance."). As the Supreme Court has explained: "In the case of a physician [the CSA] contemplates that *he is authorized by the State to practice medicine* and to dispense drugs in connection with his professional practice." *United States v. Moore*, 423 U.S. 122, 140-41 (1975) (emphasis added) (quoted in *United Prescription Services, Inc.*, 72 FR at 50407).

Here, it is undisputed that Respondent is licensed only in Tennessee. Accordingly, he engaged in the unauthorized practice of medicine by prescribing controlled substances to patients located in the States of South Carolina, North Carolina and Mississippi and therefore acted outside of the usual course of professional practice for this reason as well. See S.C. Code Ann. § 40-47-20(36)(b) & (e) (defining practice of medicine); *id.* § 40-47-200 (prohibiting practicing medicine without a license); N.C. Code Ann. § 90-1.1(5) (defining practice of medicine); *id.* § 90-18 (prohibiting practice of medicine without a license); Miss. Code Ann. § 73-25-33 (defining practice of medicine); *id.* § 73-25-34 (prohibiting practice of telemedicine without a state license).

Moreover, even were I to adopt the ALJ's finding that the Government did not prove that the "prescriptions were issued by Telemed with Respondent's knowledge or authorization," ALJ at 32, that would not be the end of the matter as far as the Secure Telemed prescriptions. Contrary to the ALJ's understanding, DEA's authority to revoke a registration is not limited to those instances in which "Respondent knowingly issued . . . or . . . authorized Telemed to issue . . . prescriptions on his behalf." *Id.*

Rather, this Agency has long held that a registrant is strictly liable for the misuse of his registration by any person to whom he entrusts his registration. See *Scott C. Bickman*, 76 FR 17694, 17703 (2011); *Harrell E. Robinson*, 74 FR 61370, 61376-77 (2009); *Paul Volkman*, 73 FR 30630, 30644 & n.42 (2008); *Rose Mary Jacinta Lewis*, 72 FR 4035, 4040 (2007); *Anthony L. Capelli*, 59 FR 42288 (1994). Having provided

his registration number to Secure Telemedicine, and having no effective means of supervising its employees to ensure that his number was not being misused, Respondent is liable for the issuance of all of the prescriptions Secure Telemedicine issued under his registration as if he had personally authorized them.²⁴

Moreover, Respondent testified that he never visited Secure's office nor interviewed face-to-face with principals. He also offered no testimony as to any due diligence he had performed. Respondent's total failure to take any steps to determine whether Secure was a legitimate enterprise manifests a level of irresponsible behavior that is fundamentally incompatible with holding a DEA registration.²⁵

The ALJ totally ignored this line of authority. See ALJ 32. I conclude, however, that this conduct is sufficiently egregious to warrant the revocation of Respondent's registration.²⁶

²⁴ Moreover, at the time Respondent entered into his contract with Secure Telemedicine, this Agency had already issued several final orders finding that the prescribing of controlled substances under similar circumstances (i.e., through the internet and/or a telephone consultation) violated Federal law. See, e.g., *William R. Lockridge, M.D.*, 71 FR 77791, 77798 (2006) (discussing expert testimony regarding steps necessary to establish a doctor-patient relationship, as well as guidelines published by the Federation of State Medical Boards and the American Medical Association, and DEA's 2001 Guidance Document, *Dispensing and Purchasing Controlled Substances Over the Internet*, 66 FR 21181). See also *Dale L. Taylor*, 72 FR 30855 (2007); *Mario Avello*, 70 FR 11695, 11697 (2005). So too, numerous States had issued pronouncements establishing that such prescribing was unlawful.

²⁵ In *Bickman*, I noted that "this is not a case where a practitioner simply provided his DEA registration to a health care facility as part of the credentialing process and a person at the facility subsequently used his registration for unlawful purposes." 76 FR at 17703 n.22. Given Respondent's total failure to perform due diligence, so too here.

²⁶ The evidence also showed that Respondent had prescribed phentermine to family members including his wife, sister, and mother-in-law. According to a Policy Statement of the Tennessee Board, "[t]reatment of immediate family members should be reserved only for minor illnesses or emergency situations," and "[n]o schedule II, III or IV controlled substances should be dispensed or prescribed except in emergency situations." Tennessee State Board of Medical Examiners, *Policy: Prescribing For Oneself And One's Family 1* (Jan. 1997). The Board's statement does not, however, define the term "immediate family member," see *id.*, and the Government does not cite to any decision of either the Board or the Tennessee courts construing the term. While it would seem that Respondent's wife would fall within the definition, Respondent fully acknowledged his misconduct in prescribing phentermine to her. Thus, had this been the only allegation proven in the case, I would have adopted the ALJ's recommended sanction. For similar reasons, Respondent's failure to update his registered location would not warrant anything more than a reprimand.

²² The ALJ also found that while Respondent did not perform physical examinations on the Tennessee patients, the Government failed to prove that Respondent had violated Tennessee regulations because it did not show "that Respondent was not exempt under Tenn. Comp. R. & Regs. 0880-2-.14(7)(b)" from the requirements that he perform a physical examination. ALJ at 39. Under this provision, "[a] physician . . . may prescribe or dispense drugs for a person not in compliance with [the requirement that he perform a physical examination] consistent with sound medical practice . . . [for a patient of another physician for whom the prescriber is taking calls or for whom the prescriber has verified the appropriateness of the medication.]" Tenn. Comp. R. & Regs. 0880-2-.14(7)(b).

The Government offered no expert testimony as to whether Respondent's internet prescribing was "consistent with sound medical practice." *Id.* Nor did it cite to any state authority such as a decision of either the Tennessee Courts or Board of Medicine explaining what constitutes compliance with the provision authorizing a prescription where "the prescriber has verified the appropriateness of the medications." *Id.* I therefore do not find the allegations of the Show Cause Order proved with respect to Respondent's Tennessee patients.

²³ The ALJ also noted that some of the signatures on the Secure Telemed prescriptions differed from those on the prescriptions Respondent issued to his family members. See ALJ at 33. Be that as it may, it provides no comfort to Respondent because he testified that he did not actually sign any of the prescriptions he approved for Secure Telemed but simply pushed a button on his computer approving the prescriptions, which was then prepared by someone at Telemed. Tr. at 304 & 414. Indeed, Respondent's failure to sign the prescriptions (even those he admits to issuing) is itself a violation of the CSA. See 21 CFR 1306.05(a) ("The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations.") (emphasis added).

Factor Five—Other Conduct Which May Threaten Public Health and Safety

Even were I to adopt the ALJ's findings and credit Respondent's testimony that he was unaware of the misuse of his registration until an April 2008 phone call from a South Carolina pharmacy, see ALJ at 37, the record supports a further finding that he engaged in other conduct which threatened public health and safety. While Respondent claimed that he reported the incident to the Tennessee Medical Board sometime in 2009 and well after the fact,²⁷ he did not notify DEA of the incident until the June 2009 interview.²⁸ Tr. 371–72. However, the record contains evidence establishing that numerous additional prescriptions were issued under his registration through Secure Telemed following the April 2008 phone call, many of which were filled. See GX 17, at 1 (spreadsheet listing multiple prescriptions filled by South Carolina residents); GX 8, at 5 (Pt. S.P.H.); GX 12, at 3–4 (Pt. E.F.); GX 14, at 1–2 (Pt. H.B.); GX 15, at 15 (Pt. K.P.); GX 6, at 9 (entry for patient for E.F. showing additional hydrocodone prescription filled on 8/4/08).

Thus, even crediting his testimony, Respondent was aware that his registration was being used for criminal purposes, and yet did nothing to prevent this. See 21 U.S.C. 822(a) (requiring registration to lawfully dispense a controlled substance) and § 841(a)(1) (“Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to . . . distribute[] or dispense . . . a controlled substance[.]”); see also *id.* § 843(a)(2) (“It shall be unlawful for any person knowingly or intentionally . . . to use in the course of the . . . distribution[] or dispensing of a controlled substance, . . . a registration number which is . . . issued to another person.”). His failure to inform the Agency of the unlawful use of his

²⁷ Respondent initially testified that he did not file the report with the State until June 2009 (the same month that he was interviewed by DEA Investigators). Tr. 372. Respondent then stated that he could not recall the exact month although it was sometime in 2009. *Id.* Respondent did not, however, maintain a copy of the report. *Id.*

²⁸ Contrary to the ALJ's understanding, see ALJ at 43–44. Respondent's claim that he reported the misuse of his DEA registration to the State authorities (approximately one year after the incident) neither mitigates his misconduct nor manifests that he accepts responsibility. State authorities did not issue his DEA registration and obviously have no authority to cancel a registration issued by an Agency of the federal government. Moreover, the lengthy delay in his reporting of the incident is consistent with the conduct of someone who has something to hide.

registration²⁹ led to additional acts of diversion of controlled substances and constitutes “other conduct which . . . threaten[s] the public health and safety.” 21 U.S.C. 823(f)(5).

I thus conclude that this factor also supports a finding that Respondent has committed acts which render his registration inconsistent with the public interest. 21 U.S.C. 824(a)(4).

Sanction

Under Agency precedent, where, as here, the Government has made out a *prima facie* case that a registrant has committed acts which render his registration “inconsistent with the public interest,” he must “present[] sufficient mitigating evidence to assure the Administrator that [he] can be [en]trusted with the responsibility carried by such a registration.” *Samuel S. Jackson*, 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller*, 53 FR 21931, 21932 (1988)). “Moreover, because ‘past performance is the best predictor of future performance,’ *ALRA Labs., Inc. v. DEA*, 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.” *Medicine Shoppe-Jonesborough*, 73 FR at 387. As the Sixth Circuit has recognized, this Agency also “properly considers” a registrant's admission of fault and his candor during the investigation and hearing to be “important factors” in the public interest determination. See *Hoxie*, 419 F.3d at 483.

More recently, the Tenth Circuit upheld the Agency's rule, explaining that:

When faced with evidence that a doctor has a history of distributing controlled substances unlawfully, it is reasonable for the . . . Administrator to consider whether that doctor will change his behavior in the future. And that consideration is vital to whether [his] continued registration is in the public interest. Without Dr. MacKay's testimony, the . . . Administrator had no evidence that Dr. MacKay recognized the extent of his misconduct and was prepared to remedy his prescribing practices.

MacKay, 664 F.3d at 820.

Here, the ALJ found that the Respondent “fully accepted

²⁹ Had Respondent reported the misuse of his registration, the Agency could have—with his agreement—cancelled his number and posted this information in the database which the Agency makes available to other registrants for verifying the validity of another person's registration. However, short of issuing an Immediate Suspension Order, the Agency could not have indicated in the database that he did not have a valid registration.

responsibility” for his misconduct. ALJ at 43. Yet this conclusion was premised on the ALJ's finding that Respondent did not write any of the out-of-state prescriptions, a finding which I reject. As explained above, the record as a whole contains substantial evidence that Respondent, notwithstanding his testimony to the contrary, issued numerous controlled substance prescriptions to out-of-state patients, with whom he did not establish a legitimate doctor-patient relationship, and that he acted outside of the usual course of professional practice because he engaged in the unauthorized practice of medicine. Because Respondent failed to accept responsibility for this aspect of his misconduct, which was the most egregious of the various types of misconduct he engaged in, and continues to deny doing so, I conclude that he has not rebutted the Government's *prima facie* case. Accordingly, I will order that Respondent's registration be revoked and that any pending application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BD8297461, issued to Kevin Dennis, M.D., be, and it hereby is, revoked. I further order that any pending application of Kevin Dennis, M.D., to renew or modify his registration, be, and it hereby is denied. This Order is effective September 25, 2013.

Dated: August 17, 2013.

Michele M. Leonhart,
Administrator.

[FR Doc. 2013–20677 Filed 8–23–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Catalent CTS., LLC.

Pursuant to Title 21, of the Code of Federal Regulations 1301.34(a), this is notice that on March 27, 2013, Catalent CTS., LLC., 10245 Hickman Mills Drive, Kansas City, Missouri 64137, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

| Drug | Schedule |
|--------------------------------|----------|
| Marihuana (7360) | I |
| Poppy Straw Concentrate (9670) | II |

The company plans to import a finished pharmaceutical product containing cannabis extracts in dosage form for a clinical trial study. In addition, the company plans to import an ointment for the treatment of wounds which contain trace amounts of the controlled substances normally found in poppy straw concentrate for packaging and labeling to be used in clinical trials.

Comments and requests for any hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, VA 22152; and must be filed no later than September 25, 2013.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745-46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 15, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-20717 Filed 8-23-13; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Chattem Chemicals, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on June 21, 2013, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

| Drug | Schedule |
|---|----------|
| Methamphetamine (1105) | II |
| 4-Anilino-N-phenethyl-4-piperidine (8333) | II |
| Phenylacetone (8501) | II |
| Opium, raw (9600) | II |
| Poppy Straw Concentrate (9670) | II |
| Tapentadol (9780) | II |

The company plans to import the listed controlled substances to manufacture bulk controlled substances for sale to its customers. The company plans to import an intermediate form of Tapentadol (9780); and then to bulk manufacture Tapentadol-for distribution to its customers.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act [21 U.S.C. 952(a)(2)(B)] may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than September 25, 2013.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23,

1975, 40 FR 43745-46, all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: August 15, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2013-20720 Filed 8-23-13; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Organix, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 2, 2013, Organix, Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Drug | Schedule |
|------------------------------------|----------|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |

The company plans to synthesize small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrisette Drive, Springfield, Virginia 22152; and must be filed no later than October 25, 2013.

Dated: August 20, 2013.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 2013-20724 Filed 8-23-13; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Application;
Cambridge Isotope Lab

Pursuant to § 1301.33(a), Title 21 of
the Code of Federal Regulations (CFR),
this is notice that on July 01, 2013,
Cambridge Isotope Lab, 50 Frontage
Road, Andover, Massachusetts 01810,
made application by renewal to the
Drug Enforcement Administration
(DEA) to be registered as a bulk
manufacturer of Morphine (9300), a
basic class of controlled substance listed
in schedule II.

The company plans to utilize small
quantities of the listed controlled
substance in the preparation of
analytical standards.

Any other such applicant, and any
person who is presently registered with
DEA to manufacture such a substance,
may file comments or objections to the
issuance of the proposed registration
pursuant to 21 CFR § 1301.33(a).

Any such written comments or
objections should be addressed, in
quintuplicate, to the Drug Enforcement
Administration, Office of Diversion
Control, Federal Register Representative
(ODL), 8701 Morrisette Drive,
Springfield, Virginia 22152; and must be
filed no later than October 25, 2013.

Dated: August 15, 2013.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 2013-20723 Filed 8-23-13; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Registration;
Morton Grove Pharmaceuticals

By Notice dated March 12, 2013, and
published in the Federal Register on
March 20, 2013; 78 FR 17231, Morton
Grove Pharmaceuticals, 6451 Main
Street, Morton Grove, Illinois 60053-
2633, made application by renewal to
the Drug Enforcement Administration

(DEA) to be registered as a bulk
manufacturer of Gamma Hydroxybutyric
Acid (2010), a basic class of controlled
substance listed in schedule I.

The company plans to manufacture
the listed controlled substance for
distribution to its customers.

No comments or objections have been
received. DEA has considered the
factors in 21 U.S.C. 823(a), and
determined that the registration of
Morton Grove Pharmaceuticals to
manufacture the listed basic class of
controlled substance is consistent with
the public interest at this time. DEA has
investigated Morton Grove
Pharmaceuticals to ensure that the
company's registration is consistent
with the public interest. The
investigation has included inspection
and testing of the company's physical
security systems; verification of the
company's compliance with state and
local laws; and a review of the
company's background and history.

Therefore, pursuant to 21 U.S.C.
823(a), and in accordance with 21 CFR
1301.33, the above named company is
granted registration as a bulk
manufacturer of the basic class of
controlled substance listed.

Dated: August 15, 2013.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 2013-20761 Filed 8-23-13; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled
Substances; Notice of Registration;
Navinta, LLC

By Notice dated April 10, 2013, and
published in the Federal Register on
April 19, 2013, 78 FR 23596, Navinta,
LLC., 1499 Lower Ferry Road, Ewing,
New Jersey 08618-1414, made
application to the Drug Enforcement
Administration (DEA) to be registered as
a bulk manufacturer of the following
basic classes of controlled substances:

Table with 2 columns: Drug, Schedule. Rows include Pentobarbital (2270) and Remifentanyl (9739), both in Schedule II.

The company plans initially to
manufacture API quantities of the listed
controlled substances for validation
purposes and FDA approval, then to
produce commercial size batches for
distribution to dosage form
manufacturers upon FDA approval.

No comments or objections have been
received. DEA has considered the
factors in 21 U.S.C. 823(a) and
determined that the registration of
Navinta, LLC., to manufacture the listed
basic classes of controlled substances is
consistent with the public interest at
this time. DEA has investigated Navinta,
LLC., to ensure that the company's
registration is consistent with the public
interest. The investigation has included
inspection and testing of the company's
physical security systems, verification
of the company's compliance with state
and local laws, and a review of the
company's background and history.
Therefore, pursuant to 21 U.S.C. 823(a),
and in accordance with 21 CFR 1301.33,
the above named company is granted
registration as a bulk manufacturer of
the basic classes of controlled
substances listed.

Dated: August 15, 2013.
Joseph T. Rannazzisi,
Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.
[FR Doc. 2013-20757 Filed 8-23-13; 8:45 am]
BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Tin T. Win, M.D., Dismissal of
Proceeding

On February 27, 2013, I, the
Administrator of the Drug Enforcement
Administration, issued an Order to
Show Cause and Immediate Suspension
of Registration to Tin T. Win, M.D.
(hereinafter, Registrant), of Lake Havasu,
Arizona, GX 10, at 1. Among various
charges, the Order alleged that
Registrant issued numerous controlled
substance prescriptions after the
Arizona Medical Board had prohibited
her "from prescribing controlled
substances" and thus violated both the
Board's order and federal law. Id. at 1-
3 (citing Ariz. Rev. Stat. § 32-
1401(27)(r); 21 U.S.C. 841). The Order
also notified Registrant of her right to
either request a hearing on the
allegations or submit a written
statement of position in lieu of a hearing
within thirty (30) days of her receipt of
the Order, the procedure for electing
either option, and the consequence of
failing to elect either option.

On March 6, 2013, the Order was
personally served on Registrant by a
DEA Special Agent and a Diversion
Investigator. See GX 11. On May 20,
2013, the Government filed a Request
for Final Agency Action, which sought
the revocation of Registrant's

registration. Request for Final Agency Action, at 12. Therein, the Government represented that neither Registrant, nor anyone purporting to represent her, had filed either a request for a hearing or a written statement in lieu of a hearing. *Id.* at 2.

Upon review of the record, the Government's evidence showed that Registrant's registration was due to expire on May 31, 2013. *See* GX 2. However, because the filing of a timely renewal application would have prevented the expiration of her registration (albeit in suspended status), *see* 5 U.S.C. 556(e), I took official notice of her registration record with the Agency. According to that record, Registrant did not file either a renewal application or a new application. The Agency therefore deemed her registration as expired and retired her registration number.

While ordinarily these findings render a case moot, *see Ronald J. Riegel*, 63 FR 67132, 67133 (1998), simultaneously with the issuance of the Order to Show Cause, I immediately suspended Registrant's registration. Because the Immediate Suspension Order also authorized the Government to seize any controlled substances in Registrant's possession, and thus created the possibility that a collateral consequence existed which precludes a finding of mootness, *see Robert Charles Ley*, 76 FR 20033, 20034 (2011), I directed the Government to notify my Office as to whether it had seized any controlled substances. Order (July 15, 2013).

On July 22, 2013, the Government notified my Office that it had not seized any controlled substances pursuant to the Immediate Suspension Order. Gov. Response Regarding Mootness, at 2. The Government further acknowledged that this "case is now moot." *Id.* Accordingly, I will dismiss this proceeding. *See Ley*, 76 FR at 20034.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that the Order to Show Cause and Immediate Suspension of Registration issued to Tin T. Win, M.D., be, and it hereby is, dismissed. This Order is effective immediately.

Dated: August 16, 2013.

Michele M. Leonhart,
Administrator.

[FR Doc. 2013-20676 Filed 8-23-13; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Additional Information Collection Requirements for Special Dipping and Coating Operations

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, "Additional Information Collection Requirements for Special Dipping and Coating Operations," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before September 25, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306-1218-003 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202-395-6881 (this is not a toll-free number), email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Information Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202-693-4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Dipping and Coating Operations Standard requires employers to post a

conspicuous sign near each piece of electrostatic detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. *See* 29 CFR 1910.126(g)(4). This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218-0237. For additional substantive information about this ICR, see the related notice published in the *Federal Register* on April 9, 2013 (78 FR 21159).

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on December 31, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. It should also be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the *Federal Register*. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218-0237. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-OSHA.

Title of Collection: Additional Information Collection Requirements for Special Dipping and Coating Operations.

OMB Control Number: 1218-0237.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Burden Hours: 1.

Total Estimated Annual Other Costs Burden: \$0.

Dated: August 19, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-20690 Filed 8-23-13; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95-541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978; Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 25, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Division of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Adrian Dahood, ACA Permit Officer, at

the above address or ACApermits@nsf.gov or (703) 292-7149.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

1. *Applicant Permit Application:* 2014-009, Peter West, National Science Foundation, Arlington Virginia.

Activity for Which Permit Is Requested

ASPAs Entry; The National Science Foundation, as U.S. taxpayer supported government agency, routinely selects members of the U.S. news media to visit Antarctica and report on the science the foundation facilitates there. The newsgathering process requires journalists to visit specific sites and to speak with the researchers conducting science there. Any interviews, photographs or video gathered during visits to ASPAs would be used to inform the general public about the importance of the science conducted on the continent. Visits to the ASPAs listed in this application would take place in conjunction with valid scientific activities, for the express purposes of gathering images, footage, or information on scientific research, general scenic locations, and interviews with scientists working in the field. Journalists visiting Antarctica will be accompanied at all times by an NSF staff "escort". The escort will be a person who has years of experience working with field parties, with scientists and with journalists. The escort is cognizant of—and will follow the requirements contained in—the ASPA management plans and the Antarctic Conservation Act. They will insure that every effort is made to practice "low impact" documentary procedures with regard to the natural environment as well as to adhere to all USAP operations and procedures.

Location

ASPAs 121: Cape Royds, Ross Island.
ASPAs 122: Arrival Heights, Ross Island.
ASPAs 124: Cape Crozier, Ross Island.
ASPAs 157: Backdoor Bay, Cape Royds (Shackleton's Hut), Ross Island.

ASPAs 158: Cape Evans (Scott's Hut), Ross Island.

Dates

October 1, 2013 to September 30 2018.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2013-20704 Filed 8-23-13; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0089]

mPower™ Design-Specific Review Standard

AGENCY: Nuclear Regulatory Commission.

ACTION: Design-Specific Review Standard (DSRS) for the mPower™ Design; re-opening of comment period.

SUMMARY: On May 14, 2013, the U.S. Nuclear Regulatory Commission (NRC) published a request for public comment on the DSRS for the mPower™ design (mPower™ DSRS). The purpose of the mPower™ DSRS is to more fully integrate the use of risk insights into the review of a design certification (DC), an early site permit (ESP) or a combined license (COL) that incorporates the mPower™ design. The public comment period was originally scheduled to close on August 16, 2013. Generation mPower submitted a letter on August 8, 2013 (ADAMS Accession No. ML13224A163), requesting an extension of the public comment period until September 16, 2012, on specific sections of the mPower™ DSRS. The NRC has decided to re-open the public comment period on those specific sections of the mPower™ DSRS to allow more time for members of the public to assemble their comments on those sections.

DATES: The comment period has been re-opened and now closes on September 16, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (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-2013-0089. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3244; 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, Chief, Rules, Announcements, and Directives Branch (RADB), 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 "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Yanely Malave, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1519 or email: Yanely.Malave@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC-2013-0089 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

• *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0089.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library 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 in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced and also in the table included in this notice. The DSRS sections are available in ADAMS under the corresponding accession number as describe in Section II, "Further Information," of this notice.

• *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-2013-0089 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. Further Information

A. Background

In 2010, the Commission provided direction to the staff on the preparation for, and review of, small modular reactor (SMR) applications, with a near-term focus on integral pressurized water reactor (iPWR) designs. The Commission directed the staff to more fully integrate the use of risk insights into pre-application activities and the review of applications and, consistent with regulatory requirements and Commission policy statements, to align the review focus and resources to risk-significant structures, systems, and components and other aspects of the design that contribute most to safety in order to enhance the effectiveness and efficiency of the review process. The Commission directed the staff to develop a design-specific, risk-informed review plan for each SMR design to address pre-application and application

review activities. An important part of this review plan is the DSRS. This DSRS for the mPower™ design is the result of the implementation of the Commission's direction.

B. DSRS for the mPower™ Design

As part of the mPower™ DSRS, the NRC's Office of New Reactors has issued the mPower™ Design-Specific Review Standard Scope and Safety Review Matrix (ADAMS Accession No. *ML13088A252*) to reflect the integration of risk insights into the review of applications submitted for the mPower™ DC and ESPs or COLs that incorporate the mPower™ design under part 52 of Title 10 of the *Code of Federal Regulations*. The mPower™ DSRS reflects current staff review methods and practices based on the integration of risk insights and, where appropriate, lessons learned from NRC reviews of DC and COL applications completed since the last revision of the Standard Review Plan.

C. Re-Opening of Comment Period

On May 14, 2013 (78 FR 28258), the NRC published a request for public comment on the mPower™ DSRS. The public comment period was originally scheduled to close on August 16, 2013. Generation mPower submitted a letter on August 8, 2013 (ADAMS Accession No. *ML13224A163*), requesting an extension of the public comment period until September 16, 2013, on specific sections of the mPower™ DSRS. The NRC has decided to re-open the public comment period on those specific sections of the mPower™ DSRS to allow more time for members of the public to assemble their comments on those sections. The NRC did not receive a request to extend the comment period on the additional sections in the May 14, 2013, request for public comment; and believes the original 90-day public comment period afforded for those sections is sufficient.

Specifically, we request comment on the sufficiency of the proposed technical content of the individual mPower™ DSRS sections, identified in the following table, that were revised or developed to incorporate design-specific review guidance based on features of the mPower™ reactor design.

| Section | Design-specific review standard title | ADAMS No. |
|---------|--|-------------|
| 3.7.1 | Seismic Design Parameters | ML13099A204 |
| 3.7.2 | Seismic System Analysis | ML13099A205 |
| 3.7.3 | Seismic Subsystem Analysis | ML13099A209 |
| 3.8.2 | Steel Containment | ML13099A298 |
| 3.8.3 | Concrete and Steel Internal Structures of Steel Containments | ML13099A312 |

| Section | Design-specific review standard title | ADAMS No. |
|---------------|--|-------------|
| 3.8.4 | Other Seismic Category I Structures | ML13099A316 |
| 3.8.5 | Foundations | ML13099A319 |
| 15.0 | Introduction—Transient and Accident Analyses | ML12275A026 |
| 15.0.2 | Review of Transient and Accident Analysis Methods | ML12207A098 |
| 15.0.3 | Design Basis Accident Radiological Consequence Analyses for Advanced Light Water Reactors | ML12257A226 |
| 15.1.5 | Steam System Piping Failures Inside and Outside of Containment | ML12207A108 |
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Dated at Rockville, Maryland, this 20th day of August, 2013.

For the Nuclear Regulatory Commission.

Yanelly Malave,

Project Manager, Small Modular Reactor Licensing Branch 1, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2013-20708 Filed 8-23-13; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. RM2013-6; Order No. 1814]

Periodic Reporting (Proposals One Through Five)

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting an informal proceeding to consider changes in four analytical method changes for use in periodic reporting. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 9, 2013. *Reply comments are due:* September 19, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 16, 2013, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes in four analytical methods for use in periodic reporting.¹ The Petition labels the proposed analytical method changes filed in this docket as Proposals One through Four. In addition, the Petition requests clarification concerning the status of a proposal that the Postal Service filed in response to a Commission directive in Docket No. ACR2012 regarding distribution of settlement costs within certain Global Plus Negotiated Service Agreement (NSA) products.² This request for clarification will be treated as a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider the

¹ Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals One through Four), August 16, 2013 (Petition).

² *Id.* at 1; see also Docket No. ACR2012, Responses of the United States Postal Service to Commission Requests for Additional Information in FY 2012 Annual Compliance Determination, Item 3, June 26, 2013 (Proposal Five).

changes identified in response to the Commission directive in Docket No. ACR2012, Item 3. *Id.* This request will be labeled as Proposal Five and reviewed as part of this docket.

II. Proposals

A. Proposal One: New Formula and Location for Alaska Air Adjustment Factor

The Postal Service proposes a simpler method for calculating the Alaska Air Adjustment Factor. In addition, the Postal Service proposes to implement the Alaska Air Adjustment Factor within the Cost Segment 14 model, rather than with the Cost and Revenue Analysis (CRA) model. It asserts that the current method for calculating the Alaska Air Adjustment Factor is unnecessarily complex, and since the current method was established, postal operational data have improved significantly. Thus, it contends, that the proposal is a more accurate and more easily updateable ratio of highway to air costs. It also believes that implementing the proposed change in the Cost Segment 14 workbook, rather than in the CRA model where it is currently located, would help increase transparency. See Petition at 2-3.

B. Proposal Two: New Set of Distribution Factors for Alaska Non-Preferential, Alaska Preferential, Hawaii, and Air Taxi Cost Pools in Cost Segment 14

The Postal Service proposes a single set of distribution factors to assign relevant costs from the Non-Preferential

Alaska Air, Preferential Alaska Air, Hawaii Air, and Air Taxi cost pools to products. The proposed distribution factors rely on current operations data from Surface Air Management Systems—Alaska regularly collected by the Transportation Cost System. The proposal is also designed to remedy an inaccuracy in the distribution of Air Taxi costs. The Postal Service asserts that the primary advantage of the proposal over the existing method is that it uses current data, and therefore computes distribution factors that align with current product lists. *See id.* at 4–7.

C. Proposal Three: New Set of Distribution Factors for Highway and Plant Load Cost Pools in Cost Segment 14

The Postal Service proposes a proxy set of distribution factors to assign relevant costs to products from the Highway Plant Load and Rail Plant Load cost pools in Cost Segment 14. The Postal Service asserts that the product lists have undergone significant changes since Docket No. R2005–1 and the corresponding attributable costs have decreased dramatically. It believes that rather than replicating expensive special studies, it is more sensible to use its proposed proxy set of distribution factors that can be updated quarterly to assign relevant costs to products. *See id.* at 8–10.

D. Proposal Four: Change in Canada Air Transportation Costing Methodology

The Postal Service proposes revising its costing methodology for Air Transportation of outbound products to Canada. This is expected to impact primarily Canada's Air Transportation costs and measured contribution in both the "Booked Version" and "Imputed Version" of reports. Specifically, the proposal benchmarks changes to "Imputed Reports.xls" and "Reports (Booked).xls" to bring the reported International Transportation costs by Product and Country into agreement between the two versions. The proposed changes will preserve the calculation of diversion of Outbound Canada Air Mail to Highway Transportation and eliminate the shift in costs between Canada and the rest of the world during the "Booking" process. In essence, the Postal Service is proposing to change the Imputed Reports so that Canada's combined Air and Air Diverted to Highway costs, together with Air Transportation costs for the rest of the world, are benchmarked to a combination of General Ledger Air and Surface Purchased Transportation Accounts. Such results would then be

used by "Reports (Booked).xls" without further change. The Postal Service asserts that Canada's International Transportation costs for Outbound Air Mail that is diverted to Highway Transportation, once obscured by International Surface Transportation costs associated with Outbound Surface Mail, have become discernible with the elimination of Outbound Surface Mail Products. Thus, the proposal intends to make use of this information to enhance the International CRA. *See id.* at 11–22.

E. Proposal Five: Change in Methodology for Distributing Settlement Costs for Certain Negotiated Service Agreements

In its Annual Compliance Determination (ACD), the Commission directed the Postal Service to more accurately develop costs or increase the contingency factor to accommodate costs that cannot be modeled for its Global Plus NSA products. *See* 2012 ACD at 169–70. The Postal Service filed its response to the Commission's directive on June 26, 2013. *See* Proposal Five at 8–14. It notes that the Global Plus NSAs at issue relate to mailpieces going to Canada, and, pursuant to agreement, the Canada Post Corporation (CPC) bills the Postal Service for services rendered relating to the total product. Accordingly, the Postal Service asserts that it needs an improved methodology for distributing settlement costs to each NSA contract within a particular product. In its FY 2012 Annual Compliance Report, the Postal Service used a pound distribution key to distribute costs to each NSA within a product. In its response to the ACD directive, the Postal Service proposes changing the pound distribution key methodology for distributing settlement costs to a revenue distribution key methodology in order to distribute costs to each NSA within a product.

The Postal Service observes that the overall product revenues exceed the overall attributable costs and that each Global Plus NSA within the 2B and 2C products should cover costs. However, it also notes that the CPC settlement rates are more complex than a uniform pound rate. For this reason, the Postal Service asserts that a revenue key is better suited for distributing settlement costs to NSA contracts in the Global Plus 2B and 2C products. Accordingly, the Commission will consider the Postal Service's proposed change from a pound distribution key methodology for distributing settlement costs within certain Global Plus NSA products to a revenue distribution key methodology for distributing settlement costs as Proposal Five in this docket.

III. Notice and Comment

The Commission establishes Docket No. RM2013–6 for consideration of matters raised by the Petition and Proposal Five. More information on the Petition and Proposal Five may be accessed via the Commission's Web site at <http://www.prc.gov>. The Postal Service filed portions of its supporting documentation under seal as part of a non-public annex. Information concerning access to these non-public materials is located in 39 CFR part 3007.

Interested persons may submit comments on the Petition and Proposal Five no later than September 9, 2013. Reply comments are due no later than September 19, 2013. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2013–6 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals One through Four), filed August 16, 2013.

2. The Commission will also consider in this docket matters raised by the United States Postal Service in its Responses of the United States Postal Service to Commission Requests for Additional Information in FY 2012 Annual Compliance Determination, Item 3, filed June 26, 2013 (Proposal Five), in this docket.

3. Comments by interested persons in this proceeding are due no later than September 9, 2013. Reply comments are due no later than September 19, 2013.

4. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.
Shoshana M. Grove,
Secretary.

[FR Doc. 2013–20734 Filed 8–23–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form N-2; SEC File No. 270-21, OMB Control No. 3235-0026.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The title for the collection of information is "Form N-2 (17 CFR 239.14 and 274.11a-1) under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Closed-End Management Investment Companies." Form N-2 is the form used by closed-end management investment companies ("closed-end funds") to register as investment companies under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Investment Company Act") and to register their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"). The primary purpose of the registration process is to provide disclosure of financial and other information to current and potential investors for the purpose of evaluating an investment in a security. Form N-2 also permits closed-end funds to provide investors with a prospectus containing information required in a registration statement prior to the sale or at the time of confirmation of delivery of securities. The form also may be used by the Commission in its regulatory review, inspection, and policy-making roles.

The Commission estimates that there are 162 initial registration statements and 29 post-effective amendments to initial registration statements filed on Form N-2 annually and that the average number of portfolios referenced in each initial filing and post-effective amendment is 1. The Commission further estimates that the hour burden for preparing and filing an initial registration statement on Form N-2 is 515 hours per portfolio, and the hour burden for preparing and filing a post-

effective amendment on Form N-2 is 107 hours per portfolio. The estimated annual hour burden for preparing and filing initial registration statements is 83,430 hours (162 initial registration statements \times 1 portfolio \times 515 hours per portfolio). The estimated annual hour burden for preparing and filing post-effective amendments is 3,103 hours (29 post-effective amendments \times 1 portfolio \times 107 hours per portfolio). The estimated total annual hour burden for Form N-2, therefore, is estimated to be 86,533 hours (83,430 hours + 3,103 hours).

The information collection requirements imposed by Form N-2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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.

Please direct your written comments to Thomas Bayer, 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: August 20, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-20681 Filed 8-23-13; 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 Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 15c3-5; SEC File No. 270-601, OMB Control No. 3235-0673.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c3-5 (17 CFR 240.15c3-5) under the Securities and 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 15c3-5 under the Exchange Act requires brokers or dealers with access to trading directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. Each such broker or dealer is required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a-4(e)(7) under the Exchange Act. Such regular review is required to be conducted in accordance with written procedures and is required to be documented. The broker or dealer is required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 174(e)(7) under the Exchange Act, and Rule 17a-4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the rule, and that the broker-dealer conducted such review. Such certifications are required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a-4(b) under the Exchange Act. Compliance with Rule 15c3-5 is mandatory.

Respondents consist of broker-dealers with access to trading directly on an exchange or ATS. The Commission

estimates that there are currently 870 respondents. To comply with Rule 15c3-5, these respondents will spend approximately 139,200 hours per year (160 hours per broker-dealer × 870 broker-dealers = 139,200 hours). At an average internal cost per burden hour of approximately \$390.57, the resultant total related internal cost of compliance for these respondents is \$54,367,170 per year (139,200 burden hours multiplied by approximately \$390.57/hour). In addition, for hardware and software expenses, the Commission estimates that the average annual external cost would be approximately \$20,500 per broker-dealer, or a total of \$17,835,000 (\$20,500 per broker-dealer × 870 broker-dealers = \$17,835,000) for all respondents.

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: August 20, 2013.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20679 Filed 8-23-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available
From: Securities and Exchange
Commission, Office of Investor

Education and Advocacy,
Washington, DC 20549-0213.

Extension:

Rule 17f-1(g), SEC File No. 270-30, OMB Control No. 3235-0290.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17f-1(g) (17 CFR 240.17f-1(g)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f-1(g) requires that all reporting institutions (i.e., every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program ("Program") under Rule 17f-1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X-17F-1A) filed with the Commission's designee; (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f-1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f-1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f-1. If such records were not retained by reporting institutions, compliance with Rule 17f-1 could not be monitored effectively.

The Commission estimates that there are approximately 24,969 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.55 hours per respondent per year). Thus, the total estimated annual time burden

for all respondents is 13,733 hours (24,969 × 0.55 hours = 13,733). Assuming an average hourly cost for clerical work of \$50.00, the average total yearly record retention cost of compliance for each respondent would be \$27.50 (\$50 × 0.55 hours). Based on these estimates, the total annual compliance cost for the estimated 24,969 reporting institutions would be approximately \$686,647 (24,969 × \$27.50).

Rule 17f-1(g) does not require periodic collection, but it does require retention of records generated as a result of compliance with Rule 17f-1. Under Section 17(b) and (f) of the Act, the information required by Rule 17f-1(g) is available to the Commission and Federal bank regulators for examinations or collection purposes. Rule 0-4 of the Securities Exchange Act deems such information to be confidential.

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.

The public may view background documentation for this information collection at the following Web site: www.reginfo.gov. Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: Shagufta_Ahmed@omb.eop.gov; and (ii) 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. Comments must be submitted within 30 days of this notice.

Dated: August 20, 2013.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20680 Filed 8-23-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70236; File No. SR-BYX-2013-028]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify BYX Registration and Continuing Education Requirements

August 20, 2013.

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 August 15, 2013, 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 Act³ 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to add language to amend BYX Rule 2.5, entitled "Restrictions," and BYX Rule 11.4, entitled "Authorized Traders," to recognize a new category of limited representative registration for proprietary traders and Proprietary Trader Principals and clarify the qualification and continuing education requirements necessary or acceptable for different registration categories.

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

Proprietary Trader Registration

The Exchange proposes to amend Rules 2.5 and 11.4 to recognize a new category of limited representative registration for proprietary traders. The Exchange will also expand its registration requirements to include the Proprietary Traders Qualification Examination ("Series 56") among the applicable qualification examinations as determined by the Exchange. Further, the Exchange proposes to permit Authorized Traders⁵ of Members who engage solely in proprietary trading to obtain the Series 56 license in order to effect transactions on the Exchange.

The Series 56 was developed by a number of self-regulatory organizations ("SROs") to test a candidate's knowledge of proprietary trading generally and the industry rules applicable to the trading of equity securities and listed options contracts.⁶ The Series 56 covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices, display, execution, and trading systems. While the Series 56 is primarily dedicated to topics related to proprietary trading, it also covers some general concepts relating to customers.

The qualification examination consists of 100 multiple choice questions, which candidates have 150 minutes to complete. The content outline describes the following topical sections comprising the examination: Personnel, Business Conduct,

⁵ An "Authorized Trader" is a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Member or Sponsored Participant. BYX Rule 1.5(d).

⁶ See Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR-CBOE-2011-056) (explaining the development of the Series 56 examination and the examination's content). The Series 56 examination program was developed in conjunction with FINRA, and is shared by the Boston Options Exchange, C2 Options Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.; NASDAQ OMX PHLX LLC; NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange, LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

Recordkeeping and Reporting Requirements—9 questions; Markets, Market Participants, Exchanges, and Self-Regulatory Organizations—8 questions; Types and Characteristics of Securities and Investments—20 questions; Trading Practices and Prohibited Acts—50 questions; and Display, Execution, and Trading Systems, 13 questions. The examination is already available in the Central Registration Depository (Web CRD), and thus, the rule change can be implemented immediately upon filing the proposed rule changes.

The Exchange believes that acceptance of the Series 56 qualification examination will benefit both the Exchange and the applicable proprietary traders affected by the proposal because the examination would allow an individual who wishes to transact business on BATS [sic] in a limited capacity to qualify by passing an examination tailored to that limited capacity. The Series 56 specifically addresses industry topics that establish the appropriate regulatory and procedural knowledge base necessary for individuals required to register as a Proprietary Trader. As such, the Exchange proposes to modify Interpretation and Policy .01(c) of Rule 2.5 to include the Series 56 examination among the examinations accepted by the Exchange. The Exchange also proposes to replace existing Interpretation and Policy .01(f) of Rule 2.5 to set forth the registration requirements for a Proprietary Trader, re-designate current Interpretation and Policy .01(f) as .01(g), and modify this provision to include a cross-reference to new Interpretation and Policy .01(f). Further, the Exchange proposes to modify Interpretation and Policy .02(a) of Rule 2.5 to clarify that persons registered as Proprietary Traders must comply with the continuing education requirements applicable to the Series 56 license, while other Registered Representatives must comply with the continuing education requirements applicable to their particular registration and license. These continuing education requirements are listed in proposed Interpretation and Policy .02(e) to Rule 2.5. Finally, the Exchange also proposes to amend Rule 11.4(e) to include Series 56 among the examinations necessary for an individual to be eligible for registration as an Authorized Trader.

Under proposed Interpretation and Policy .01(f) of Rule 2.5, an Authorized Trader that is considered to be a proprietary trader can qualify for limited representative registration. An Authorized Trader will be considered to be a proprietary trader if: (1) 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).

Authorized Trader's activities in the investment banking or securities business are limited solely to proprietary trading; (2) the Authorized Trader passes the Series 56; and (3) the Authorized Trader is an associated person of a proprietary trading firm. Under paragraph (g) of this provision, a "proprietary trading firm" is a Member that trades its own capital, does not have customers, and is not a member of the Financial Industry Regulatory Authority (FINRA). In addition, to qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm's accounts, and traders must be owners of, employees of, or contractors to the firm.⁷ Thus, the Proprietary Trader registration expressly excludes associated persons that deal with the public.⁸

Principal Registration

The Exchange proposes to amend Interpretation and Policy .01(d) of Rule 2.5 to state that the Exchange will accept the New York Stock Exchange ("NYSE") Series 14 Compliance Official Examination ("Series 14") in lieu of the Series 24 General Securities Principal Examination ("Series 24") to satisfy the registration requirement for Principals that have been designated Chief Compliance Officers on Schedule A of Form BD. This examination is designed to establish that the applicant has the knowledge and skill necessary for compliance officials.⁹ The Exchange notes that acceptance of this alternative examination is consistent with other SROs' registration requirements¹⁰ and will provide an alternate, appropriate

examination requirement for certain individuals associated with Exchange Members.

In addition, to accommodate the new Proprietary Trader registration category, the Exchange proposes to add language to Interpretation and Policy .01(d) of Rule 2.5 that will create a new category of limited representative Principal—the Proprietary Trader Principal—and clarify the prerequisites necessary for Proprietary Trader Principals as opposed to General Securities Principals. Registration as a Proprietary Trader Principal will be restricted to individuals whose supervisory responsibilities are limited to proprietary traders, as defined in amended Interpretation and Policy .01(f) of Rule 2.5. The Exchange will permit the Series 56 as a prerequisite to the General Securities Principal Examination ("Series 24") or Compliance Official Examination ("Series 14").¹¹

The Exchange also proposes to add language to Interpretation and Policy .01(d) of Rule 2.5 to clarify the appropriate prerequisites for registration as General Securities Principals.¹² The Exchange will continue to require General Securities Principals to successfully complete the General Securities Representative Registration ("Series 7") or an equivalent foreign examination module ("Series 17" or "Series 37/38").

The Exchange believes that the prerequisite examination requirement for registration as a Proprietary Trader Principal is appropriate because, as noted above, the Series 56 is specifically designed to address industry topics and establish the appropriate regulatory and procedural knowledge base relevant to proprietary trading. Moreover, the Exchange will continue to require successful completion of either the Series 24 or Series 14 for both Proprietary Trader Principals and General Securities Principals, thereby ensuring that all Principals have the necessary knowledge and skill to act in a supervisory capacity. Additionally, the Exchange notes that creating the registration category of Proprietary Trader Principal is consistent with registration requirements of other national securities exchanges.¹³

¹¹ As noted, the Exchange will only permit the Series 14 for those designated as Chief Compliance Officers on Schedule A of Form BD.

¹² General Securities Principals are individuals that supervise the activities of General Securities Representatives.

¹³ See, e.g., BOX Rule 2020(c)(2); CBOE Rule 3.6A.08; NASDAQ OMX BX Rule 1022(h); NASDAQ OMX PHLX Rule 612(e).

Acceptable Qualification Examinations

The Exchange proposes to add Interpretation and Policy .01(h) of Rule 2.5, which will include a chart that sets forth the relevant qualification requirements for each registration category described in the rule. This chart will not change the qualification requirements in any way. It will merely clarify the requirements described in the Rule, thereby avoiding any confusion regarding qualification examinations the Exchange deems acceptable for each registration category.

Acceptable Continuing Education Programs

The Exchange also proposes to add language to Interpretation and Policy .02(e) to Rule 2.5 that will clarify the different continuing education ("CE") requirements for registered persons based upon their registration with the Exchange. Specifically, the Exchange proposes to introduce a chart that enumerates the Regulatory Element programs necessary for each registration category and introduce a new Regulatory Element program for those persons registered as Proprietary Traders.

Existing Interpretation and Policy .02(a) of Rule 2.5 requires all registered representatives to complete the Regulatory Element of the continuing education program at specified intervals and states that the content of the Regulatory Element shall be determined by the Exchange for each registration category of persons subject to the Rule. The Regulatory Element is a computer-based education program administered by the Financial Industry Regulatory Authority ("FINRA") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry. Currently, there are two Regulatory Element programs: The S201 Supervisor Program for registered principals and supervisors and the S101 General Program for Series 7 and all other registered persons.¹⁴ The Exchange is proposing to enumerate these existing programs in Interpretation and Policy .02(e) to Rule 2.5, as well as the new S501 Series 56 Proprietary Trader Continuing Education Program for those persons registered as Proprietary Traders.

The Exchange is also proposing to introduce a new CE program for persons registered with the Exchange solely as Proprietary Traders by passing the

¹⁴ The Commission notes that there are three Regulatory Element programs. The S106 is the Regulatory Element program for persons who are Series 6 qualified.

⁷ BYX Rule 2.5, Interpretation and Policy .01(f) (proposed Interpretation and Policy .01(g)).

⁸ Authorized Traders that deal with the public should continue to register as General Securities Representatives after obtaining the Series 7 license. An Authorized Trader who is qualified as a General Securities Representative by passing the Series 7 may function as a proprietary trader; however, such person should register as a General Securities Representative rather than a Proprietary Trader.

⁹ For details about the Series 14, see Financial Industry Regulatory Authority, *Compliance Official Qualification Examination (Test Series 14): Content Outline*, (2012), available at <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p117564.pdf>.

¹⁰ See, e.g., CBOE Rule 3.6A.08(b); NASD Notice to Members 01-51 (August 2001), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003809.pdf>; Chicago Stock Exchange, Inc. Member Regulation Department Information Memorandum (May 8, 2013), available at http://www.chx.com/content/Participant_Information/Downloadable_Docs/MarketRegulation/1_InformationMemoranda/2013/MR-13-04_New_Registration_Categories_and_Related_Qualification_Exoms.pdf; NYSE Information Memo 07-43 (May 9, 2007), available at http://www.nyse.com/nyse/nyse/nyse/information-memos/pdf?memo_id=07-43.

Series 56. Proposed Interpretation and Policy .01(f) to Rule 2.5 outlines the registration and qualification requirements for those wishing to register with the Exchange as a Proprietary Trader, making clear that the Series 56 is a prerequisite for this registration category.

The Proprietary Trader Continuing Education Program (S501) is a computer-based education program developed by many of the self-regulatory organizations that worked to develop the Series 56 ("Participating SROs")¹⁵ and administered by FINRA to ensure that registered persons are kept current on regulatory, compliance, and trading practice matters in the industry. Unlike the other offered CE programs, the S501 is not part of the Uniform Continuing Education Program, which is developed and maintained by the Securities Industry Regulatory Council on Continuing Education.

The S501 will logistically operate as the currently offered CE programs do. Specifically, registered persons will be required, through CRD, to complete the Regulatory Element of the CE on the second anniversary of the base date and then every three years thereafter. While creating the S501, the Participating SROs believe that the current procedures of the other CE programs work well. The Securities Industry Regulatory Council on Continuing Education has tailored the process of the other CE programs since its inception and made it successful. Thus, as proposed, the S501 will work in the same manner. In addition, consistency between the different programs will avoid creating confusion among registered persons and FINRA.

The S501 is required for registrants who are registered as Proprietary Traders and do not maintain any other registration through CRD.¹⁶ Individuals that are registered under any other registration are required to maintain the CE obligations associated with such registrations. For example, an individual that engages solely in proprietary trading activities yet continues to maintain a Series 7

registration will be required to continue taking the Series 7 Continuing Education Program (S101).¹⁷ Although such an individual may be engaging in the same activities as an individual registered as a Proprietary Trader, the Series 7 Examination is more comprehensive and covers topics that the Series 56 does not. Thus, the Exchange believes that this individual should complete the CE associated with the Series 7 because this covers all aspects of the individual's registration.

The introduction of the S501 allows the Exchange to tailor its CE requirements more closely to the duties of individuals who have registered with the Exchange as Proprietary Traders after passing the Series 56. More specifically, the Exchange believes allowing individuals engaging in proprietary trading and registered under the Series 56 to complete a separate CE program than those maintaining a Series 7 registration is appropriate given that all individuals have the option of taking either test. In comparison to the more comprehensive Series 7, the Series 56 Examination is more closely tailored to the practice of proprietary trading. As such, the Exchange believes a Series 56 CE program should be tailored as well. At the same time, if an individual would like to retain a Series 7 license, the Exchange believes it is appropriate they continue to be required to complete the broader CE program, which covers all aspects of this registration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(c)(3)(B) of the Act in particular.¹⁹ Under Section 6(c)(3)(B), it is the Exchange's responsibility to prescribe standards of training, experience, and competence for Exchange Members and their associated persons.²⁰ The Exchange proposes to recognize a new category of limited representative registration for proprietary traders and to permit Authorized Traders of Members who engage solely in proprietary trading to obtain the Series 56 license in lieu of the more general Series 7 license. The Exchange believes the Series 56 establishes that Authorized Traders of

Members have attained specified levels of competence and knowledge generally applicable to proprietary trading.

Additionally, the Exchange is offering an alternative qualification examination, the Series 14, for Principals designated as Chief Compliance Officers. The Exchange believes this examination establishes the skill and knowledge base necessary for a compliance official. Moreover, acceptance of this alternative examination will provide an alternate, appropriate examination requirement for certain individuals associated with Exchange Members.

To accommodate recognition of limited representative registration as proprietary Traders, the Exchange proposes to recognize a new category of limited representative principal registration for individuals whose supervisory responsibilities are restricted to proprietary traders. The Exchange will accept the Series 56 as a prerequisite to the successful completion of a permissible Principal Examination. The Exchange will continue to require successful completion of either the Series 24 or Series 14 examination for all Principals because the Exchange believes that these examinations establish the skill and knowledge base appropriate for individuals responsible for supervising the activities of a member's Authorized Traders.

Finally, the Exchange proposes to codify existing CE requirements for persons registered with the Exchange, while also introducing a new CE program that prescribes a standard for Series 56 registered persons. The Exchange believes the proposed changes are reasonable and set forth the appropriate CE requirements for an individual required to register under Rule 2.5.

The Exchange believes the proposed changes are also consistent with Section 6(b)(5) of the Act²¹ because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest. The Exchange believes the rule changes accomplish these objectives by enabling individuals to qualify for registration with the Exchange by passing a qualification examination that specifically addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for such persons electing to register as Proprietary Traders and/or Proprietary Trader Principals. Furthermore, the

¹⁵ The Participating SROs that have assisted with the development of, and plan to administer, the Series 56 and S501 are the Exchange, Chicago Board Options Exchange, C2 Options Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, LLC, NYSE Arca, Inc., NYSE Amex, LLC, the NASDAQ Stock Market LLC, the National Stock Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange, LLC, and BOX Options Exchange, LLC.

¹⁶ Any registered person who receives a waiver of the Series 56 under Rule 2.5.01(b), and does not maintain any other registrations in CRD, will be required to complete the Proprietary Trader Continuing Education Program (S501).

¹⁷ See *id.* If a registered person has received a Series 56 waiver under Rule 2.5.01(b) but continues to maintain a Series 7 registration (that predates the introduction of the Series 56 on the Exchange), that registered individual will only be required to take the Series 7 CE Program (S101). Through CRD, FINRA will recognize the Series 56 as waived while still requiring the Series 7 CE completion.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78(c)(3)(B).

²⁰ *Id.*

²¹ 15 U.S.C. 78f(b)(5).

Exchange is clarifying the continuing education requirements necessary for individuals that choose to register as Proprietary Traders, as well as the basic qualification requirements necessary for all categories of registration, thereby avoiding any unnecessary investor with regard to such requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes related to registration requirements will align Exchange Rules with those of many other national securities exchanges.²² Unifying the qualification requirements for registration as a Proprietary Trader and Proprietary Trader Principal across exchanges promotes clarity for investors and promotes competition among exchanges for trading volume. Similarly, accepting an alternative examination for Principals designated as Chief Compliance Officers on Form BD will avoid duplicative examination requirements among exchanges, thereby furthering competition among these exchanges and reducing the burden on individuals that are well-qualified to act in a supervisory capacity.

In addition, the proposed rule change clarifying the specific CE requirements for all registration categories will align Exchange Rules with those of the Chicago Board Option Exchange ("CBOE").²³ The Exchange does not believe that these proposed rule changes will affect intermarket competition because the Exchange believes that all exchanges that impose the same CE requirements will file similar rule changes addressing these CE programs. Furthermore, the Exchange does not believe the proposed change will affect intramarket competition because all

similarly situated registered persons (e.g. registered persons maintaining the same registrations) are required to complete the same CE requirements. For example, all individuals maintaining a Series 7 registration will be required to complete the Series 7 CE, while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new Series 56 CE.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change will allow the Exchange to formally recognize a new category of limited representative registration for Proprietary Traders and Proprietary Trader Principals, as well as the Series 56 examination. The proposed rule change also aligns the Exchange's registration and examination requirements for Proprietary Traders and Chief Compliance Officers with those of other exchanges, and specifies the qualification examinations and continuing education requirements for the different registration categories. Waiver of the operative delay would allow the Exchange to implement the proposed rule change without delay, enabling the Authorized Traders of its Members to comply with their registration, examination and continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.²⁵

²⁴ 15 U.S.C. 78b(3)(A).

²⁵ 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).

At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BYX-2013-028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2013-028. 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;

²² See, e.g., BOX Rule 2020(b)(2), (c)(2); CBOE Rule 3.6A.08; NASDAQ OMX BX Rules 1022(h), 1032(b); NASDAQ OMX PHLX Rules 612(e), 613(f); NYSE Arca Options Rule 2.23(b)(2); EDGX Rule 2.5.06; see also NASD Notice to Members 01-51 (August 2001), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003809.pdf>; Chicago Stock Exchange, Inc. Member Regulation Department Information Memorandum (May 8, 2013), available at http://www.chx.com/content/Participant_Information/Downloadable_Docs/MarketRegulation/1_InformationMemorandum/2013/MR-13-04_New_Registration_Categories_and_Related_Qualification_Exams.pdf; NYSE Information Memo 07-43 (May 9, 2007), available at http://www.nyse.com/nyse/nyse/nyse/information-memos/pdf?memo_id=07-43.

²³ See Securities Exchange Act Release No. 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR-CBOE-2013-076).

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-2013-028 and should be submitted on or before September 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20745 Filed 8-23-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70237; File No. SR-BATS-2013-046]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify BATS Registration and Continuing Education Requirements

August 20, 2013.

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 August 15, 2013, 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 Act³ 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend BATS Rule 2.5, entitled "Restrictions," and BATS Rule 11.4, entitled "Authorized Traders," to recognize a new category of limited representative registration for proprietary traders and Proprietary Trader Principals and clarify the qualification and continuing education

requirements necessary or acceptable for different registration categories.

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

Proprietary Trader Registration

The Exchange proposes to amend Rules 2.5 and 11.4 to recognize a new category of limited representative registration for proprietary traders. The Exchange will also expand its registration requirements to include the Proprietary Traders Qualification Examination ("Series 56") among the applicable qualification examinations as determined by the Exchange. Further, the Exchange proposes to permit Authorized Traders⁵ of Members who engage solely in proprietary trading to obtain the Series 56 license in order to effect transactions on the Exchange.

The Series 56 was developed by a number of self-regulatory organizations ("SROs") to test a candidate's knowledge of proprietary trading generally and the industry rules applicable to the trading of equity securities and listed options contracts.⁶

⁵ An "Authorized Trader" is a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Member or Sponsored Participant. BATS Rule 1.5(d).

⁶ See Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR-CBOE-2011-056) (explaining the development of the Series 56 examination and the examination's content). The Series 56 examination program was developed in conjunction with FINRA, and is shared by the Boston Options Exchange, C2 Options Exchange, Inc.; Chicago Board Options Exchange, Inc.; Chicago Stock Exchange, Inc.; International Securities Exchange, LLC; NASDAQ OMX BX, Inc.;

The Series 56 covers, among other things, recordkeeping and recording requirements, types and characteristics of securities and investments, trading practices, display, execution, and trading systems. While the Series 56 is primarily dedicated to topics related to proprietary trading, it also covers some general concepts relating to customers.

The qualification examination consists of 100 multiple choice questions, which candidates have 150 minutes to complete. The content outline describes the following topical sections comprising the examination: Personnel, Business Conduct, Recordkeeping and Reporting Requirements—9 questions; Markets, Market Participants, Exchanges, and Self-Regulatory Organizations—8 questions; Types and Characteristics of Securities and Investments—20 questions; Trading Practices and Prohibited Acts—50 questions; and Display, Execution, and Trading Systems, 13 questions. The examination is already available in the Central Registration Depository (Web CRD), and thus, the rule change can be implemented immediately upon filing the proposed rule changes.

The Exchange believes that acceptance of the Series 56 qualification examination will benefit both the Exchange and the applicable proprietary traders affected by the proposal because the examination would allow an individual who wishes to transact business on BATS in a limited capacity to qualify by passing an examination tailored to that limited capacity. The Series 56 specifically addresses industry topics that establish the appropriate regulatory and procedural knowledge base necessary for individuals required to register as a Proprietary Trader. As such, the Exchange proposes to modify Interpretation and Policy .01(c) of Rule 2.5 to include the Series 56 examination among the examinations accepted by the Exchange. The Exchange also proposes to replace existing Interpretation and Policy .01(f) of Rule 2.5 to set forth the registration requirements for a Proprietary Trader and modify Interpretation and Policy .01(g) to include a cross-reference to this new provision. Further, the Exchange proposes to modify Interpretation and Policy .02(a) of Rule 2.5 to clarify that persons registered as Proprietary Traders must comply with the continuing education requirements applicable to the Series 56 license.

NASDAQ OMX PHLX LLC; NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange, LLC; NYSE Amex, Inc.; and NYSE Arca, Inc.

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

while other Registered Representatives must comply with the continuing education requirements applicable to their particular registration and license. These continuing education requirements are listed in proposed Interpretation and Policy .02(e) to Rule 2.5. Finally, the Exchange also proposes to amend Rule 11.4(e) to include Series 56 among the examinations necessary for an individual to be eligible for registration as an Authorized Trader.

Interpretation and Policy .01(f) of Rule 2.5 currently sets forth a date by which Members were to comply with previous changes to the Rule, which date has already long since passed. The Exchange proposes to eliminate this text and replace it with new text as described below. Under proposed Interpretation and Policy .01(f) of Rule 2.5, an Authorized Trader that is considered to be a proprietary trader can qualify for limited representative registration. An Authorized Trader will be considered to be a proprietary trader if: (1) The Authorized Trader's activities in the investment banking or securities business are limited solely to proprietary trading; (2) the Authorized Trader passes the Series 56; and (3) the Authorized Trader is an associated person of a proprietary trading firm. Under paragraph (g) of this provision, a "proprietary trading firm" is a Member that trades its own capital, does not have customers, and is not a member of the Financial Industry Regulatory Authority (FINRA). In addition, to qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm's accounts, and traders must be owners of, employees of, or contractors to the firm.⁷ Thus, the Proprietary Trader registration expressly excludes associated persons that deal with the public.⁸

Principal Registration

The Exchange proposes to amend Interpretation and Policy .01(d) of Rule 2.5 to state that the Exchange will accept the New York Stock Exchange ("NYSE") Series 14 Compliance Official Examination ("Series 14") in lieu of the Series 24 General Securities Principal Examination ("Series 24") to satisfy the registration requirement for Principals that have been designated Chief

Compliance Officers on Schedule A of Form BD. This examination is designed to establish that the applicant has the knowledge and skill necessary for compliance officials.⁹ The Exchange notes that acceptance of this alternative examination is consistent with other SROs' registration requirements¹⁰ and will provide an alternate, appropriate examination requirement for certain individuals associated with Exchange Members.

In addition, to accommodate the new Proprietary Trader registration category, the Exchange proposes to add language to Interpretation and Policy .01(d) of Rule 2.5 that will create a new category of limited representative Principal—the Proprietary Trader Principal—and clarify the prerequisites necessary for Proprietary Trader Principals as opposed to General Securities Principals. Registration as a Proprietary Trader Principal will be restricted to individuals whose supervisory responsibilities are limited to proprietary traders, as defined in amended Interpretation and Policy .01(f) of Rule 2.5. The Exchange will permit the Series 56 as a prerequisite to the General Securities Principal Examination ("Series 24") or Compliance Official Examination ("Series 14").¹¹

The Exchange also proposes to add language to Interpretation and Policy .01(d) of Rule 2.5 to clarify the appropriate prerequisites for registration as a General Securities Principals.¹² The Exchange will continue to require General Securities Principals to successfully complete the General Securities Representative Registration ("Series 7") or an equivalent foreign examination module ("Series 17" or "Series 37/38").

⁹ For details about the Series 14, see Financial Industry Regulatory Authority, *Compliance Official Qualification Examination (Test Series 14): Content Outline*, (2012), available at <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p117564.pdf>.

¹⁰ See, e.g., CBOE Rule 3.6A.08(b); NASD Notice to Members 01-51 (August 2001), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003809.pdf>; Chicago Stock Exchange, Inc. Member Regulation Department Information Memorandum (May 8, 2013), available at http://www.chx.com/content/Participant_Information/Downloadable_Docs/MarketRegulation/1_InformationMemoranda/2013/MR-13-04_New_Registration_Categories_and_Related_Qualification_Exams.pdf; NYSE Information Memo 07-43 (May 9, 2007), available at http://www.nyse.com/nyse/notices/nyse/information-memos/pdf?memo_id=07-43.

¹¹ As noted, the Exchange will only permit the Series 14 for those designated as Chief Compliance Officers on Schedule A of Form BD.

¹² General Securities Principals are individuals that supervise the activities of General Securities Representatives.

The Exchange believes that the prerequisite examination requirement for registration as a Proprietary Trader Principal is appropriate because, as noted above, the Series 56 is specifically designed to address industry topics and establish the appropriate regulatory and procedural knowledge base relevant to proprietary trading. Moreover, the Exchange will continue to require successful completion of either the Series 24 or Series 14 for both Proprietary Trader Principals and General Securities Principals, thereby ensuring that all Principals have the necessary knowledge and skill to act in a supervisory capacity. Additionally, the Exchange notes that creating the registration category of Proprietary Trader Principal is consistent with registration requirements of other national securities exchanges.¹³

Acceptable Qualification Examinations

The Exchange proposes to add Interpretation and Policy .01(h) of Rule 2.5, which will include a chart that sets forth the relevant qualification requirements for each registration category described in the rule. This chart will not change the qualification requirements in any way. It will merely clarify the requirements described in the Rule, thereby avoiding any confusion regarding qualification examinations the Exchange deems acceptable for each registration category.

Acceptable Continuing Education Programs

The Exchange also proposes to add language to Interpretation and Policy .02(e) to Rule 2.5 that will clarify the different continuing education ("CE") requirements for registered persons based upon their registration with the Exchange. Specifically, the Exchange proposes to introduce a chart that enumerates the Regulatory Element programs necessary for each registration category and introduce a new Regulatory Element program for those persons registered as Proprietary Traders.

Existing Interpretation and Policy .02(a) of Rule 2.5 requires all registered representatives to complete the Regulatory Element of the continuing education program at specified intervals and states that the content of the Regulatory Element shall be determined by the Exchange for each registration category of persons subject to the Rule. The Regulatory Element is a computer-based education program administered

¹³ See, e.g., BOX Rule 2020(c)(2); CBOE Rule 3.6A.08; NASDAQ OMX BX Rule 1022(h); NASDAQ OMX PHLX Rule 612(e).

⁷ BATS Rule 2.5, Interpretation and Policy .01(g).

⁸ Authorized Traders that deal with the public should continue to register as General Securities Representatives after obtaining the Series 7 license. An Authorized Trader who is qualified as a General Securities Representative by passing the Series 7 may function as a proprietary trader; however, such person should register as a General Securities Representative rather than a Proprietary Trader.

by the Financial Industry Regulatory Authority ("FINRA") to help ensure that registered persons are kept up to date on regulatory, compliance and sales practice matters in the industry. Currently, there are there two Regulatory Element programs: The S201 Supervisor Program for registered principals and supervisors and the S101 General Program for Series 7 and all other registered persons.¹⁴ The Exchange is proposing to enumerate these existing programs in Interpretation and Policy .02(e) to Rule 2.5, as well as the new S501 Series 56 Proprietary Trader Continuing Education Program for those persons registered as Proprietary Traders.

The Exchange is also proposing to introduce a new CE program for persons registered with the Exchange solely as Proprietary Traders by passing the Series 56. Proposed Interpretation and Policy .01(f) to Rule 2.5 outlines the registration and qualification requirements for those wishing to register with the Exchange as a Proprietary Trader, making clear that the Series 56 is a prerequisite for this registration category.

The Proprietary Trader Continuing Education Program (S501) is a computer-based education program developed by many of the self-regulatory organizations that worked to develop the Series 56 ("Participating SROs")¹⁵ and administered by FINRA to ensure that registered persons are kept current on regulatory, compliance, and trading practice matters in the industry. Unlike the other offered CE programs, the S501 is not part of the Uniform Continuing Education Program, which is developed and maintained by the Securities Industry Regulatory Council on Continuing Education.

The S501 will logistically operate as the currently offered CE programs do. Specifically, registered persons will be required, through CRD, to complete the Regulatory Element of the CE on the second anniversary of the base date and then every three years thereafter. While creating the S501, the Participating SROs believe that the current

procedures of the other CE programs work well. The Securities Industry Regulatory Council on Continuing Education has tailored the process of the other CE programs since its inception and made it successful. Thus, as proposed, the S501 will work in the same manner. In addition, consistency between the different programs will avoid creating confusion among registered persons and FINRA.

The S501 is required for registrants who are registered as Proprietary Traders and do not maintain any other registration through CRD.¹⁶ Individuals that are registered under any other registration are required to maintain the CE obligations associated with such registrations. For example, an individual that engages solely in proprietary trading activities yet continues to maintain a Series 7 registration will be required to continue taking the Series 7 Continuing Education Program (S101).¹⁷ Although such an individual may be engaging in the same activities as an individual registered as a Proprietary Trader, the Series 7 Examination is more comprehensive and covers topics that the Series 56 does not. Thus, the Exchange believes that this individual should complete the CE associated with the Series 7 because this covers all aspects of the individual's registration.

The introduction of the S501 allows the Exchange to tailor its CE requirements more closely to the duties of individuals who have registered with the Exchange as Proprietary Traders after passing the Series 56. More specifically, the Exchange believes allowing individuals engaging in proprietary trading and registered under the Series 56 to complete a separate CE program than those maintaining a Series 7 registration is appropriate given that all individuals have the option of taking either test. In comparison to the more comprehensive Series 7, the Series 56 Examination is more closely tailored to the practice of proprietary trading. As such, the Exchange believes a Series 56 CE program should be tailored as well. At the same time, if an individual would like to retain a Series 7 license, the Exchange believes it is appropriate

they continue to be required to complete the broader CE program, which covers all aspects of this registration.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Section 6(c)(3)(B) of the Act in particular.¹⁹ Under Section 6(c)(3)(B), it is the Exchange's responsibility to prescribe standards of training, experience, and competence for Exchange Members and their associated persons.²⁰ The Exchange proposes to recognize a new category of limited representative registration for proprietary traders and to permit Authorized Traders of Members who engage solely in proprietary trading to obtain the Series 56 license in lieu of the more general Series 7 license. The Exchange believes the Series 56 establishes that Authorized Traders of Members have attained specified levels of competence and knowledge generally applicable to proprietary trading.

Additionally, the Exchange is offering an alternative qualification examination, the Series 14, for Principals designated as Chief Compliance Officers. The Exchange believes this examination establishes the skill and knowledge base necessary for a compliance official. Moreover, acceptance of this alternative examination will provide an alternate, appropriate examination requirement for certain individuals associated with Exchange Members.

To accommodate recognition of limited representative registration as proprietary Traders, the Exchange proposes to recognize a new category of limited representative principal registration for individuals whose supervisory responsibilities are restricted to proprietary traders. The Exchange will accept the Series 56 as a prerequisite to the successful completion of a permissible Principal Examination. The Exchange will continue to require successful completion of either the Series 24 or Series 14 examination for all Principals because the Exchange believes that these examinations establish the skill and knowledge base appropriate for individuals responsible for supervising the activities of a member's Authorized Traders.

Finally, the Exchange proposes to codify existing CE requirements for persons registered with the Exchange, while also introducing a new CE program that prescribes a standard for

¹⁴ The Commission notes that there are three Regulatory Element programs. The S106 is the Regulatory Element program for persons who are Series 6 qualified.

¹⁵ The Participating SROs that have assisted with the development of, and plan to administer, the Series 56 and S501 are the Exchange, Chicago Board Options Exchange, C2 Options Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, LLC, NYSE Agra, Inc., NYSE Amex, LLC, the NASDAQ Stock Market LLC, the National Stock Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange, LLC, and BOX Options Exchange, LLC.

¹⁶ Any registered person who receives a waiver of the Series 56 under Rule 2.5.01(b), and does not maintain any other registrations in CRD, will be required to complete the Proprietary Trader Continuing Education Program (S501).

¹⁷ See *id.* If a registered person has received a Series 56 waiver under Rule 2.5.01(b) but continues to maintain a Series 7 registration (that predates the introduction of the Series 56 on the Exchange), that registered individual will only be required to take the Series 7 CE Program (S101). Through CRD, FINRA will recognize the Series 56 as waived while still requiring the Series 7 CE completion.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78(c)(3)(B).

²⁰ *Id.*

Series 56 registered persons. The Exchange believes the proposed changes are reasonable and set forth the appropriate CE requirements for an individual required to register under Rule 2.5.

The Exchange believes the proposed changes are also consistent with Section 6(b)(5) of the Act²¹ because they would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, protect investors and the public interest. The Exchange believes the rule changes accomplish these objectives by enabling individuals to qualify for registration with the Exchange by passing a qualification examination that specifically addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for such persons electing to register as Proprietary Traders and/or Proprietary Trader Principals. Furthermore, the Exchange is clarifying the continuing education requirements necessary for individuals that choose to register as Proprietary Traders, as well as the basic qualification requirements necessary for all categories of registration, thereby avoiding any unnecessary investor with regard to such requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes related to registration requirements will align Exchange Rules with those of many other national securities exchanges.²² Unifying the qualification requirements for registration as a Proprietary Trader and Proprietary Trader Principal across exchanges promotes clarity for investors and promotes competition among

²¹ 15 U.S.C. 78f(b)(5).

²² See, e.g., BOX Rule 2020(b)(2), (c)(2); CBOE Rule 3.6A.08; NASDAQ OMX BX Rules 1022(h), 1032(b); NASDAQ OMX PHLX Rules 612(e), 613(f); NYSE Arca Options Rule 2.23(b)(2); EDGX Rule 2.5.06; see also NASD Notice to Members 01-51 (August 2001), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003809.pdf>; Chicago Stock Exchange, Inc. Member Regulation Department Information Memorandum (May 8, 2013), available at http://www.chx.com/content/Participant_Information/Downloadable_Docs/MarketRegulation/1_InformationMemoranda/2013/MR-13-04_New_Registration_Categories_and_Related_Qualification_Exams.pdf; NYSE Information Memo 07-43 (May 9, 2007), available at http://www.nyse.com/nyse/notices/nyse/information-memos/pdf?memo_id=07-43.

exchanges for trading volume. Similarly, accepting an alternative examination for Principals designated as Chief Compliance Officers on Form BD will avoid duplicative examination requirements among exchanges, thereby furthering competition among these exchanges and reducing the burden on individuals that are well-qualified to act in a supervisory capacity.

In addition, the proposed rule change clarifying the specific CE requirements for all registration categories will align Exchange Rules with those of the Chicago Board Option Exchange ("CBOE").²³ The Exchange does not believe that these proposed rule changes will affect intermarket competition because the Exchange believes that all exchanges that impose the same CE requirements will file similar rule changes addressing these CE programs. Furthermore, the Exchange does not believe the proposed change will affect intramarket competition because all similarly situated registered persons (e.g. registered persons maintaining the same registrations) are required to complete the same CE requirements. For example, all individuals maintaining a Series 7 registration will be required to complete the Series 7 CE, while all individuals maintaining a Series 56 registration (and no other registrations) will be required to complete the new Series 56 CE.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The proposed rule change will allow the Exchange to formally

²³ See Securities Exchange Act Release No. 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR-CBOE-2013-076).

²⁴ 15 U.S.C. 78b(3)(A).

recognize a new category of limited representative registration for Proprietary Traders and Proprietary Trader Principals, as well as the Series 56 examination. The proposed rule change also aligns the Exchange's registration and examination requirements for Proprietary Traders and Chief Compliance Officers with those of other exchanges, and specifies the qualification examinations and continuing education requirements for the different registration categories. Waiver of the operative delay would allow the Exchange to implement the proposed rule change without delay, enabling the Authorized Traders of its Members to comply with their registration, examination and continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.²⁵

At any time within 60 days of the filing of this 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BATS-2013-046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2013-046. This file

²⁵ 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).

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-2013-046 and should be submitted on or before September 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20746 Filed 8-23-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-70235; File No. SR-NYSEMKT-2013-59

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending Rule 965NY, Which Governs NDX and RUT Combination Orders

August 20, 2013.

On June 21, 2013, NYSE MKT LLC ("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 amend Rule 965NY, which governs NDX and RUT Combination Orders. The proposed rule change was published for comment in the *Federal Register* on July 9, 2013.³ The Commission received two comment letters on this proposal⁴ and a response letter from the Exchange.⁵

Section 19(b)(2) of the Act⁶ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is August 23, 2013. The Commission is now extending the time period for Commission action.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change, the comment letters that have been submitted in connection with this proposed rule change, and the Exchange's response letter.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁷ designates October 7, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEMKT-2013-59).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-20678 Filed 8-23-13; 8:45 am]

BILLING CODE 8011-01-P

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 69919 (July 2, 2013), 78 FR 41168.

⁴ See comment letters to Elizabeth M. Murphy, Secretary, Commission, from Darren Story, CFA, Student Options, LLC, dated July 12, 2013; and from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated August 2, 2013.

⁵ See comment letter to Elizabeth M. Murphy, Secretary, Commission, from Janet McGinness, EVP & Corporate Secretary, NYSE Euronext, dated August 19, 2013.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(31).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting of the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.
ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS), in accordance with the National Parks Air Tour Management Act of 2000, as amended, announce the next meeting of the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). This notification provides the date, format, and agenda for the meeting.

Date and Location: The NPOAG ARC will hold a meeting on September 19, 2013. The meeting will be conducted as a telephone conference call. The meeting will be held from 10:00 a.m. to 12:00 p.m. Pacific Daylight Time. This NPOAG meeting will be open to the public. Interested persons may listen in on the conference call (see Public Participation at the Meeting).

FOR FURTHER INFORMATION CONTACT: Keith Lusk, AWP-1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009-2007, telephone: (310) 725-3808, email: Keith.Lusk@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (NPATMA), enacted on April 5, 2000, as Public Law 106-181, required the establishment of the NPOAG within one year after its enactment. The Act requires that the NPOAG be a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The duties of the NPOAG include providing advice, information, and recommendations to the FAA Administrator and the NPS Director on: Implementation of Public Law 106-181; quiet aircraft technology; other measures that might accommodate interests to visitors of national parks;

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

and at the request of the Administrator and the Director, on safety, environmental, and other issues related to commercial air tour operations over national parks or tribal lands.

Agenda for the September 19, 2013, NPOAG Meeting

The agenda for the meeting will include, but is not limited to, the following: Review of the new air tour reporting requirements, status on current voluntary agreement efforts, and review and approval of the meeting minutes from the May 16, 2012 NPOAG meeting in Rapid City, SD.

Public Participation at the Meeting

This NPOAG meeting will be conducted as a telephone conference call. Members of the public will be able to listen in on the proceedings. Information regarding how the public may access this conference call in a "listen mode" will be posted on the FAA's ATMP Web site at http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/ by September 12, 2013. Other supplementary meeting information may also be posted on the ATMP Web site. You may also find out how to access the call by contacting Mr. Keith Lusk (contact information is provided above in **FOR FURTHER INFORMATION CONTACT**).

Record of the Meeting

If you are unable to participate in this NPOAG meeting conference call, a summary record of the meeting will be made available at a later date under the NPOAG section of the FAA's ATMP Web site at http://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/ or through the Special Programs Staff, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Los Angeles, CA 90009-207, telephone (310) 725-3808.

Issued in Hawthorne, CA, on August 20, 2013.

Keith Lusk,

Program Manager, Special Programs Office,
Western-Pacific Region.

[FR Doc. 2013-20728 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Interstate 81 Viaduct Project (Onondaga County, New York)

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (USDOT).

ACTION: Notice of intent.

SUMMARY: FHWA, as lead agency, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed infrastructure improvements of Interstate 81 (I-81) in the greater Syracuse area, Onondaga County, New York.

FOR FURTHER INFORMATION CONTACT: Debra Nelson, New York State Department of Transportation, 50 Wolf Road, Albany, New York 12232, Telephone: (518) 457-7256; or Jonathan McDade, New York Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 7th Floor, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431-4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal to correct deficiencies with the I-81 viaduct in the City of Syracuse, Onondaga County, New York while taking into consideration opportunities for addressing community concerns related to this portion of I-81.

In its current condition, the I-81 viaduct is in a deteriorating state of repair and does not meet current design standards. The purpose of the project is to address these structural deficiencies and nonstandard highway features while creating an improved corridor through the City of Syracuse that meets transportation needs and provides the transportation infrastructure to support long-range planning efforts.

To address these issues, the EIS will evaluate alternatives that meet the goals of improving safety and creating an efficient regional and local transportation system within and through greater Syracuse; and providing transportation solutions that enhance the livability, sustainability, and economic vitality of greater Syracuse.

Alternatives under consideration include the no-build alternative; rehabilitation or reconstruction of the

existing highway infrastructure; conversion of the existing highway to an alternative non-interstate highway facility (e.g., at-grade roadway); and replacement of existing infrastructure with a below-grade facility (e.g., highway tunnel, or depressed highway) The NEPA documentation will consider this list of alternatives and evaluations conducted to date as well as any other reasonable and prudent alternatives identified during scoping. The EIS will consider all reasonable alternatives that meet the project purpose and need and are considered feasible based on engineering, cost, and social, economic, and environmental considerations.

Letters describing the project, alternatives under consideration, and opportunities for agency and public involvement in the process will be sent to the appropriate Cooperating and Participating Agencies and to private organizations and citizens that have expressed an interest in this action. The public and agencies will be offered an opportunity to comment on the Purpose and Need, range of alternatives, level of detail, methodologies, etc. This will be accomplished through public and agency outreach which will consist of: A formal public scoping meeting to be held in Syracuse, New York in November 2013; a series of public/stakeholder meetings; a public hearing; meetings with the applicable Cooperating and Participating Agencies; and meeting with the Section 106 Consulting Parties including federally recognized Indian tribes. The Draft EIS will also be available for public and agency review and comment. FHWA and NYSDOT will provide public notification of the time and location of the meetings and hearings.

The meetings will be accessible to persons with disabilities. If special services, such as an interpreter or sign language services, are needed, please contact Debra Nelson, New York State Department of Transportation.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NYSDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 2013.

Jonathan D. McDade,
Division Administrator, New York Division,
Federal Highway Administration.

[FR Doc. 2013-20727 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2013-0181]

Pipeline Safety: Request for Special Permit

AGENCY: Pipeline and Hazardous
Materials Safety Administration
(PHMSA); DOT.

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of a special permit request we have received from a pipeline operator, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on this request, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the request and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding this special permit request by September 25, 2013.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- **E-Gov Web site:** <http://www.Regulations.gov>. This site allows the public to enter comments on any Federal Register notice issued by any agency.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management System: 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:** Docket Management System: 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

Note: Comments are posted without changes or edits to <http://www.Regulations.gov>, including any personal information provided. There is a privacy

statement published on <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

General: Kay McIver by telephone at 202-366-0113, or email at Kay.McIver@dot.gov.

Technical: Charles Helm by telephone at 405-686-2323, or email at Charles.Helm@dot.gov.

SUPPLEMENTARY INFORMATION: PHMSA has received a request for a special permit from a pipeline operator seeking relief from compliance with certain pipeline safety regulations. The request includes a technical analysis provided by the operator. The request has been filed at <http://www.Regulations.gov> and assigned docket number PHMSA-2013-0181. We invite interested persons to participate by reviewing this special permit requests at <http://www.Regulations.gov>, and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on this special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit request:

| Docket No. | Requester | Regulation(s) affected | Nature of special permit |
|-----------------|-----------------------------------|------------------------|--|
| PHMSA-2013-0181 | Fairbanks Natural Gas, LLC (FNG). | 49 CFR 193.2155(b). | To authorize Fairbanks Natural Gas, LLC, (FNG) to construct a 125,000 Barrel Liquid Natural Gas (LNG) Single Containment Storage Tank at its existing storage and vaporization facility at 2942 Tria Road, in Fairbanks, Alaska. The proposed tank will be located within 1 mile of Metro Field Airport, a private airstrip with FAA identifier MTF. FNG requested that the Special Permit be valid for the 50-year life expectancy of the tank. 49 CFR 193.2155(b) states that "An LNG storage tank must not be located within a horizontal distance of 1 mile (1.6 km) from the ends, or ¼ mile (0.4 km) from the nearest point of a runway, whichever is longer." The height of the LNG structures in the vicinity of an airport must also comply with Federal Aviation Administration (FAA) requirements in 14 CFR Section 1.1. FNG believes that the location of the tank at 0.84 miles from the end of the runway, and not directly in the traffic pattern of the airport represent a low risk to the public and airport safety. The height of the tank is approximately 40 feet lower in elevation than an existing known obstruction in the traffic pattern of Metro Field Airport, so FNG stated that its design will comply with requirements of 14 CFR 1.1. |

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on August 20, 2013.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2013-20641 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2013-0146]

Pipeline Safety: Request for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice of a special permit request we have received from a pipeline operator, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on this request, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate the request and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding this special permit request by September 25, 2013.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web site:* <http://www.Regulations.gov>. This site allows the public to enter comments on any Federal Register notice issued by any agency.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management System: 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:* Docket Management System: 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at <http://www.Regulations.gov>.

Note: Comments are posted without changes or edits to <http://www.Regulations.gov>, including any personal

information provided. There is a privacy statement published on <http://www.Regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

General: Kay McIver by telephone at 202-366-0113, or email at kay.mciver@dot.gov.

Technical: Steve Nanney by telephone at 713 272 2855, or email at Steve.Nanne@dot.gov.

SUPPLEMENTARY INFORMATION: PHMSA has received a request for a special permit from a pipeline operator seeking relief from compliance with certain pipeline safety regulations. The request includes a technical analysis provided by the operator. The request has been filed at www.Regulations.gov and assigned a docket number. We invite interested persons to participate by reviewing this special permit request at <http://www.Regulations.gov>, and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on this special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA has received the following special permit request:

| Docket No. | Requester | Regulation(s) affected | Nature of special permit |
|--------------------|------------------------------|------------------------|---|
| PHMSA-2013-0146 .. | North Slope Borough, Alaska. | 49 CFR 192.939 | To authorize the North Slope Borough, Alaska variance from 49 CFR 192.939 for the reassessment interval of its 6-inch Natural Gas Transmission Line that runs from South Barrow Gas Fields, approximately 4 miles southeast of the City of Barrow, to the Barrow Utilities & Electric Cooperative Inc. (BUECI) in the city of Borough, Alaska. The total length of the pipeline is 29,000 feet. On June 4, 2013, North Slope Borough Assembly, identified and allocated funding for the construction of a new secondary redundant pipeline. North Slope Borough requested relief from the requirements of §192.939 until December 31, 2016. This is to allow for completion of the new pipeline and removal of the current pipeline from service, in order to address the reassessment requirements without creating a hazard or loss of product supply to the Alaska community. |

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC on August 20, 2013.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2013-20640 Filed 8-23-13; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. NOR 38302S; Docket No. NOR 38376S]

United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, et al.; and United States Department of Energy and United States Department of Defense v. Aberdeen & Rockfish Railroad Company, et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Final Decision.

SUMMARY: The Surface Transportation Board (Board) has approved the settlement agreement (Agreement) negotiated by the United States Departments of Energy and Defense (the Government) on the one hand and BNSF Railway Company (BNSF) on the other hand; prescribed the Agreement's rate and rate update methodology and revenue-to-variable cost (R/VC) ratios as the maximum reasonable rates; and continued to hold these proceedings in abeyance as to the remaining railroad defendants to permit continued settlement negotiations.

DATES: *Effective Date:* The decision is effective on September 25, 2013.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245-0390. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: In a decision served on August 26, 2013, the Board, under 49 U.S.C. 10704, approved the Agreement negotiated by the Government and BNSF to settle these rate reasonableness complaints as between them only. The Agreement—which applies broadly to the nationwide movement on BNSF's lines of irradiated spent fuel, parts and constituents; spent nuclear fuel moving from a foreign country to the United States for disposal; empty casks; radioactive waste materials; and buffer and escort cars (collectively, Covered Movements) and is structured to cover movements to or from unanticipated geographic areas or in as-yet-unknown types of

equipment—is to be implemented by BNSF tendering rate quotations to the Government under 49 U.S.C. 10721.

In addition, the Board: (1) Prescribed the Agreement's rate and rate update methodology and R/VC ratios (not to exceed 1.80, 2.50, or 3.51 times the shipment cost, depending on commodity type, using BNSF's most current system-average variable costs computed using the Board's Uniform Railroad Costing System) to establish the maximum reasonable rates; (2) dismissed BNSF as a defendant in these proceedings; (3) extinguished all of BNSF's liability and that of its predecessors and subsidiaries for all reparations on past shipments of Covered Movements in which they participated, both insofar as the Government is involved and insofar as any connecting rail carrier may seek contribution; (4) preserved the liability of connecting carriers for reparations as to their portion of the charges assessed on through routes that include(d) BNSF; (5) relieved BNSF from any further requirement to participate in these proceedings, except in response to a properly issued subpoena under the Board's rules; and (6) continued to hold these proceedings in abeyance, subject to the Government reporting quarterly to the Board on the progress of settlement negotiations with remaining railroad defendants.

The Board also: (1) Endorsed the Agreement's non-participation clause, Paragraph 14, "Reparation Claims and Rate Challenges Extinguished," ruling that it will not entertain cross-complaints under 49 CFR 1111.4(c) against BNSF in proceedings involving the Government's claims for reparations against connecting carriers; (2) clarified that the terms and obligations of the Agreement, including the prescribed rate and rate update methodologies and maximum R/VC ratios, will be binding only as between the Government and BNSF, will have no precedential effect as to the reasonableness of the rates or the common carrier obligations of non-consenting rail carrier parties in future proceedings or negotiations, and will not be considered a presumptive model for negotiations between CSXT and the Government; and (3) dismissed BNSF as a party from (a) the Government's pending motion, filed in this proceeding on October 3, 1994, to sever issues relating to the quantity of service, including number of routes open for moving radioactive materials nationwide, and to consolidate tariff questions, and (b) the railroad defendants' pending petition, filed on January 18, 1996, to dismiss the complaints in these proceedings.

The Board's decision is available on our Web site at www.stb.dot.gov.

Decided: August 19, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Derrick A. Gardner,
Clearance Clerk.

[FR Doc. 2013-20735 Filed 8-23-13; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 20, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 25, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.GOV and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at PRA@treasury.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927-5331, email at PRA@treasury.gov, or the entire information collection request maybe found at www.reginfo.gov.

Internal Revenue Service (IRS)

OMB Number: 1545-0962.

Type of Review: Extension without change of a currently approved collection.

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

Abstract: Internal Revenue Code section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protect the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 204,000.

OMB Number: 1545-1863.

Type of Review: Extension without change of a currently approved collection.

Title: IRS e-file Signature Authorization for Form 1120S.

Form: 8879-S.

Abstract: Form 8879-S authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

Affected Public: Private sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 74,181.

OMB Number: 1545-1580.

Type of Review: Extension without change of a currently approved collection.

Title: Compensation Deferred Under Eligible Deferred Compensation Plans (TD 9075).

Abstract: Final regulation provides guidance regarding the trust requirements for certain eligible deferred compensation plans enacted in the Small Business Job Protection Act of 1996.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 10,600.

OMB Number: 1545-2036.

Type of Review: Extension without change of a currently approved collection.

Title: Taxation and Reporting of REIT Excess Inclusion Income (Notice 2006-97).

Abstract: The notice requires certain REITs, RICs, partnerships and other Pass-Through Entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Affected Public: Private sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 100.

OMB Number: 1545-2161.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return for Build America Bonds and Recovery Zone Economic Development Bonds.

Form: 8038-B.

Abstract: Form 8038-B has been developed to assist issuers of the new types of Build America and Recovery Zone Economic Development Bonds, enacted under the American Recovery and Reinvestment Act of 2009, to capture information required by IRC section 149(e).

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 113,661.

OMB Number: 1545-2162.

Type of Review: Extension without change of a currently approved collection.

Title: HCTC Medicare Family Member Registration Form.

Form: 14117.

Abstract: Section 1899E, Health Coverage Improvement, of the ARRA, authorizes the continuation of HCTC benefits for qualified family members after the original HCTC candidate has been canceled from the program due to Medicare enrollment. The original HCTC candidate will complete this form in order to continue enrollment for or to register their family members in the monthly HCTC program.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 1,200.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013-20639 Filed 8-23-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Renewal of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The charter for the Federal Advisory Committee on Insurance (FACI) has been renewed for a two-year period beginning July 29, 2013.

FOR FURTHER INFORMATION CONTACT: James P. Brown, Senior Policy Advisor to the Federal Insurance Office, Room 2100, Department of the Treasury, 1425 New York Avenue NW., Washington, DC 20220, at (202) 622-6910 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the FACI has been renewed for an additional two years beginning July 29, 2013. The purpose of the FACI is to present advice and recommendations to the Federal

Insurance Office (FIO) in performing its duties and authorities. The advice and recommendations may cover specific or general insurance topics, processes, studies and/or reports. The duties of the FACI shall be solely advisory and shall extend only to the submission of advice and recommendations, which shall be non-binding, to FIO. The FACI meets on a periodic basis, and its membership is balanced to include a cross-section of representative views of state and non-government persons having an interest in the duties and authorities of FIO.

Dated: August 16, 2013.

Rebecca H. Ewing,
Executive Secretary.

[FR Doc. 2013-20700 Filed 8-23-13; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 1 Individual and 1 Entity Pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism"

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 1 individual and 1 entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The designations by the Director of OFAC of the 1 individual and 1 entity in this notice, pursuant to Executive Order 13224, are effective on August 20, 2013.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons. of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose 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; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of,

such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On August 20, 2013 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 1 individual and 1 entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for this individual and entity on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individual

1. AZMARAI, Umar Siddique Kathio (a.k.a. AL-SINDHI, Abdallah; a.k.a. AL-SINDHI, Abdullah; a.k.a. AL-SINDI, Abdullah; a.k.a. CHANDIO, Umar Kathio; a.k.a. CHANDUO, Umar; a.k.a. CHANDYO, Omar; a.k.a. KATHIO, Muhammad Umar; a.k.a. KATIO, Muhammad Umar Siddique; a.k.a. OMER, Muhammad; a.k.a. SINDHI, 'Abdallah; a.k.a. UMAR, Muhammad), Karachi, Pakistan; Miram Shah, North Waziristan Agency, Federally Administered Tribal Areas, Pakistan; DOB 1977; POB Saudi Arabia; nationality Pakistan; National ID No. 466-77-221879 (Pakistan); alt. National ID No. 42201-015024707-7 (individual) [SDGT].

Entity

1. JAMIA TALEEM-UL-QURAN-WAL-HADITH MADRASSA (a.k.a. GANJ MADRASSA; a.k.a. GANJOO MADRASSA; a.k.a. JAMIA MADRASSA DUR UL KORAN WASUNA; a.k.a. MADRASA TALEEMUL QURAN WAL HADITH; a.k.a. MADRASA-TALEEMUL QURAN WAL SUNNAH; a.k.a. MAWIYA MADRASSA; a.k.a. MOW-YA MADRASSA; a.k.a. TALALIM QURAN MADRASSA; a.k.a. TALEEM UL-QURAN MADRASSA; a.k.a. TASIN AL-QURAN ABU HAMZA), Gunj Gate, Phandu Road, Peshawar, Pakistan; Near the Baron Gate, Ganj area, Peshawar, Pakistan; Lahori and Yaka Tote Rd. at the intersection near the Ganj Gate, Peshawar, Pakistan [SDGT].

Dated: August 20, 2013.

Barbara C. Hammerle,
Acting Director, Office of Foreign Assets Control.

[FR Doc. 2013-20698 Filed 8-23-13; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-NEW]

Proposed Information Collection (Bowel and Bladder Care Billing Form) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the Bowel and Bladder Care Billing Form used by caregivers of eligible Veterans to document time spent providing services related specifically to bowel and bladder care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 25, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov; or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: cynthia.harvey-pryor@va.gov. Please refer to "OMB Control No. 2900-NEW (Bowel and Bladder Care Billing Form)" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461-5870 or fax (202) 495-5397.

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, 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: Bowel and Bladder Care Billing Form, VA Form 10-10071.

OMB Control Number: 2900-NEW.

Type of Review: New data collection.

Abstract: The information requested on this form is required for National Non-VA Medical Care Program Office to pay eligible caregivers for time spent providing eligible Veterans with specifically defined services such as: bowel and bladder care, showering, shaving, brushing teeth, dressing, transferring to wheelchair, catheterization, undressing, transferring to bed, putting away clothes, etc.

Affected Public: Individuals or households.

Estimated Annual Burden: 7600 burden hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: 12 per year.

Estimated Number of Respondents: 3800.

Dated: August 21, 2013.

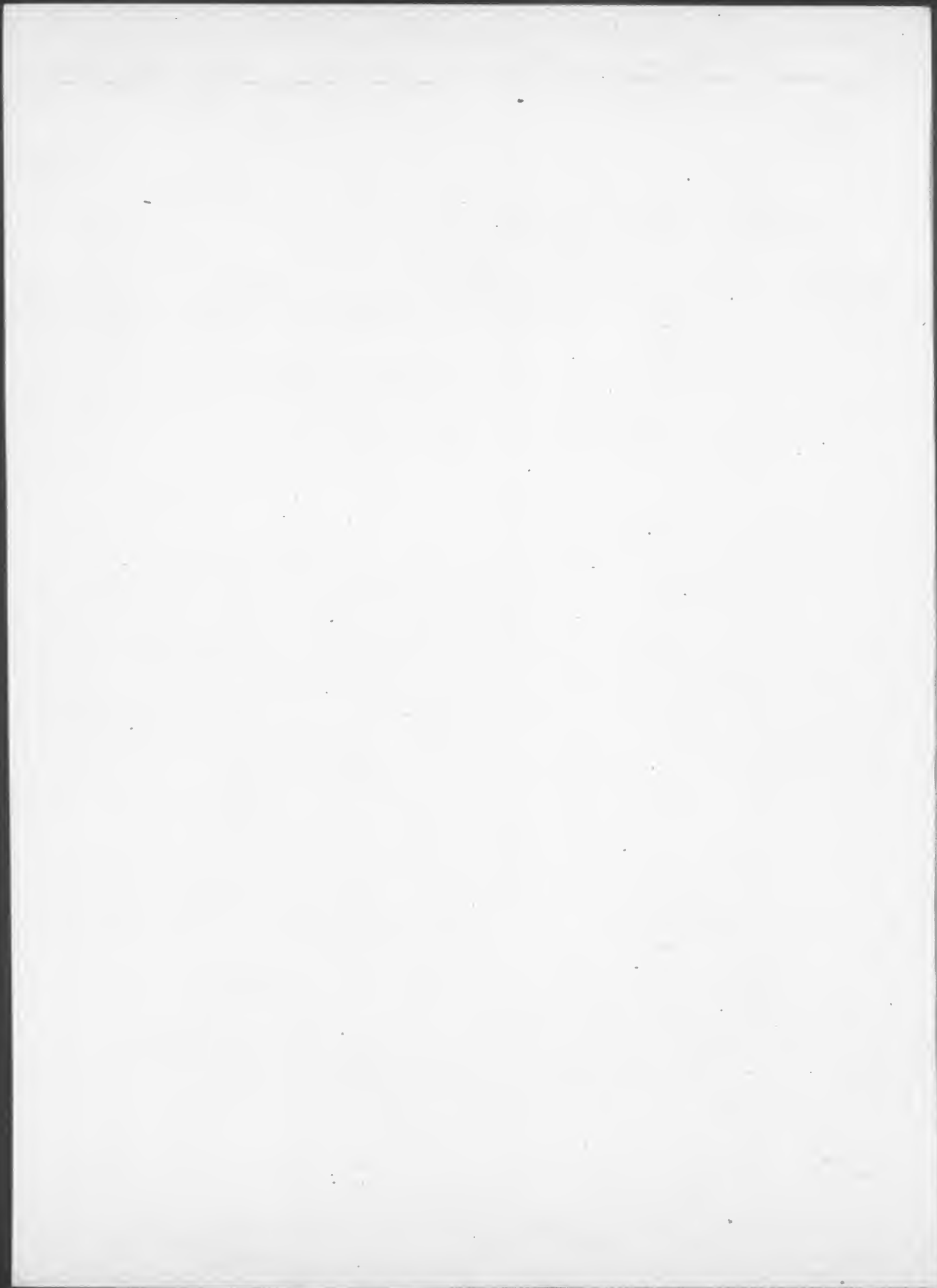
By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-20683 Filed 8-23-13; 8:45 am]

BILLING CODE 8320-01-P



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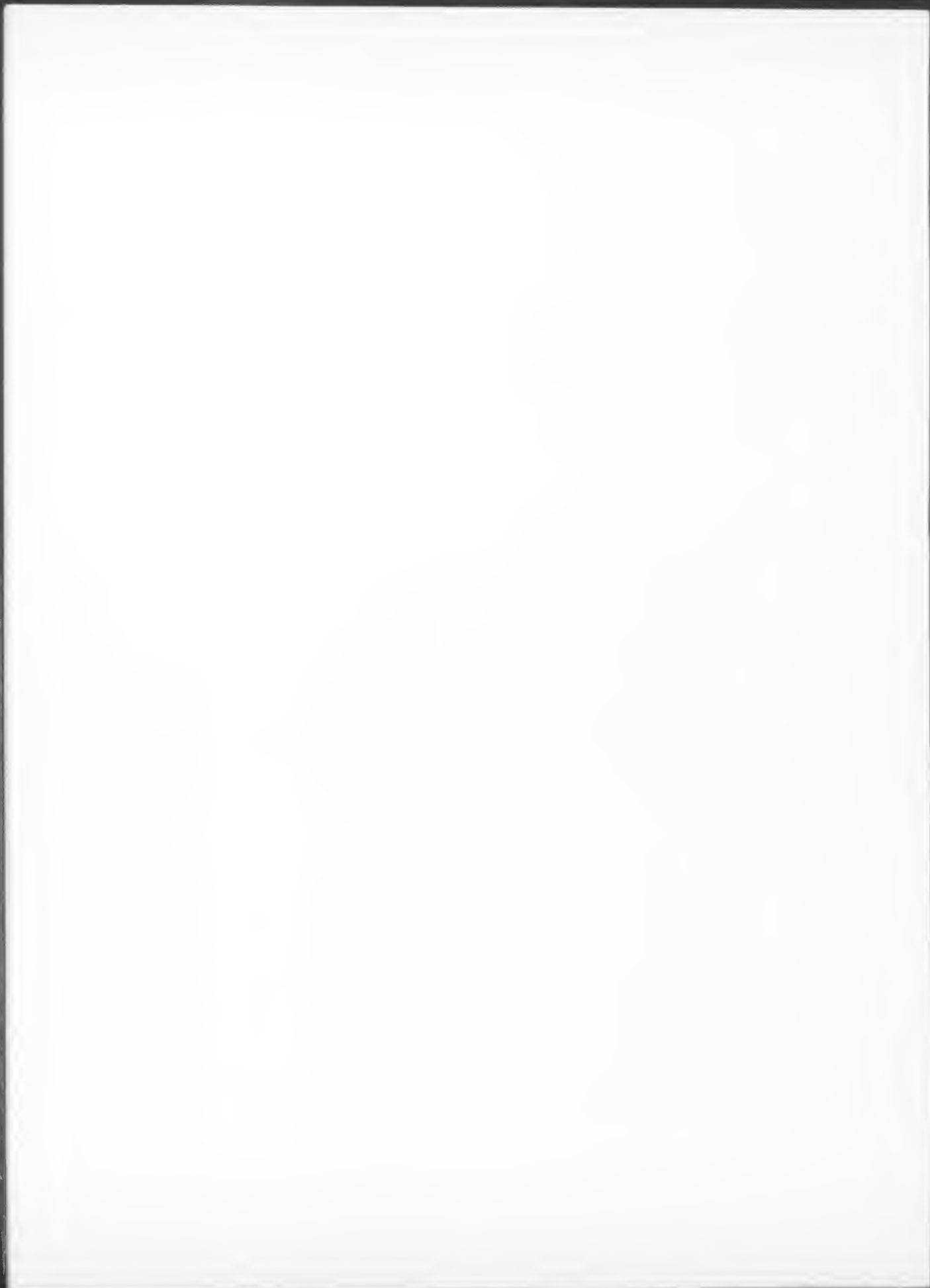
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