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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0419; Directorate Identifier 2012–NM–129–AD; Amendment 39–17800; AD 2014–05–28]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by reports of excessive wear on the lower latch surface of the main landing gear (MLG) up-lock hook. This AD requires revising the maintenance program. We are issuing this AD to detect and correct up-lock hooks worn beyond the wear limit, which could prevent the successful extension of the MLG using the primary landing gear extension system, which in combination with an alternate extension system failure could result in the inability to extend the MLG.

DATES: This AD becomes effective May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0419-0002* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

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 view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM published in the **Federal Register** on May 14, 2013 (78 FR 28156). The NPRM was prompted by reports of excessive wear on the lower latch surface of the main landing gear (MLG) up-lock hook. The NPRM proposed to require revising the maintenance program. We are issuing this AD to detect and correct up-lock hooks worn beyond the wear limit, which could prevent the successful extension of the MLG using the primary landing gear extension system, which in combination with an alternate extension system failure could result in the inability to extend the MLG.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–21, dated June 25, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The main landing gear up-lock assembly part number (P/N) 46500–7 was introduced as the terminating action to AD CF–2002–13R2 [*http://www.regulations.gov/#!documentDetail;D=FAA-2013-0419-0002*]. The main landing gear up-lock assembly P/N 46500–9 was later introduced as a product improvement and has the same up-lock hook as P/N 46500–7.
>
> Due to a delay in the release of the new Maintenance Review Board (MRB) task associated with P/Ns 46500–7 and 46500–9, it is anticipated that in-service aeroplanes may be operating with up-lock hooks worn beyond the wear limit. An up-lock hook worn beyond the wear limit could prevent the successful extension of the main landing gear using the primary landing gear extension system. In combination with an alternate extension system failure, this could result in the inability to extend the main landing gear.
>
> This [Canadian] AD mandates the incorporation of the MRB task number 323100–202.

MRB Task Number 323100–202 adds a functional check of the main landing gear up-lock assembly latch to the maintenance program. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2013–0419.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request for Clarification of Maintenance Program Requirement

Horizon Air requested that we revise paragraph (g) of the NPRM (78 FR 28156, May 14, 2013) to clarify which maintenance program (the operator or maintenance program in PSM 1–84–7) would require revision. Horizon Air also asked whether the operators are required to put the MRB task into their program and revise PSM 1–84–7, or just revise PSM 1–84–7.

We agree to clarify. We have revised the language in paragraph (g) by replacing the phrase ''revise the maintenance program'' with the phrase ''revise the maintenance or inspection program as applicable.'' The AD requires revising the maintenance or inspection program, as applicable, to incorporate the information in Bombardier Temporary Revision MRB–66, dated December 7, 2011, to Section 1–32, Systems/Powerplant Maintenance Program of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. We have revised the introductory text of paragraph (g) of this final rule to include this terminology.

Request for Clarification of Procedures

Horizon Air requested clarification of the procedures to be used to accomplish the actions specified in paragraph (g) of the NPRM (78 FR 28156, May 14, 2013). Horizon Air stated that paragraph (g) would mandate implementation of Task Number 323100–202 into the maintenance program, but is silent on which procedures are used to accomplish the task.

We agree to clarify. This final rule requires incorporating Task Number 323100–202, as introduced by Temporary Revision (TR) MRB–66 into the maintenance or inspection program. Bombardier Temporary Revision MRB–66, dated December 7, 2011, to Section 1–32, Systems/Powerplant Maintenance Program of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7 provides information on how to accomplish the task. No change has been made to this final rule in this regard.

Request for Credit for Actions Done Previously

Horizon Air requested that we allow credit for actions done prior to the effective date of the AD using airplane maintenance manual (AMM) Task Number 32–31–21–220–801 for the corresponding actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of the NPRM (78 FR 28156, May 14, 2013).

We agree to allow credit as requested. The final rule provides an initial compliance time for the performance of MRB Task Number 323100–202. If the operator has already performed the initial task using AMM Task 32–31–21–220–801, then the intent of the final rule is met for the initial task. No change has been made to this final rule in this regard.

Request To Allow Replacement of Up-Lock With Serviceable Up-Lock

Horizon Air (the commenter) requested that we revise paragraph (h) of the NPRM (78 FR 28156, May 14, 2013) to require that replacement up-locks be ''serviceable'' rather than ''new.'' The commenter stated that operators are required to purchase zero time ''new'' up-locks to meet the intent of the final rule, which places an unnecessary financial burden on operators.

We agree with the commenter that operators should be allowed to use a serviceable (i.e., reworked) up-lock. Paragraphs (h)(2)(i), (h)(2)(ii), (h)(2)(iii), and (h)(4)(ii), as stated in the NPRM (78 FR 28156, May 14, 2013), give the option to replace the affected parts with new or reworked (serviceable) parts, or a new up-lock assembly. No change has been made to this final rule in this regard.

Request To Change Heading of Paragraph (h) of the NPRM (78 FR 28156, May 14, 2013)

Horizon Air (the commenter) requested that we change the heading for paragraph (h) of the NPRM (78 FR 28156, May 14, 2013) to ''Optional Method of Compliance.'' The commenter stated that the paragraph provides instructions that may be used in lieu of the initial functional check required by paragraph (g).

We agree with the commenter. We have changed the heading of paragraph (h) of this final rule to ''Optional Method of Compliance.''

Request To Allow Operators To Reduce the Repetitive Intervals

Horizon Air (the commenter) requested that the requirements of paragraph (i) of the NPRM (78 FR 28156, May 14, 2013) be changed to allow operators to set repetitive intervals at times less than those required by Bombardier Temporary Revision MRB–66, dated December 7, 2011. The commenter stated the language in paragraph (i) of the NPRM is too restrictive in regard to the repetitive intervals.

We agree to clarify the repetitive interval that is specified in Bombardier Temporary Revision MRB–66, dated December 7, 2011. In paragraph (g) of this final rule, we have added a sentence to specify that the repetitive interval is not to exceed 6,000 flight hours or 60 months, whichever occurs first. Because the compliance time is specified as ''not to exceed'' the interval, operators are allowed to do the actions earlier than the specified interval. We have not changed paragraph (j) of this final rule (referred to as paragraph (i) of the NPRM (78 FR 28156, May 14, 2013)), which specifies that no alternative intervals may be used unless the intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (l) of this final rule.

Request To Remove Reporting Requirements

Horizon Air (the commenter) requested that we remove the reporting requirements from the NPRM (78 FR 28156, May 14, 2013). The commenter stated that the AMM task and TR MRB–66, dated December 7, 2011, of PSM 1–84–7, do not include a reporting requirement. The commenter stated that an operator that performed the AMM task or the MRB task prior to the release of the final rule would not have recorded the wear dimensions because there was no requirement to record it in either task. The commenter stated that to force operators who have proactively accomplished the inspection to go back and perform the task again just to get a wear measurement to fulfill the requirements of paragraph (j) of the NPRM places an unnecessary financial burden on the operator, and provides data that do nothing to enlighten the manufacturer to the amount of hook wear occurring on high-time up-locks.

We agree that any operator that has performed the AMM task prior to publication of the NPRM (78 FR 28156, May 14, 2013) would not have recorded any dimension. However, we disagree with the request to remove the requirement entirely, because it is beneficial for any operator that has not performed the required task to submit the report. We have revised paragraph (j) of this final rule to state: ''For airplanes on which the requirements of paragraph (g) or (h) of this AD have been accomplished after the effective date of this AD: Within 30 days after the functional check, submit a report of the initial functional check findings using Form No ISETS–03–AOM Q400 in Bombardier Q400 All Operator Message DHC8–400–AOM–515, Revision 2009–06–24, dated April 4, 2012. Send the report to Bombardier, Inc., Technical Help Desk, phone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com.*''

Other Changes to This Final Rule

We have revised the introductory text to paragraph (g) and paragraphs (g)(1), (g)(2), and (g)(3) of this final rule to clarify the requirements regarding the compliance time for doing the initial functional check. The compliance time has not changed.

We have removed the reference to Bombardier Repair Drawing 8/4–32–0190, Issue 1, dated April 2, 2012, in paragraph (h)(3) of this final rule because the introductory text of paragraph (h) already refers to the service information.

We have also added new paragraph (i) to this final rule to allow credit for using Bombardier Repair Drawing 8/4–32–0190, Issue 1, dated April 2, 2012. We have re-designated subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, including the comments received, and determined that air safety and the public interest require adopting this AD

with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 28156, May 14, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 28156, May 14, 2013).

Costs of Compliance

Based on the service information, we estimate that this AD affects about 83 products of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $7,055, or $85 per product.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0419-0002;* 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 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–28 Bombardier, Inc.: Amendment 39–17800. Docket No. FAA–2013–0419; Directorate Identifier 2012–NM–129–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 and subsequent, equipped with a main landing gear (MLG) up-lock having part number 46500–7 or 46500–9.

(d) Subject

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

(e) Reason

This AD was prompted by reports of excessive wear on the lower latch surface of the MLG up-lock hook. We are issuing this AD to detect and correct up-lock hooks worn beyond the wear limit, which could prevent the successful extension of the MLG using the primary landing gear extension system, which in combination with an alternate extension system failure could result in the inability to extend the MLG.

(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) Maintenance/Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Task Number 323100–202 of Bombardier Temporary Revision MRB–66, dated December 7, 2011, to Section 1–32, Systems/Powerplant Maintenance Program of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The compliance time for the initial functional check is at the applicable time specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. The compliance time for the repetitive interval is at intervals not to exceed 6,000 flight hours or 60 months, whichever occurs first.

Note 1 to Paragraph (g) of this AD: The maintenance or inspection program revision required by paragraph (g) of this AD may be done by inserting a copy of Bombardier Temporary Revision MRB–66, dated December 7, 2011, to Section 1–32, Systems/Powerplant Maintenance Program of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When this temporary revision has been included in general revisions of the PSM, the general revisions may be inserted in the PSM, provided the relevant information in the general revision is identical to that in TR MRB–66.

(1) For up-lock hook assemblies that have 15,000 total flight cycles or more as of the

effective date of this AD: The compliance time for doing the initial functional check is within 600 flight cycles after the effective date of this AD.

(2) For up-lock hook assemblies that have 12,000 total flight cycles or more, but fewer than 15,000 total flight cycles, as of the effective date of this AD: The compliance time for doing the initial functional check is within 1,200 flight cycles after the effective date of this AD, but before the accumulation of 15,600 total flight cycles on the assembly.

(3) For up-lock hook assemblies with fewer than 12,000 total flight cycles as of the effective date of this AD: The compliance time for doing the initial functional check is within 6,000 flight cycles after the effective date of this AD, but before the accumulation of 13,200 total flight cycles on the assembly.

(h) Optional Method of Compliance

For any up-lock assembly outside the wear limit specified in the Inspection Notes of Bombardier Repair Drawing 8/4–32–0190, Issue 2, dated January 14, 2013; and on which the up-lock roller on the MLG shock strut is free to rotate and free of any damage or flat spots on the riding surface: In lieu of doing the initial functional check, as required by paragraph (g) of this AD, accomplishing the actions specified in paragraphs (h)(1) through (h)(4) of this AD in accordance with Bombardier Repair Drawing 8/4–32–0190, Issue 2, dated January 14, 2013, may be done. However, as of 36 months after the effective date of this AD, the initial functional check must be done in accordance with the requirements of paragraph (g) of this AD.

(1) Do a detailed inspection for deformation, corrosion, or broken springs of the up-lock assembly of the MLG. If deformation, corrosion, or broken springs are found, before further flight, replace the spring.

(2) Measure the groove depth of the lower latch working surface.

(i) If the groove depth is greater than or equal to 0.022 inch, before further flight, replace the up-lock assembly part number (P/N) 46500–7 or 46500–9 with a new assembly, or an assembly with a new or reworked hook installed.

(ii) If the groove depth is greater than 0.017 inch and less than or equal to 0.0215 inch: Within 600 flight cycles after accomplishing the measurement, do the up-lock inspection as specified in paragraphs (h)(1) and (h)(2) of this AD, and repeat the inspections thereafter at intervals not to exceed 600 flight cycles. Replacing the up-lock hook with a new or reworked hook, or installing a new up-lock assembly, terminates the repetitive inspections.

(iii) If the groove depth is between 0.0215 and 0.0220 inch: Within 300 flight cycles after the measurement, replace the up-lock hook with a new or reworked hook, or with a new up-lock assembly.

(3) Unless already accomplished, within 6,000 flight hours or 36 months after doing the initial inspection specified in paragraph (h)(1) of this AD: Replace the up-lock assembly with a new assembly, or a new or reworked hook installed.

(4) Inspect the up-lock roller on both main gear shock struts for freedom of movement.

(i) If the up-lock roller cannot be freely rotated by finger force, or any flat spots exceeding 0.060 inch (across the flats) are found, before further flight, replace the up-lock roller.

(ii) Repeat the inspections thereafter at intervals not to exceed 50 flight hours until the up-lock has been replaced with a new assembly, or a new or reworked up-lock hook has been installed. Replacing the up-lock with a new assembly, or installing a new or reworked up-lock hook, terminates the repetitive inspection requirements.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Repair Drawing 8/4–32–0190, Issue 1, dated April 2, 2012, which is not incorporated by reference in this AD.

(j) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used, except as provided by paragraph (h) of this AD unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (l) of this AD.

(k) Reporting

For airplanes on which the requirements of paragraph (g) or (h) of this AD have been accomplished after the effective date of this AD: Within 30 days after the functional check, submit a report of the initial functional check findings using Form No ISETS–03–AOM Q400 in Bombardier Q400 All Operator Message DHC8–400–AOM–515, Revision 2009–06–24, dated April 4, 2012. Send the report to Bombardier, Inc., Technical Help Desk, phone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com.*

(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, 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, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–21, dated June 25, 2012, for related information. This MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0419-0002.*

(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 view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Q400 All Operator Message DHC8–400–AOM–515, Revision 2009–06–24, dated April 4, 2012.

(ii) Bombardier Repair Drawing 8/4–32–0190, Issue 2, including handwritten annotations, dated January 14, 2013.

(iii) Bombardier Temporary Revision MRB–66, dated December 7, 2011, to Section 1–32, Systems/Powerplant Maintenance Program of MRB Report Part 1, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7.

(3) 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.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 28, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–05425 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0019; Directorate Identifier 2013–CE–045–AD; Amendment 39–17811; AD 2014–06–07]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher, Segelflugzeugbau Gliders

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Alexander Schleicher, Segelflugzeugbau Model ASK 21 gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as inadequate guidance for spin training operations. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0019; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, D–36163 Poppenhausen, Germany; phone: +49 (0) 06658 89–0; fax: +49 (0) 06658 89–40; Internet: *http://www.alexander-schleicher.de/;* email: *info@alexander-schleicher.de.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Alexander Schleicher, Segelflugzeugbau Model ASK 21 gliders. That NPRM was published in the **Federal Register** on January 15, 2014 (79 FR 2595). That NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> ASK 21 sailplane spin characteristics can be controlled using tail ballast weights, ensuring that pilots of all weights can achieve the same spin results. Although the tail ballast weights were designed to control the centre of gravity of the sailplane, these weights significantly affect the inertia terms that govern the sailplane response to spin manoeuvres. Schleicher issued a Technical Note (TN) Nr. 4 in 1980 (mainly used in Switzerland) to provide instructions for the Aircraft Flight Manual (AFM) for spin training. These instructions did not provide proper protection against accomplishment of single seated flight with forgotten spin ballast installed.
>
> Schleicher issued a TN Nr. 4a in 2004 to provide instructions to the Aircraft Flight Manual (AFM) amendments to address spin ballast installation and facilitate two seated spin training. However, these instructions did not provide proper guidance for the spin entry techniques. The safety margin in respect to inertia limits was marginal for pilot weights less than 70 kg on the front seat.
>
> Furthermore, in one case, it was observed that a control surface gap was not sealed in accordance with design data approved for that aircraft.
>
> Single seated flight with forgotten spin ballast installed, if not corrected, could lead to sailplane operation beyond its centre of gravity limits. Flights with low inertia momentum around Y axis (as a result of the low weight crew) could result in reduced safety margin in respect to inertia limits.
>
> Improperly sealed control surface gap during spin recovery could lead to significant delay of recovery and reduced control of the sailplane.
>
> To address these potential unsafe conditions, Schleicher issued TN Nr. 4b for ASK 21 model sailplanes and TN Nr. 7 for ASK 21 Mi model sailplanes to amend the associated AFM and Aircraft Maintenance Manual (AMM) procedures and installation of a cockpit placard, as applicable to sailplane model.
>
> For the reasons described above, this AD requires amendment of the AFM, AMM and installation of a cockpit placard.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0019-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 2595, January 15, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 2595, January 15, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 2595, January 15, 2014).

Costs of Compliance

We estimate that this AD will affect 59 products of U.S. registry. We also estimate that it will take about 2.5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $250 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $27,287.50, or $462.50 per product.

Authority for This Rulemaking

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

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0019; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–06–07 Alexander Schleicher, Segelflugzeugbau: Amendment 39–17811; Docket No. FAA–2014–0019; Directorate Identifier 2013–CE–045–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alexander Schleicher, Segelflugzeugbau Model ASK 21 gliders, all serial numbers, certificated in any category, that have incorporated:

(1) Alexander Schleicher Segelflugzeugbau ASK 21 Technical Note No. 4, dated November 14, 1980; or

(2) Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note 4a, dated November 25, 2004.

(d) Subject

Air Transport Association of America (ATA) Code 11: Placards and Markings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as inadequate guidance for spin training operations. We are issuing this proposed AD to ensure the placard installed in the aircraft cockpit, the aircraft flight manual (AFM), and the instructions for continued airworthiness (ICA) all have adequate guidance for spin training operations.

(f) Actions and Compliance

Unless already done, do the following actions as specified in paragraphs (f)(1) through (f)(3) of this AD:

(1) *For gliders modified following Alexander Schleicher Segelflugzeugbau ASK 21 Technical Note No. 4, dated November 14, 1980:* Within 30 days after May 8, 2014 (the effective date of this AD), insert the amended pages into the glider's AFM and the ICA and install a cockpit placard following paragraph B) of the Action section in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note Nr. 4b, Issue for US registered gliders, dated October 31, 2013.

(2) *For gliders modified following Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note 4a, dated November 25, 2004:* Within 30 days after May 8, 2014 (the effective date of this AD), insert the amended pages into the glider's AFM and the ICA following paragraph C) of the Action section in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note Nr. 4b, Issue for US registered gliders, dated October 31, 2013.

(3) *For all affected gliders:* An owner/operator (pilot) holding at least a private pilot certificate may insert the amended pages into the AFM and ICA of the glider required by paragraphs (f)(1) and (f)(2) of this AD and must enter the action into the aircraft records showing compliance with this AD following 14 CFR 43.9 (a)(1)–(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov*. Before using any approved AMOC on any aircraft to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2013–0123, dated June 5, 2013, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0019-0002*. You may also refer to Alexander Schleicher Segelflugzeugbau ASK 21 Technical Note No. 4, dated November 14, 1980; and Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note 4a, dated November 25, 2004, for more information. For service information related to this AD, you may contact the manufacturer using the information found in paragraph (i)(3) of this AD.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Alexander Schleicher, Segelflugzeugbau Alexander Schleicher GmbH & Co. Segelflugzeugbau ASK 21 Technical Note Nr. 4b, Issue for US registered gliders, dated October 31, 2013.

(ii) Reserved.

(3) For Alexander Schleicher, Segelflugzeugbau service information identified in this AD, contact Alexander Schleicher GmbH & Co. Segelflugzeugbau, Alexander-Schleicher-Str. 1, D–36163 Poppenhausen, Germany; phone: +49 (0) 06658 89–0; fax: +49 (0) 06658 89–40; Internet: *http://www.alexander-schleicher.de/;* email: *info@alexander-schleicher.de.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on March 19, 2014.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06627 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD; Amendment 39–17809; AD 2014–06–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2007–03–02 for all Rolls-Royce Deutschland (RRD) Tay 620–15, Tay 650–15, and Tay 651–54 turbofan engines. AD 2007–03–02 required an ultrasonic inspection (UI) of low-pressure (LP) compressor fan blades for cracks on certain serial number (S/N) Tay 650–15 engines. AD 2007–03–02 also required, for all Tay 611–8, 620–15, Tay 650–15, and Tay 651–54 engines, initial and repetitive UIs of LP compressor fan blades. AD 2007–03–02 also required, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine. This AD requires additional inspections for the affected engines and removal of the Tay 611–8 engine from the applicability. This AD was prompted by a report of an additional engine failure due to multiple fan blade separation. We are issuing this AD to prevent failure of the LP compressor fan blade, engine failure, and damage to the airplane.

DATES: This AD is effective May 8, 2014. Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 8, 2014.

ADDRESSES: For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Blankenfelde—Mahlow, Germany; phone: 49 0 33 7086 1200; fax: 49 0 33 7086 1212. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* by searching for and locating Docket No. FAA–2006–24777; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Anthony W. Cerra Jr., Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7128; fax: 781–238–7199; email: *anthony.cerra@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007), (''AD 2007–03–02''). AD 2007–03–02 applied to all RRD Tay 611–8 and Tay 620–15 turbofan engines with LP compressor module, part number (P/N) M01100AA or P/N M01100AB, installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module, P/N M01300AA or P/N M01300AB, installed. The NPRM published in the **Federal Register** on November 29, 2013 (78 FR 71532). The NPRM proposed to require a UI of LP compressor fan blades for cracks on certain S/N Tay 650–15 engines; initial and repetitive UIs of LP compressor fan blades for all Tay 620–15, Tay 650–15, and Tay 651–54 engines; and UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine for Tay 650–15 and Tay 651–54 engines. The NPRM also proposed to require additional inspections for the affected engines and removal of the Tay 611–8 engine from the applicability of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 71532, November 29, 2013).

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed.

Costs of Compliance

We estimate that this AD affects about 52 engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 hours per engine to remove and inspect an LP compressor blade set. The average labor rate is $85 per hour. Prorated parts life will cost about $11,750 per engine. Based on these figures, we estimate that the cost of this AD on U.S. operators is $628,680.

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

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

For the reasons discussed above, I certify that this AD:

(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),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007) and adding the following new AD:

2014–06–05 Rolls-Royce Deutschland Ltd & Co KG: (Type Certificate previously held by Rolls-Royce plc) Amendment 39–17809; Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD.

(a) Effective Date

This AD is effective May 8, 2014.

(b) Affected ADs

This AD supersedes AD 2007–03–02, Amendment 39–14913 (72 FR 3936, January 29, 2007).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 620–15 turbofan engines with low-pressure (LP) compressor module, part number (P/N) M01100AA or P/N M01100AB, installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module, P/N M01300AA or P/N M01300AB, installed.

(d) Unsafe Condition

This AD was prompted by a report of an additional engine failure due to multiple fan blade separation. We are issuing this AD to prevent failure of the LP compressor fan blade, engine failure, and damage to the airplane.

(e) Compliance

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

(1) For Tay 650–15 and Tay 651–54 engine LP compressor fan blade ultrasonic inspection (UI):

(i) After the effective date of this AD, whenever LP compressor fan blades are removed from an engine, before re-installation on a different engine, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction I of paragraph 3 of RRD Alert Non-Modification Service Bulletin (NMSB) TAY–72–A1442, Revision 6, dated August 26, 2013.

(ii) After the effective date of this AD, during each engine shop visit, before return to service of the engine, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction II of paragraph 3 of RRD Alert NMSB TAY–72–A1442, Revision 6, dated August 26, 2013.

(2) For Tay 620–15 engine LP compressor fan blade UI, after the effective date of this AD, before return to service of an engine after every mid-life, or every calendar-life, or every overhaul shop visit, inspect the LP compressor fan blades and accomplish a UI of the LP compressor fan blades in accordance with Instruction II of paragraph 3 of RRD Alert NMSB TAY–72–A1442, Revision 6, dated August 26, 2013.

(3) For Tay 620–15, Tay 650–15, and Tay 651–54 engine LP compressor fan blade and rotor disk replacement, if during any inspection required by paragraph (e)(1) or (e)(2) of this AD, any LP compressor fan blade is found cracked, before next flight or return to service of the engine, replace the complete set of the LP compressor fan blades and the LP compressor rotor disk.

(f) Credit for Previous Actions

If, before the effective date of this AD, you inspected or replaced any Tay 620–15, Tay 650–15, or Tay 651–54 turbofan engine LP compressor fan blade or rotor disk assembly using RRD Alert NMSB TAY–72–A1442, Revision 5, dated May 31, 2013, or earlier, you have satisfied the requirements of paragraphs (e)(1) through (e)(3) of this AD.

(g) Definitions

For the purposes of this AD for Tay 620–15 engines:

(1) A mid-life shop visit is an engine shop visit accomplished before accumulating 12,000 engine flight cycles since new (FCSN) or flight cycles (FC) since last engine mid-life shop visit;

(2) A calendar-life shop visit is an engine shop visit accomplished within 10 years since new or since the last engine calendar-life shop visit; and

(3) An overhaul shop visit is an engine shop visit accomplished before accumulating 22,000 engine FCSN or FC since the last engine overhaul shop visit.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Anthony W. Cerra Jr., Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7128; fax: 781–238–7199; email: *anthony.cerra@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency, AD 2013–151R2, dated September 2, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2006-24777-0012.*

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

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce Deutschland Ltd & Co KG Alert Non-Modification Service Bulletin No. TAY–72–A1442, Revision 6, dated August 26, 2013.

(ii) Reserved.

(3) For RRD service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33 7086 1200; fax: 49 0 33 7086 1212.

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

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

Issued in Burlington, Massachusetts, on March 18, 2014.

Ann C. Mollica,

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

[FR Doc. 2014–06632 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0975; Directorate Identifier 2013–NM–082–AD; Amendment 39–17813; AD 2014–06–09]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–18–18 for certain ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. AD 2009–18–18 required repetitive inspections for damage and absence of repair of the cockpit forward side windows, and replacement if necessary. This new AD requires repetitive detailed inspections of the cockpit forward side window for damage and discrepancies; and replacement if necessary. Replacing both cockpit forward side windows with approved windows terminates the repetitive detailed inspections. This new AD also expands the applicability of AD 2009–18–18. The actions required by AD 2009–18–18 are not required by this AD. This AD was prompted by reports of a cockpit forward right-hand side blow out during flight. We are issuing this AD to detect and correct air/water leakage of the cockpit forward side window, which could lead to rapid cabin decompression, resulting in loss of control of the airplane.

DATES: This AD becomes effective May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0975;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For PPG Aerospace service information identified in this AD, contact PPG Aerospace, 12780 San Fernando Road, Sylmar, CA 91342; phone: 818–362–6711; fax: 818–362–0603; Internet: *http://corporateportal.ppg.com/na/aerospace.*

For ATR service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–18–18, Amendment 39–16014 (74 FR 46336, September 9, 2009). AD 2009–18–18 applied to certain ATR—GIE Avions de Transport Régional Model ATR42 and ATR72 airplanes. The NPRM published in the **Federal Register** on November 27, 2013 (78 FR 70892). The NPRM was prompted by reports of a cockpit forward right-hand side blow out during flight. The NPRM proposed to require repetitive detailed inspections of the cockpit forward side window for damage and discrepancies; and replacement if necessary. Replacing both cockpit forward side windows with approved windows would terminate the repetitive detailed inspections. The NPRM also proposed to expand the applicability of AD 2009–18–18. The actions required by AD 2009–18–18 are not required by the NPRM. We are issuing this AD to detect and correct air/water leakage of the cockpit forward side window, which could lead to rapid cabin decompression, resulting in loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0087, dated April 9, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; all manufacturer serial numbers. The MCAI states:

> In 2009, a Left-Hand (LH) forward side glass window of an ATR 72–212 aeroplane blew out while performing a ground pressure test. The investigation results revealed some anomalies on the forward side window at the level of the z-bar on the windows external side and at the level of the inner retainer on the windows internal side. Such anomalies are considered as precursors of this kind of failure. Air or water leakages between the z-bar and the outer glass ply, or between the inner retainer and inner glass ply indicate the presence of deteriorating structural components in the window.
>
> Neither ATR nor PPG Aerospace have authorized repairs on the window z-bar or z-bar sealant. Any attempted repairs on these forward side window z-bars and/or z-bar sealants could lead to a similar event as described above.
>
> In-flight loss of a forward side window would cause rapid cabin decompression, possibly resulting in flight crew incapacitation and consequent reduced control, or loss of control of the aeroplane, and cause the risk of injury to persons on the ground. The loss of a forward side window while the aeroplane is on the ground, due to differential cabin pressure, could result in injury to aeroplane occupants or to persons outside the aeroplane.
>
> To address this potential unsafe condition, EASA issued AD 2009–0159–E [dated July 20, 2009] (*http://ad.easa.europa.eu/blob/easa_ad_2009_0159E_superseded.pdf/EAD_2009-0159-E_1*) [which corresponds to FAA AD 2009–18–18, Amendment 39–116014 (74 FR 46336, September 9, 2009)] to require repetitive inspections of the affected LH and right-hand (RH) cockpit forward side glass windows and, in case discrepancies are found as defined in PPG Aerospace Service Bulletin (SB) NP–158862–001, the replacement of the window(s).
>
> Since that [EASA] AD was issued, a cockpit forward RH-side window blew out during flight on an ATR72–212 aeroplane. Degradation of the window is considered to have been the cause for this failure.
>
> * * * [T]his [EASA] AD * * * requires to accomplish the [detailed] inspections in accordance with the instructions of Revision 1 of PPG Aerospace SB NP–158862–001, which provides more information on examples of [damaged and] discrepant conditions.
>
> This [EASA] AD also requires the removal from service of the affected Part Number (P/N) NP158862–1 and P/N NP158862–2 cockpit forward side windows, which constitutes terminating action for the repetitive inspections required by this AD.

The corrective action is replacing windows, if damage and discrepancies are found. Damage and discrepancies to detect during the inspection include z-bar existing sealant repair, z-bar deformation, separation or gap in the sealant bond between the retainer and inner glass ply, z-bar deformation and retainer gap at same location, or z-bar deformation and retainer gap in window corner. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0975-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 70892, November 27, 2013) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 70892, November 27, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 70892, November 27, 2013).

Costs of Compliance

We estimate that this AD affects 43 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$3,655 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	4 work-hours × $85 per hour = $340	$18,546	$18,886

Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0975;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–18–18, Amendment 39–16014 (74 FR 46336, September 9, 2009), and adding the following new AD:

2014–06–09 ATR—GIE Avions de Transport Régional: Amendment 39–17813. Docket No. FAA–2013–0975; Directorate Identifier 2013–NM–082–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 8, 2014.

(b) Affected ADs

This AD supersedes AD 2009–18–18, Amendment 39–16014 (74 FR 46336, September 9, 2009).

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes; and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Reason

This AD was prompted by reports of a cockpit forward right-hand side blow out during flight. We are issuing this AD to detect and correct air/water leakage of the cockpit forward side window, which could lead to rapid cabin decompression, resulting in loss of control of the airplane.

(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) Inspections

For airplanes that are equipped with any PPG Aerospace cockpit forward side glass window having part number (P/N) NP158862–1 or P/N NP158862–2: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection of the cockpit forward side window to detect any damage and discrepancies (z-bar existing sealant repair, z-bar deformation, separation or gap in the sealant bond between the retainer and inner glass ply, z-bar deformation and retainer gap at same location, or z-bar deformation and retainer gap in window corner), in accordance with the Accomplishment Instructions of PPG Aerospace Component Service Bulletin NP–158862–001 Revision 1, dated January 10, 2013. Repeat the inspection thereafter at intervals not to exceed 550 flight hours or 750 flight cycles, whichever occurs first, except as required by paragraph (h) of this AD.

(1) For windows for which the total flight cycles can be established, inspect within 2,000 flight cycles since first installation of the cockpit forward side window, or within 10 days after the effective date of this AD, whichever occurs later.

(2) For windows for which the total flight cycles cannot be established, inspect before the accumulation of 2,000 total flight cycles on the airplane, or within 10 days after the effective date of this AD, whichever occurs later.

(h) Conditions for Reduced Interval

If any of the conditions specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD is found during any inspection required by paragraph (g) of this AD, reduce the interval of each subsequent inspection as required by paragraph (g) of this AD to 50 flight cycles or 7 days, whichever occurs later.

(1) Sealant separation between the z-bar and the outer glass ply, with depth less than 4 millimeter (mm) (0.160 inches (in)).

(2) Sealant separation between the inboard retainer and inner glass ply, with depth less than 7.5 mm (0.300 in) and cumulative length less than 300 mm (12.000 in).

(3) Window showing both sealant separation between the z-bar and the outer ply, and separation between inboard retainer and inner glass ply, common to the same hole location with a length less than 225 mm (8.860 in), and not covering the entire arc of a window corner.

(i) Replacement

If, during any inspection required by this AD, any damage or discrepant condition, as defined in PPG Aerospace Component Service Bulletin NP–158862–001 Revision 1, dated January 10, 2013 (z-bar existing sealant repair, z-bar deformation, separation or gap in the sealant bond between the retainer and inner glass ply, z-bar deformation and retainer gap at same location, or z-bar deformation and retainer gap in window corner), is found, except for the conditions specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD, before further pressurized flight or within 10 days after the inspection, whichever occurs first, replace the affected window(s) using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent, or the Design Approval Holder (DAH) with EASA design organization approval). For a replacement method to be approved, the repair must specifically refer to this AD.

Note 1 to paragraph (i) of this AD: Guidance for unpressurized flight conditions and limitations can be found in ATR Master Minimum Equipment List (MMEL) item 21–30–1 and Dispatch Deviation Guide (DDG) item 21–30–1.(4).

Note 2 to paragraph (i) of this AD: Guidance for the replacement required by paragraph (i) of this AD can be found in ATR42/72 Job Instruction Card airplane maintenance manual (AMM) JIC 56–12–00 RAI 10000.

(j) Reporting Requirement

Submit a report of the findings of the inspection required by paragraph (g) of this AD to ATR techdesk, 1 ALLEE PIERRE NADOT, 31712 BLAGNAC CEDEX, France, phone: +33 (0)5 62 21 62 21; fax: +33 (0)5 62 21 67 18; email: *techdesk@atr.fr;* and PPG Aerospace, ATTN: Andrew Troller, P.O. Box 2200, Huntsville, AL 35811 USA, phone: 1–256–859–2500 ext. 2544; fax 1–256–859–8155; email: *atroller@ppg.com*; at the applicable time specified in paragraph (j)(1) or (j)(2) of this AD. The report must include the information specified in PPG Aerospace Service Bulletin NP–158862–001, Revision 1, dated January 10, 2013.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Window Replacement Provisions

Replacing only the affected window, as required by paragraph (i) of this AD, with a cockpit forward side window having P/N NP158862–1 left-hand (LH) or P/N NP158862–2 right-hand (RH), as applicable, is not terminating action for the repetitive inspections required by this AD.

(l) Terminating Action

Within 72 months after the effective date of this AD, replace each PPG Aerospace P/N NP–158862–1 LH and P/N NP–158862–2 RH cockpit forward side window with an approved cockpit forward side window. Replacing both PPG Aerospace P/N NP158862–1 LH and P/N NP158862–2 RH cockpit forward side windows with approved windows is a terminating action for the repetitive inspections required by this AD. Replacement windows and procedures for their installation must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent, by the DAH with EASA design organization approval).

(m) Parts Installation Prohibition

As of 72 months after the effective date of this AD, no person may install any PPG Aerospace cockpit forward side window having P/N NP158862–1 LH or P/N NP158862–2 RH on any airplane.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to

approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. 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, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

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

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0087, dated April 9, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0975-0002*.

(2) For ATR service information identified in this AD that is not incorporated by reference in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr*; Internet *http://www.aerochain.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) PPG Aerospace Component Service Bulletin NP–158862–001 Revision 1, dated January 10, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact PPG Aerospace, 12780 San Fernando Road, Sylmar, CA 91342; phone: 818 362 6711; fax: 818 362 0603; Internet: *http://corporateportal.ppg.com/na/aerospace.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on March 14, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–07317 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0829; Directorate Identifier 2013–NM–085–AD; Amendment 39–17814; AD 2014–06–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2010–23–12 for certain Airbus Model A330 and Model A340 series airplanes. AD 2010–23–12 required inspecting to determine the part number for Thales Avionics Angle of Attack (AoA) probes, and replacing any affected probe with a serviceable probe. This new AD adds airplanes to the applicability and, for certain airplanes, requires that those affected probes be replaced. This AD was prompted by reports that the AoA sensors on certain airplanes were modified and re-identified without performing the inspection to determine the part number; therefore, the affected probes were not replaced with serviceable probes. We are issuing this AD to prevent erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems, which, in combination with flight at a high angle of attack, could result in reduced controllability of the airplane.

DATES: This AD becomes effective May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 14, 2010 (75 FR 68698, November 9, 2010).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

For Thales Avionics service information identified in this AD, contact Thales—Aerospace Division, 105, avenue du General Eisenhower—BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 (0)5 61 19 65 00; fax +33 (0)5 61 19 66 00; Internet *http://www.thalesgroup.com/aerospace.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton,

Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010). AD 2010–23–12 applied to certain Airbus Model A330 and Model A340 series airplanes. The NPRM published in the **Federal Register** on September 26, 2013 (78 FR 59295). The NPRM was prompted by reports that the AoA sensors on certain airplanes were modified and re-identified without performing the inspection to determine the part number; therefore, the affected probes were not replaced with serviceable probes. The NPRM proposed to require inspecting to determine the part number for Thales Avionics Angle of Attack (AoA) probes, and replacing any affected probe with a serviceable probe. We are issuing this AD to prevent erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems, which, in combination with flight at a high angle of attack, could result in reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0068, dated March 15, 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:

> During Airbus Final Assembly Line reception flight tests, Angle of Attack (AoA) data from two different aeroplanes were found inaccurate, which was confirmed by flight data analysis.
>
> The results of the investigation conducted by Airbus and Thales on the removed sensors revealed oil residue between the stator and the rotor parts of the AoA vane position resolvers. This oil residue was the result of incorrect removal of machining oil during the manufacturing process of the AoA resolvers. At low temperatures, this oil residue becomes viscous (typically in cruise) causing delayed and/or reduced AoA vane movement. Multiple AoA sensors could be simultaneously affected, providing incorrect indications of the AoA of the aeroplane.
>
> This condition, if not corrected, could lead to erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems which, if during flight at a high angle of attack, could result in reduced control of the aeroplane.
>
> To address this unsafe condition, EASA issued AD 2010–0016R1 [(*http://ad.easa.europa.eu/blob/easa_ad_2013_0068.pdf/AD_2011-0007R1_1*)] [which corresponds to FAA AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)] to require the identification of the serial number (S/N) of each installed Thales Avionics (formerly SEXTANT), Part Number (P/N) C16291AA AoA sensor and the replacement of all suspect units with serviceable one. EASA AD 2010–0016R1 also prohibited the (re) installation of these same S/N AoA sensors on any aeroplane, unless corrective measures had been accomplished.
>
> Since that [EASA] AD was issued, it was discovered that a part of the affected population of AoA sensors may have been modified and re-identified from P/N C16291AA to P/N C16291AB, in accordance with the instructions of Airbus Service Bulletin (SB) A330–34–3228 or SB A340–34–5070, as applicable to aeroplane type, without having passed the inspection in accordance with the instructions of Thales Avionics SB C16291A–34–007, Revision 01.
>
> For the reasons described above, this new [EASA] AD retains the requirements of EASA AD 2010–0016R1, which is superseded, [adds airplanes to the applicability, and requires, for the affected population that was not addressed by EASA AD 2010–0016R1, the replacement of the suspect units with serviceable ones.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov.*

Revised Service Information

Since the NPRM (78 FR 59295, September 26, 2013) was published, we have received the following service information:

- Airbus Mandatory Service Bulletin A330–34–3232, Revision 01, dated September 17, 2013 (for Model A330–200 and A330–300 series airplanes);
- Airbus Mandatory Service Bulletin A340–34–4239, Revision 01, dated September 17, 2013 (for Model A340–200 and A340–300 series airplanes); and
- Airbus Mandatory Service Bulletin A340–34–5072, Revision 01, dated September 17, 2013 (for Model A340–500, and A340–600 series airplanes).

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Include Revised Service Information

Airbus asked that we include the service information identified previously under ''Revised Service Information'' as a means of compliance for accomplishing the required actions.

We agree with the commenter and have included this new service information in paragraph (i) of this AD. We have also given credit for previous revisions of the service information by adding a new paragraph (k) to this AD and redesignating subsequent paragraphs accordingly.

Change to Paragraph (g) of This AD

The NPRM (78 FR 59295, September 26, 2013) contained a typographical error in paragraph (g) of the NPRM. The last sentence of paragraph (g) of the NPRM referred to ''paragraph (l) of this AD.'' Paragraph (l) of the NPRM contained the ''Other FAA AD Provisions'' text. The last sentence of paragraph (g) of the NPRM should have referred to the ''Parts Installation Limitations'' text, which was in paragraph (k) of the NPRM. However, we have not changed the last sentence in paragraph (g) of this AD to refer to paragraph (k) of this AD, because the reference to paragraph (l) of this AD is now correct. As stated previously, a new paragraph (k) was added to this AD and, therefore, paragraph (k) of the NPRM is now referred to as paragraph (l) in this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 59295, September 26, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 59295, September 26, 2013).

Costs of Compliance

We estimate that this AD affects about 70 products of U.S. registry.

The actions that were required by AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), and are retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the retained required actions is $255 per product.

We estimate that it takes about 9 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher

than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $53,550, or $765 per product.

We have received no definitive data that would enable us to provide cost estimates for the optional terminating action specified in this AD.

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0597;* 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 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), and adding the following new AD:

2014–06–10 Airbus: Amendment 39–17814. Docket No. FAA–2013–0829; Directorate Identifier 2013–NM–085–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 8, 2014.

(b) Affected ADs

This AD supersedes AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010).

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD,

(1) Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes; all manufacturer serial numbers.

(2) Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, and A340–642 airplanes; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by reports that the Angle of Attack (AoA) sensors on certain airplanes were modified and re-identified without performing the inspection to determine the part number; therefore, the affected probes were not replaced with serviceable probes. We are issuing this AD to prevent erroneous AoA information and consequent delayed activation or non-activation of the AoA protection systems, which, in combination with flight at a high angle of attack, could result in reduced controllability of the airplane.

(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) Retained Inspection of AoA Probes

This paragraph restates the requirements of paragraph (g) of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010). For airplanes on which an AoA sensor having part number (P/N) C16291AA is installed, except as provided by paragraph (l) of this AD: Within 3 months after December 14, 2010 (the effective date of AD 2010–23–12), perform a detailed inspection of the Thales Avionics AoA probes having P/N C16291AA for a serial number identification, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AoA probe can be conclusively determined from that review. If no AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, is identified during the inspection required by this paragraph of this AD, no further action is required by this AD, except as provided by paragraph (l) of this AD.

(1) Airbus Mandatory Service Bulletin A330–34–3232, dated January 20, 2010 (for Model A330–200 and A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–34–4239, dated January 20, 2010 (for Model A340–200 and A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–34–5072, dated January 20, 2010 (for Model A340–500, and A340–600 series airplanes).

(h) Retained Replacement of Identified AoA Probes

This paragraph restates the requirements of paragraph (h) of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010), with clarified procedures. If the serial number of the AoA probe identified during the inspection required by paragraph (g) of this AD corresponds to a suspect AoA probe specified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009: At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected AoA probe with a serviceable AoA probe, in accordance with one of the four options and associated Accomplishment Instructions specified in the applicable service bulletin identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For airplanes on which Airbus Modification 53368 (back-up speed scale) has been embodied in production or Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has been embodied in service:

Within 3 months after December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)).

(2) For airplanes on which Airbus Modification 53368 (back-up speed scale) has not been embodied in production and Airbus Service Bulletin A330–34–3213, Airbus Service Bulletin A340–34–4213, or Airbus Service Bulletin A340–34–5060, as applicable, has not been embodied in service: Within 15 months after December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)).

(i) New Replacement of AoA Probes

For airplanes on which an AoA probe having P/N C16291AA or C16291AB, with a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, is installed, except as provided by paragraph (l) of this AD: Within 6 months after the effective date of this AD, replace any AoA probe having P/N C16291AA or C16291AB with a serviceable AoA probe, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (i)(1), (i)(2), or (i)(3) of this AD. A review of airplane maintenance records is acceptable for compliance with the requirements of this paragraph if the records clearly demonstrate that the affected AoA probe has passed the inspection specified in Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

(1) Airbus Mandatory Service Bulletin A330–34–3232, Revision 01, dated September 17, 2013.

(2) Airbus Mandatory Service Bulletin A340–34–4239, Revision 01, dated September 17, 2013.

(3) Airbus Mandatory Service Bulletin A340–34–5072, Revision 01, dated September 17, 2013.

(j) Exception to AD Requirements

Airplanes on which Airbus Modification 58555 (installation of AoA sensors with P/N C16291AB) or Airbus Modification 46921 (installation of AoA sensors with P/N 0861ED) has been embodied in production are not affected by the requirements in paragraphs (g), (h) and (i) of this AD, provided that no AoA sensor has been replaced since first flight.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (k)(1), (k)(2), or (k)(3) of this AD, as applicable, which is not incorporated by reference in this AD.

(1) Airbus Mandatory Service Bulletin A330–34–3232, dated January 20, 2010 (for Model A330–200 and A330–300 series airplanes).

(2) Airbus Mandatory Service Bulletin A340–34–4239, dated January 20, 2010 (for Model A340–200 and A340–300 series airplanes).

(3) Airbus Mandatory Service Bulletin A340–34–5072, dated January 20, 2010 (for Model A340–500, and A340–600 series airplanes).

(l) Parts Installation Limitations

(1) For airplanes on which an AoA sensor having part number (P/N) C16291AA is installed: As of December 14, 2010 (the effective date of AD 2010–23–12, Amendment 39–16501 (75 FR 68698, November 9, 2010)) and until the effective date of this AD, no person may install, on any airplane, a Thales Avionics AoA probe having P/N C16291AA and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009, unless the AoA is fitted with an inspection label stating that Thales Service Bulletin C16291A–34–007, has been accomplished.

(2) As of the effective date of this AD, no person may install, on any airplane, a Thales Avionics AoA probe having P/N C16291AA or P/N C16291AB and a serial number identified in Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012, unless the AoA is fitted with an inspection label stating that Thales Service Bulletin C16291A–34–007, has been accomplished.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. 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.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information Airworthiness Directive 2013–0068, dated March 15, 2013, for related information. You may examine the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0829-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the address specified in paragraphs (o)(5) and (o)(7) of this AD.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on May 8, 2014.

(i) Airbus Mandatory Service Bulletin A330–34–3232, Revision 01, dated September 17, 2013.

(ii) Airbus Mandatory Service Bulletin A340–34–4239, Revision 01, dated September 17, 2013.

(iii) Airbus Mandatory Service Bulletin A340–34–5072, Revision 01, dated September 17, 2013.

(iv) Thales Service Bulletin C16291A–34–007, Revision 04, dated October 11, 2012.

(4) The following service information was approved for IBR on December 14, 2010 (75 FR 68698, November 9, 2010).

(i) Airbus Mandatory Service Bulletin A330–34–3232, excluding Appendix 01, dated January 20, 2010.

(ii) Airbus Mandatory Service Bulletin A340–34–4239, excluding Appendix 01, dated January 20, 2010.

(iii) Airbus Mandatory Service Bulletin A340–34–5072, excluding Appendix 01, dated January 20, 2010.

(iv) Thales Service Bulletin C16291A–34–007, Revision 01, dated December 3, 2009.

(5) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(6) For Thales Avionics service information identified in this AD, contact Thales—Aerospace Division, 105, avenue du General Eisenhower—BP 63647, 31036 Toulouse Cedex 1, France; telephone +33 (0)5 61 19 65 00; fax +33 (0)5 61 19 66 00; Internet *http://www.thalesgroup.com/aerospace.*

(7) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on March 17, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–07318 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0363; Directorate Identifier 2013–NM–031–AD; Amendment 39–17769; AD 2014–04–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200, –300 and –200 Freighter series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by a report that an airplane equipped with Angle of Attack (AOA) sensors installed with conic plates recently experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased. This AD requires, for certain airplanes, revising the airplane flight manual (AFM) to advise the flightcrew of emergency procedures for addressing AOA sensor blockage. This AD also requires replacing the AOA sensor conic plates with AOA sensor flat plates, which is a terminating action for the AFM revision. We are issuing this AD to prevent reduced control of the airplane.

DATES: This AD becomes effective May 8, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 8, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0363;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* You may view this 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.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–227–1138; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A330–200, –300 and –200 Freighter series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The SNPRM published in the **Federal Register** on October 2, 2013 (78 FR 60798). We preceded the SNPRM with a notice of proposed rulemaking (NPRM), which published in the **Federal Register** on May 3, 2013 (78 FR 25902). The SNPRM was prompted by a report that an airplane equipped with AOA sensors installed with conic plates recently experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased. The NPRM and the SNPRM both proposed to revise the airplane flight manual (AFM) to advise the flightcrew of emergency procedures for addressing AOA sensor blockage, for certain airplanes. The NPRM and the SNPRM also proposed to require replacing the AOA sensor conic plates with AOA sensor flat plates, which is a terminating action for the AFM revision. We are issuing this AD to prevent reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0023, dated February 1, 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:

> An A330 aeroplane experienced a blockage of all Angle of Attack (AOA) probes during climb leading to Autopilot (AP) disconnection and activation of the alpha protection (Alpha Prot) when Mach number increased.
>
> Analysis showed that this aeroplane was equipped with AOA probes having conic plates, and it is suspected that these plates might have contributed to the event. Investigations are on-going to determine the root cause of this AOA probes blockage. The AOA conic plates can also be installed on A340 aeroplanes.
>
> These AOA conic plates could have been installed in production through Airbus modification (mod.) 201609, associated to Thales Avionics AOA probes Part Number (P/N) C16291AA and P/N C16291AB, or mod. 201610, associated to Goodrich AOA probes P/N 0861ED, or in service through Airbus Service Bulletin (SB) A330–34–3255 or SB A340–34–4250 or SB A340–34–5081.
>
> The blockage of two or three AOA probes of the same angle may cause the Alpha Prot of the normal law to activate.
>
> Under normal flight conditions (in normal law), if the Alpha Prot activates and Mach number increases, the flight control laws order a pitch down of the aeroplane that the flight crew may not be able to counteract with a sidestick deflection, even in the full backward position.
>
> This condition, if not corrected, could result in reduced control of the aeroplane.
>
> To address this condition, Airbus developed a ''Blocked AOA probes'' emergency procedure included in Airbus Airplane Flight Manual (AFM) A330 Temporary Revision (TR) TR293 issue 1 and Airbus AFM A340 TR294 issue 1.
>
> Consequently, EASA issued Emergency AD 2012–0258–E to require amendment of the AFM to ensure that flight crews, in case of AOA probe blockage, apply the applicable emergency procedure.
>
> Since that [EASA] AD was issued, Airbus published approved instructions to re-install AOA probe flat plates on A330/A340 family aeroplanes.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA [Emergency] AD 2012–0258–E which is superseded, and requires installation of AOA probe flat plates, after which the AFM operational procedure must be removed.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0363-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The following presents the comment received on the proposal (78 FR 60798, October 2, 2013) and the FAA's response to each comment.

Request To Reduce Compliance Times

Airbus asked that we reduce the compliance time of 5 months, as specified in paragraphs (h) and (i) of the SNPRM (78 FR 60798, October 2, 2013), to 10 weeks. Airbus stated that, taking into account that this AD was delayed due to issuance of an SNPRM, and that the terminating action required by EASA AD 2013–0023, dated February 1, 2013 (*http://www.regulations.gov/#!documentDetail;D=FAA-2013-0363-0002*), was already completed, it

recommends a 10-week compliance time for the actions in those paragraphs.

We acknowledge the commenter's recommendation to reduce the compliance time specified in the SNPRM (78 FR 60798, October 2, 2013) to 10 weeks. While there might be merit to reducing the compliance time in this AD, the suggested reduction would make the actions currently required by this AD more restrictive, so additional rulemaking would be necessary. We find that further delaying this action would be inappropriate in light of the identified unsafe condition. Therefore, we have not changed this final rule in this regard.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (78 FR 60798, October 2, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (78 FR 60798, October 2, 2013).

Costs of Compliance

We estimate that this AD affects 64 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$5,440
Replacement of certain AOA sensor conic plates.	7 work-hours × $85 per hour = $595	0	595	38,080
Modification of installations of certain AOA sensor flat plates.	5 work-hours × $85 per hour = $425	0	425	27,200

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0363;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–04–10 Airbus: Amendment 39–17769. Docket No. FAA–2013–0363; Directorate Identifier 2013–NM–031–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 8, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

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

(2) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 34: Navigation.

(e) Reason

This AD was prompted by a report that an airplane equipped with Angle of Attack (AOA) sensors installed with conic plates recently experienced blockage of all sensors during climb, leading to autopilot disconnection and activation of the alpha protection (Alpha Prot) when Mach number was increased. We are issuing this AD to prevent reduced control of the airplane.

(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) Airplane Flight Manual Revision

For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD, except as provided by paragraph (j) of this AD: Within 10 days after the effective date of this AD, revise the Emergency Procedures of the Airbus A330 and A340 Airplane Flight Manuals (AFMs), by incorporating Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; or Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; as applicable; to advise the flightcrew of emergency procedures for addressing AOA sensor blockage. This can be done by inserting Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; or Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; into the applicable AFM. When the information in Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012; or Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012; is included in the general revisions of the applicable AFM, the general revisions may be incorporated into the AFM, and the temporary revisions may be removed.

(1) Model A330–201, –202, –203, –223, 223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers, on which Airbus modification 201609 or 201610 has been embodied in production; or on which Airbus Service Bulletin A330–34–3255 has been embodied in service.

(2) Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all manufacturer serial numbers, on which Airbus modification 201609 or 201610 has been embodied in production; or on which Airbus Service Bulletin A340–34–4250 or A340–34–5081 has been embodied in service.

(h) Replacement

Except as provided by paragraph (j) of this AD: Within 5 months after the effective date of this AD, replace all AOA sensor conic plates having part number (P/N) F3411060200000 or P/N F3411060900000 with an applicable AOA sensor flat plate identified in paragraph (h)(1) or (h)(2) of this AD. Performing this replacement constitutes terminating action for the AFM revision required by paragraph (g) of this AD; and Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012, and Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012, to the Airbus A330 and A340 AFMs, as applicable, must be removed from the AFM before further flight after doing the replacement.

(1) Replace with a flat plate having P/N F3411007920200 or P/N F3411007920300, as applicable, in accordance with the applicable service information specified in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD.

(i) Airbus Mandatory Service Bulletin A330–34–3293, Revision 01, including Appendix 01, dated June 12, 2013.

(ii) Airbus Mandatory Service Bulletin A340–34–4273, Revision 01, including Appendix 01, dated June 12, 2013.

(iii) Airbus Mandatory Service Bulletin A340–34–5093, Revision 01, including Appendix 01, dated June 12, 2013.

(2) Replace with a flat plate having P/N F3411007920000 or P/N F3411007920100, in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) or its delegated agent.

(i) Modification of Installation

For airplanes on which any AOA sensor conic plate has been replaced with an AOA sensor flat plate, in accordance with the applicable service information specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD: Within 5 months after the effective date of this AD, modify the installation of the AOA sensor flat plates so that the plates are flush with the fuselage, in accordance with the applicable service information identified in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD.

(1) Airbus Mandatory Service Bulletin A330–34–3293, including Appendix 01, dated January 31, 2013.

(2) Airbus Mandatory Service Bulletin A340–34–4273, including Appendix 01, dated January 30, 2013.

(3) Airbus Mandatory Service Bulletin A340–34–5093, including Appendix 01, dated January 30, 2013.

(j) Exception to the Requirements of Paragraphs (g) and (h) of this AD

For airplanes on which Airbus modification 203285 (improved AOA flat plate protection treatment) has been embodied in production: The actions specified in paragraphs (g) and (h) of this AD are not required, provided that, since first flight, no AOA probe conic plate having P/N F3411060200000 or P/N F3411060900000 has been installed.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, an AOA sensor conic plate having P/N F3411060200000 or P/N F3411060900000 or an AOA protection cover having P/N 98D34203003000.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. 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, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information EASA Airworthiness Directive 2013–0023, dated February 1, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0363-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (n)(3) and (n)(4) of this AD.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus A330 Temporary Revision TR293, Issue 1.0, dated December 4, 2012, to the Airbus A330 Airplane Flight Manual (AFM).

(ii) Airbus A340 Temporary Revision TR294, Issue 1.0, dated December 4, 2012, to the Airbus A340 Airplane Flight Manual (AFM).

(iii) Airbus Mandatory Service Bulletin A330–34–3293, Revision 01, including Appendix 01, dated June 12, 2013.

(iv) Airbus Mandatory Service Bulletin A340–34–4273, Revision 01, including Appendix 01, dated June 12, 2013.

(v) Airbus Mandatory Service Bulletin A340–34–5093, Revision 01, including Appendix 01, dated June 12, 2013.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on February 14, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–07235 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1202; Directorate Identifier 2012–NE–38–AD; Amendment 39–17816; AD 2014–07–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2012–26–14 for all Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. AD 2012–26–14 required removal from service of certain high-pressure (HP) compressor stages 1 to 6 rotor disc assemblies before exceeding certain thresholds. This AD requires removal from service at those same thresholds but restricts the applicability to engines exposed to silver-plated nuts, and removes the terminating action statement required by AD 2012–26–14. This AD was prompted by RRD development of a new silver-free nut that, if installed with a new HP compressor stages 1 to 6 rotor disc assembly, would correct the unsafe condition identified in AD 2012–26–14. We are issuing this AD to prevent failure of the HP compressor stages 1 to 6 rotor disc assembly, which could lead to an uncontained engine failure and damage to the airplane.

DATES: This AD is effective May 8, 2014.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–1202; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7154; fax: (781) 238–7199; email: *robert.c.morlath@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2012–26–14, Amendment 39–17309 (78 FR 2195, January 10, 2013), (''AD 2012–26–14''). AD 2012–26–14 applied to the specified products. The NPRM published in the **Federal Register** on November 19, 2013 (78 FR 69316). The NPRM proposed to continue to require removal from service of certain HP compressor stages 1 to 6 rotor disc assemblies before exceeding certain thresholds. The NPRM also proposed to restrict the applicability to engines exposed to silver-plated nuts, and to remove the terminating action statement required by AD 2012–26–14.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Include a Mandatory Terminating Action

RRD requested that we include the installation of a new HP compressor stages 1 to 6 rotor disc assembly with silver-free nuts, part number (P/N) U755872, as a necessary terminating action to the parts removal requirements of this AD, because this would eliminate the unsafe condition caused by silver nut corrosion.

We disagree. The flight cycle limits imposed by this AD on engines operating with silver-plated nuts provide an acceptable level of safety. Requiring operators to purchase a new HP compressor stages 1 to 6 rotor disc assembly and new silver-free nuts would be an undue economic burden. If an operator chooses to install a new HP compressor stages 1 to 6 rotor disc assembly and silver-free nuts, P/N U755872, this AD would no longer apply to that engine. We did not change this AD.

Request To Require the Replacement of Affected P/Ns at Listed Intervals

RRD requested that instead of requiring a one-time replacement of the HP compressor stages 1 to 6 rotor disc assembly installed with silver-plated nuts, we require replacement of the P/Ns at intervals published in European Aviation Safety Agency (EASA) AD 2012–0230, Initial Issue, dated October 30, 2012.

We disagree. Our proposed AD did not require a one-time replacement. This AD requires, for any HP compressor stages 1 to 6 rotor disc assembly that has ever been installed with silver-plated nuts, replacement at the cyclic limits stated in paragraphs (e)(1) and (e)(2) of this AD, which are equivalent to the cyclic limits stated in EASA AD 2012–0230, Initial Issue, dated October 30, 2012. We did not change this AD.

Request To Update Service Information References to the Most Recent Versions

RRD requested that we update references to service bulletins (SBs) to the most recent versions.

We disagree. We do not reference any SBs in this AD. We did not change this AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 255 engines installed on airplanes of U.S. registry. We also estimate that it will take about 20 hours per engine to comply with this AD. The average labor rate is $85 per hour. Prorated parts life will cost about $13,500 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $3,876,000.

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

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

For the reasons discussed above, I certify that this AD:

(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),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–26–14, Amendment 39–17309 (78 FR 2195, January 10, 2013) and adding the following new AD:

2014–07–02 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce Deutschland GmbH and BMW Rolls-Royce Aero Engines): Amendment 39–17816; Docket No. FAA–2012–1202; Directorate Identifier 2012–NE–38–AD.

(a) Effective Date

This AD is effective May 8, 2014.

(b) Affected ADs

This AD supersedes AD 2012–26–14, Amendment 39–17309 (78 FR 2195, January 10, 2013).

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines with high-pressure (HP) compressor stages 1 to 6 rotor disc assemblies that were ever installed using nuts, part number (P/N) AS44862 or P/N AS64367.

(d) Unsafe Condition

This AD was prompted by a report of silver chloride-induced stress corrosion cracking of the HP compressor stages 1 to 6 rotor disc assembly. We are issuing this AD to prevent failure of the HP compressor stages 1 to 6 rotor disc assembly, which could lead to an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) For BR700–715A1–30 turbofan engines operated under the Hawaiian Flight Mission only, remove the HP compressor stages 1 to 6 rotor disc assembly from service before exceeding 16,000 flight cycles since new (CSN) or before further flight after the effective date of this AD, whichever occurs later.

(2) For BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines (all flight missions except Hawaiian Flight Mission), remove the HP compressor stages 1 to 6 rotor disc assembly from service before exceeding 14,000 flight CSN or before further flight after the effective date of this AD, whichever occurs later.

(f) Prohibition Statement

After the effective date of this AD, do not install an HP compressor stages 1 to 6 rotor disk assembly into an engine, or an engine with an HP compressor stage 1 to 6 rotor disk assembly onto an aircraft, if the HP compressor stages 1 to 6 rotor disk assembly has ever been operated with nuts, P/N AS44862 or P/N AS64367, and has more CSN than specified in the applicable portion of the compliance section of this AD.

(g) Definition

For the purpose of this AD, flight cycles are defined as the total flight CSN on the HP compressor stages 1 to 6 rotor disc assembly, without any pro-rated calculations applied for different flight missions.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Robert Morlath, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: (781) 238–7154; fax: (781) 238–7199; email: *robert.c.morlath@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2012–0230, Initial Issue, dated October 30, 2012, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2012-1202-0005*.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 27, 2014.

Robert J. Ganley,

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

[FR Doc. 2014–07444 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1985

[Docket Number: OSHA–2011–0540]

RIN 1218–AC58

Procedures for Handling Retaliation Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim Final Rule; request for comments.

SUMMARY: This document provides the interim final text of regulations governing the employee protection (or whistleblower) provisions of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (CFPA). This rule establishes procedures and time frames for the handling of retaliation complaints under CFPA, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on April 3, 2014. Comments and additional materials must be

submitted (post-marked, sent or received) by June 2, 2014.

ADDRESSES: You may submit your comments by using one of the following methods:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You may submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0540, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., E.T.

Instructions: All submissions must include the agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2011–0540). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Katelyn Wendell, Program Analyst, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. Email: *wendell.katelyn@dol.gov.* This **Federal Register** publication is available in alternative formats. The alternative formats available are: Large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Financial Protection Act of 2010 (CFPA or the Act), was enacted as Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376, on July 21, 2010. The Act established the Bureau of Consumer Financial Protection (Bureau) as an independent bureau within the Federal Reserve System and gave the Bureau the power to regulate the offering and provision of consumer financial products or services under more than a dozen Federal consumer financial laws. The laws subject to the Bureau's jurisdiction include, among others, CFPA, the Consumer Leasing Act of 1976 (15 U.S.C. 1667 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Credit Billing Act (15 U.S.C. 1666 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 *et seq.*), the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*), and the Truth in Lending Act (15 U.S.C. 1601 *et seq.*). The regulations to be enforced by the Bureau include certain regulations issued by seven ''transferor agencies,'' including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development. The Bureau also has concurrent authority to enforce the Telemarketing Sales Rule issued by the Federal Trade Commission. The Bureau published an initial list of such rules and regulations. *See* 76 FR 43569–71 (July 21, 2011). It has also revised and republished many of these regulations, and announced its intention to continue doing so. *See, e.g.,* Streamlining Inherited Regulations, 76 FR 75825 (Dec. 5, 2011); Final Rule, Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7216, 7218–7219 (Jan. 31, 2013) (noting Bureau's issuance of five new regulations governing the mortgage industry).

The Bureau also has authority to issue and enforce new rules, orders, standards and prohibitions which will apply to banks and other covered persons who provide consumer financial products and services as defined in the CFPA, in addition to the existing Federal consumer financial protection laws and regulations listed above. These include, but are not limited to, providers of the following consumer financial products or services: (1) Residential mortgage loan origination, brokerage, and servicing, modification and foreclosure relief services; (2) private education loans; (3) payday loans; (4) consumer debt collection; (5) consumer credit reporting; (6) finance companies, consumer lending, and loan servicing and brokerage; (7) money transmitting and check cashing services; (8) prepaid card services; (9) debt relief services, and (10) any service provider or affiliate which is related to such an entity.

More information about the Bureau, its jurisdiction, and the laws and regulations it enforces is available at its Web site, *http://www.consumerfinance.gov/the-bureau.*

Section 1057 of the Dodd-Frank Act, codified at 12 U.S.C. 5567 and referred to throughout these interim final rules as CFPA, provides protection to covered employees, and authorized representatives of such employees, against retaliation because they provided information to their employer, to the Bureau, or to any other Federal, State, or local government authority or law enforcement agency relating to any violation of (or any act or omission that the employee reasonably believes to be a violation of) any provision of the Act or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau; testified or will testify in any proceeding resulting from the administration or enforcement of any provision of the Act or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau; filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

These interim final rules establish procedures for the handling of whistleblower complaints under CFPA.

II. Summary of Statutory Procedures

CFPA's whistleblower provisions include procedures that allow a covered

employee to file a complaint with the Secretary of Labor (Secretary) within 180 days of the alleged retaliation. Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the Act (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the complainant and respondent an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation.

The statute provides that the Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that it would have taken the same adverse action in the absence of that activity (see section 1985.104 for a summary of the investigation process). OSHA interprets the prima facie case requirement as allowing the complainant to meet this burden through the complaint as supplemented by interviews of the complainant.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the respondent of those findings, along with a preliminary order that requires the respondent to, where appropriate: take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of receipt of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an administrative law judge (ALJ). The filing of objections under CFPA will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, CFPA requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer reasonable attorney fees, not exceeding $1,000, if the Secretary finds that the complaint is frivolous or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

CFPA permits the employee to seek de novo review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after the date of receipt of a written determination. The provision provides that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

Finally, CFPA provides that except in very limited circumstances, and notwithstanding any other provision of law, the rights and remedies provided for in the CFPA whistleblower provision may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement, and no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under CFPA's whistleblower provision.

III. Summary and Discussion of Regulatory Provisions

The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of CFPA. Responsibility for receiving and investigating complaints under CFPA has been delegated to the Assistant Secretary for Occupational Safety and Health (Assistant Secretary) by Secretary's Order 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB. Secretary of Labor's Order No. 2–2012, 77 FR 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Section 1985.100 Purpose and Scope

This section describes the purpose of the regulations implementing CFPA and provides an overview of the procedures covered by these regulations.

Section 1985.101 Definitions

This section includes the general definitions from Section 1002 of the Dodd-Frank Act, 12 U.S.C. 5481, which are applicable to CFPA's whistleblower provisions. The Act defines the term ''affiliate'' as ''any person that controls, is controlled by, or is under common control with another person.'' 12 U.S.C. 5481(1). It defines the term ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' 12 U.S.C. 5481(4).

The Act defines a ''consumer financial product or service'' to include a wide variety of financial products or services offered or provided for use by consumers primarily for personal, family, or household purposes. *See* 12 U.S.C. 5481(5), (15). Included within the definition of consumer financial product or services are residential mortgage origination, lending, brokerage and servicing, and related products and services such as mortgage loan modification and foreclosure relief; private student loans; payday loans; and certain other financial services such as consumer debt collection, consumer credit reporting, credit cards and related activities, money transmitting, check cashing and related activities, prepaid cards, and debt relief services. *See, e.g.,* Notice and Request for Comment, Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 76 FR 38059–62 (June 29, 2011) (Bureau request for comment

on exercise of jurisdiction over consumer debt collection, consumer credit reporting, consumer credit and related activities, money transmitting, check cashing and related activities, prepaid cards, and debt relief services). More information about the Bureau is available at its Web site, *http://www.consumerfinance.gov/the-bureau.*

The Act defines ''covered person'' as ''any person that engages in offering or providing a consumer financial product or service'' and ''any affiliate of [such] a person . . . if [the] affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6). It defines the term ''person'' as ''an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.'' 12 U.S.C. 5481(19). The law defines ''service provider'' as ''any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—(i) participates in designing, operating, or maintaining the consumer financial product or service; or (ii) processes transactions relating to the consumer financial product or service . . . .'' 12 U.S.C. 5481(26)(A). The term ''service provider'' does not include a person who solely offers or provides general business support services or advertising services. 12 U.S.C. 5481(26)(B). Anyone who is a ''service provider'' is also ''deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.'' 12 U.S.C. 5481(26)(C).

CFPA defines ''covered employee'' as ''any individual performing tasks related to the offering or provision of a consumer financial product or service.'' 12 U.S.C. 5567(b). Consistent with the other whistleblower protection provisions administered by OSHA, OSHA interprets the term ''covered employee'' to also include individuals presently or formerly working for, individuals applying to work for, and individuals whose employment could be affected by a covered person or service provider where such individual was performing tasks related to the offering or provision of a consumer financial product or service at the time that the individual engaged in protected activity under CFPA. *See, e.g.,* 29 CFR 1979.101; 29 CFR 1980.101(g); 29 CFR 1981.101; 29 CFR 1982.101(d); 29 CFR 1983.101(h). OSHA believes this interpretation of the term ''covered employee'' best implements the broad statutory protections of CFPA, which aim to protect individuals who perform tasks related to the offering or provision of a consumer financial product or service from termination or any other form of retaliation resulting from their protected activity under CFPA.

Section 1985.102 Obligations and Prohibited Acts

This section describes the activities that are protected under CFPA and the conduct that is prohibited in response to any protected activities. As described above, CFPA protects individuals who provide information to their employer, to the Bureau, or to any other Federal, State, or local government authority or law enforcement agency relating to any violation of (or any act or omission that the employee reasonably believes to be a violation of) any provision of the Act or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau. CFPA also protects individuals who object to, or refuse to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believes to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau. More information about the Bureau is available at its Web site, *http://www.consumerfinance.gov/the-bureau.*

In order to have a ''reasonable belief'' under CFPA, a complainant must have both a subjective, good faith belief and an objectively reasonable belief that the complained-of conduct violates one of the listed categories of law. *See Sylvester* v. *Parexel Int'l LLC,* ARB No. 07–123, 2011 WL 2165854, at *11–12 (ARB May 25, 2011) (discussing the reasonable belief standard under analogous language in the Sarbanes-Oxley Act whistleblower provision, 18 U.S.C. 1514A). The requirement that the complainant have a subjective, good faith belief is satisfied so long as the complainant actually believed that the conduct complained of violated the relevant law, rule, order, standard, or prohibition. *See id.* The objective ''reasonableness'' of a complainant's belief is typically determined ''based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.'' *Id.* at *12 (internal quotation marks and citation omitted). However, the complainant need not show that the conduct complained of constituted an actual violation of law. Pursuant to this standard, an employee's whistleblower activity is protected where it is based on a reasonable, but mistaken, belief that a violation of the relevant law has occurred. *Id.* at *13.

Section 1985.103 Filing of Retaliation Complaint

This section explains the requirements for filing a retaliation complaint under CFPA. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision to take an adverse action. *Equal Emp't Opportunity Comm'n* v. *United Parcel Serv., Inc.,* 249 F.3d 557, 561–62 (6th Cir. 2001). The time for filing a complaint under CFPA may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint equitably tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

Complaints filed under CFPA need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

OSHA notes that a complaint of retaliation filed with OSHA under CFPA is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *See Sylvester* v. *Parexel Int'l, Inc.,* ARB No. 07–123, 2011 WL 2165854, at *9–10 (ARB May 25, 2011) (holding that whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts OSHA to the existence of the alleged retaliation and the complainant's desire that OSHA investigate the complaint. Upon receipt of the complaint, OSHA is to determine whether the ''complaint, supplemented as appropriate by interviews of the complainant'' alleges ''the existence of facts and evidence to make a prima facie showing.'' 29 CFR 1985.104(e). As explained in section 1985.104(e), if the

complaint, supplemented as appropriate, contains a prima facie allegation, and the respondent does not show clear and convincing evidence that it would have taken the same action in the absence of the alleged protected activity, OSHA conducts an investigation to determine whether there is reasonable cause to believe that retaliation has occurred. *See* 12 U.S.C. 5567(c)(2)(B), 29 CFR 1985.104(e).

Section 1985.104 Investigation

This section describes the procedures that apply to the investigation of CFPA complaints. Paragraph (a) of this section outlines the procedures for notifying the parties and the Bureau of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) specifies that OSHA will provide to the complainant (or the complainant's legal counsel if the complainant is represented by counsel) a copy of all of respondent's submissions to OSHA that are responsive to the complainant's whistleblower complaint at a time permitting the complainant an opportunity to respond to those submissions. Before providing such materials to the complainant, OSHA will redact them in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. Paragraph (d) of this section discusses confidentiality of information provided during investigations.

Paragraph (e) of this section sets forth the applicable burdens of proof. CFPA requires that a complainant make an initial prima facie showing that a protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. The complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. *See, e.g. Porter* v. *Cal. Dep't of Corr,* 419 F.3d 885, 895 (9th Cir. 2005) (years between the protected activity and the retaliatory actions did not defeat a finding of a causal connection where the defendant did not have the opportunity to retaliate until he was given responsibility for making personnel decisions).

If the complainant does not make the required prima facie showing by raising a non-frivolous allegation of retaliation, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the Energy Reorganization Act of 1974 (ERA), which is the same as that under CFPA, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under CFPA and not investigate further if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statute requires OSHA to determine whether there is reasonable cause to believe that protected activity was a contributing factor in the alleged adverse action. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (internal quotation marks, emphasis and citation omitted) (discussing the Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)); *see also Addis* v. *Dep't of Labor,* 575 F.3d 688, 689–91 (7th Cir. 2009) (discussing Marano as applied to analogous whistleblower provision in the ERA); *Clarke* v. *Navajo Express, Inc.,* ARB No. 09–114, 2011 WL 2614326, at *3 (ARB June 29, 2011) (discussing burdens of proof under analogous whistleblower provision in the Surface Transportation Assistance Act (STAA)). For protected activity to be a contributing factor in the adverse action, '' 'a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,' '' because a complainant alternatively can prevail by showing that the respondent's '' 'reason, while true, is only one of the reasons for its conduct,' '' and that another reason was the complainant's protected activity. *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (quoting *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the Sarbanes-Oxley Act of 2002 whistleblower provision), *aff'd sub nom. Klopfenstein* v. *Admin. Review Bd., U.S. Dep't of Labor,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

If OSHA finds reasonable cause to believe that the alleged protected activity was a contributing factor in the adverse action, OSHA may not order relief if the employer demonstrates by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 12 U.S.C. 5567(c)(3)(C). The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard. Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain. *Clarke,* 2011 WL 2614326, at *3.

Paragraph (f) describes the procedures OSHA will follow prior to the issuance of findings and a preliminary order when OSHA has reasonable cause to believe that a violation has occurred. Its purpose is to ensure compliance with the Due Process Clause of the Fifth Amendment, as interpreted by the Supreme Court in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987) (requiring OSHA to give a STAA respondent the opportunity to review the substance of the evidence and respond, prior to ordering preliminary reinstatement).

Section 1985.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement, affirmative action to abate the violation, back pay with interest, and compensatory damages. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where

appropriate, the preliminary order, also advise the respondent of the right to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

In ordering interest on back pay under CFPA, the Secretary has determined that interest due will be computed by compounding daily the Internal Revenue Service interest rate for the underpayment of taxes, which under 26 U.S.C. 6621 is generally the Federal short-term rate plus three percentage points. The Secretary believes that daily compounding of interest achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and recently was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board (NLRB). *See Jackson Hosp. Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (NLRB Oct. 22, 2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

In ordering back pay, OSHA will require the respondent to submit the appropriate documentation to the Social Security Administration (SSA) allocating the back pay to the appropriate calendar quarters. Requiring the reporting of back pay allocation to the SSA better serves the remedial purposes of CFPA by ensuring that employees subjected to discrimination are truly made whole. *See Latino Express, Inc., et al,* 359 NLRB No. 44, 2012 WL 6641632 (NLRB Dec. 18, 2012). As the NLRB explained, when back pay is not properly allocated to the years covered by the award, a complainant may be disadvantaged in several ways. First, improper allocation may interfere with a complainant's ability to qualify for any old-age Social Security benefit. *Id.* at *2 (''Unless a [complainant's] multiyear backpay award is allocated to the appropriate years, she will not receive appropriate credit for the entire period covered by the award, and could therefore fail to qualify for any old-age Social Security benefit.''). Second, improper allocation may reduce the complainant's eventual monthly benefit. *Id.* As the NLRB explained, ''[i]f a backpay award covering a multi-year period is posted as income for one year, it may result in SSA treating the [complainant] as having received wages in that year in excess of the annual contribution and benefit base.'' *Id.* Wages above this base are not subject to Social Security taxes, which reduces the amount paid on the employee's behalf. ''As a result, the [complainant's] eventual monthly benefit will be reduced, because participants receive a greater benefit when they have paid more into the system.'' *Id.* Finally, ''Social Security benefits are calculated using a progressive formula: Although a participant receives more in benefits when she pays more into the system, the rate of return diminishes at higher annual incomes.'' Therefore, a complainant may ''receive a smaller monthly benefit when a multi-year award is posted to one year rather than being allocated to the appropriate periods, even if Social Security taxes were paid on the entire amount.'' *Id.* The purpose of a make-whole remedy such as back pay is to put the complainant in the same position she would have been absent the prohibited retaliation. Should a complainant be required to suffer the above disadvantages, she would not truly be in the same position she would be had she not been subjected to retaliation. As such, the Secretary agrees that requiring proper SSA allocation better achieves the make-whole purpose of a back pay award.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to termination, but not actually return to work. Such ''economic reinstatement'' is akin to an order of front pay and frequently is employed in cases arising under Section 105(c) of the Federal Mine Safety and Health Act of 1977, which protects miners from retaliation. 30 U.S.C. 815(c); *see, e.g., Sec'y of Labor ex rel. York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (ALJ June 26, 2001). Front pay has been recognized as a possible remedy in cases under the whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *See, e.g., Moder* v. *Vill. of Jackson,* ARB Nos. 01–095, 02–039, 2003 WL 21499864, at *10 (ARB June 30, 2003) (under environmental whistleblower statutes, ''front pay may be an appropriate substitute when the parties prove the impossibility of a productive and amicable working relationship, or the company no longer has a position for which the complainant is qualified''); *Hobby* v. *Georgia Power Co.,* ARB Nos. 98–166, 98–169 (ARB Feb. 9, 2001), *aff'd sub nom. Hobby* v. *U.S. Dep't of Labor,* No. 01–10916 (11th Cir. Sept. 30, 2002) (unpublished) (noting circumstances where front pay may be available in lieu of reinstatement but ordering reinstatement); *Michaud* v. *BSP Transport, Inc.,* ARB Nos. 97–113, 1997 WL 626849, at *4 (ARB Oct. 9, 1997) (under STAA, front pay appropriate where employee was unable to work due to major depression resulting from the retaliation); *Doyle* v. *Hydro Nuclear Servs.,* ARB Nos. 99–041, 99–042, 00–012, 1996 WL 518592, at *6 (ARB Sept. 6, 1996) (under ERA, front pay appropriate where employer had eliminated the employee's position); *Brown* v. *Lockheed Martin Corp.,* ALJ No. 2008–SOX–00049, 2010 WL 2054426, at *55–56 (ALJ Jan. 15, 2010) (noting that while reinstatement is the ''presumptive remedy'' under Sarbanes-Oxley, front pay may be awarded as a substitute when reinstatement is inappropriate). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of CFPA. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. Neither an employer nor an employee has a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that immediate reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Subpart B—Litigation

Section 1985.106 Objections to the Findings and the Preliminary Order and Requests for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

The timely filing of objections stays all provisions of the preliminary order, except for the portion requiring reinstatement. A respondent may file a motion to stay the Assistant Secretary's preliminary order of reinstatement with the Office of Administrative Law Judges. However, such a motion will be granted only based on exceptional circumstances. The Secretary believes that a stay of the Assistant Secretary's preliminary order of reinstatement under CFPA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, i.e., irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay. If no timely objection to the Assistant Secretary's findings and/or preliminary order is filed, then the Assistant Secretary's findings and/or preliminary order become the final decision of the Secretary not subject to judicial review.

Section 1985.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, as set forth in 29 CFR part 18 subpart A. This section provides that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. As noted in this section, formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

Section 1985.108 Role of Federal Agencies

The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings under CFPA. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, multiple employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Bureau, if interested in a proceeding, also may participate as amicus curiae at any time in the proceedings.

Section 1985.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under CFPA. Specifically, the complainant must demonstrate (i.e. prove by a preponderance of the evidence) that the protected activity was a ''contributing factor'' in the adverse action. *See, e.g., Allen* v. *Admin. Review Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) (''The term 'demonstrates' [under identical burden-shifting scheme in the Sarbanes-Oxley whistleblower provision] means to prove by a preponderance of the evidence.''). If the employee demonstrates that the alleged protected activity was a contributing factor in the adverse action, the employer, to escape liability, must demonstrate by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 12 U.S.C. 5567(c)(3)(C).

Paragraph (c) of this section further provides that OSHA's determination to dismiss the complaint without an investigation or without a complete investigation under section 1985.104 is not subject to review. Thus, section 1985.109(c) clarifies that OSHA's determinations on whether to proceed with an investigation under CFPA and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to OSHA to conduct an investigation or make further factual findings. Paragraph (d) notes the remedies that the ALJ may order under CFPA and, as discussed under section 1985.105 above, provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily, and that the respondent will be required to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters. Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, OSHA, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the Secretary and is not subject to judicial review.

Section 1985.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to

which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that, based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under CFPA, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under CFPA would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay.

If the ARB concludes that the respondent has violated the law, it will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily, and the respondent will be required to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters. If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

Section 1985.111 Withdrawal of Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It permits complainants to withdraw their complaints orally, and provides that, in such circumstances, OSHA will confirm a complainant's desire to withdraw in writing. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1985.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ARB or the ALJ to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1985.113 Judicial Enforcement

This section describes the Secretary's authority under CFPA to obtain judicial enforcement of orders and terms of settlement agreements. CFPA expressly authorizes district courts to enforce orders issued by the Secretary under 12 U.S.C. 5567. Specifically, the statute provides that ''[i]f any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.'' 12 U.S.C. 5567(c)(5)(A).

All orders issued by the Secretary under 12 U.S.C. 5567 may also be enforced by any person on whose behalf an order was issued in district court, under 12 U.S.C. 5567(c)(5)(B). The Secretary interprets these provisions to grant the district court authority to enforce preliminary orders of reinstatement. Subsection (c)(2)(B) provides that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position (12 U.S.C. 5567(c)(2)(B)). Subsection (c)(2)(B) also instructs the Secretary to accompany any reasonable cause finding that a violation has occurred with a preliminary order containing the relief prescribed by paragraph (4)(B), which includes reinstatement, (*see* 12 U.S.C. 5567(c)(2)(B)). Subsection (c)(2)(C) declares that any reinstatement remedy contained in a preliminary order is not stayed upon the filing of objections. 12 U.S.C. 5567(c)(2)(C) (''The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.''). Thus, under the statute, enforceable orders under paragraph (c)(5) include both preliminary orders issued under subsection (c)(2)(B), and final orders issued under subsection (c)(4)(A), both of which may contain the relief of reinstatement as prescribed by subsection (c)(4)(B).

This statutory interpretation is consistent with the Secretary's interpretation of similar language in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121, and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); *Solis* v. *Tenn. Commerce Bancorp, Inc.,* 713 F. Supp. 2d 701 (M.D. Tenn. 2010); *but see Bechtel* v. *Competitive Techs., Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006), (*decision vacated, appeal dismissed,* No. 06–2295 (4th Cir. Feb. 20, 2008)).

Section 1985.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth CFPA's provisions allowing a complainant to bring an original de novo action in district court, alleging the same allegations contained in the complaint filed with OSHA, under certain circumstances. CFPA permits a complainant to file an action for de novo review in the appropriate district court if there has been no final decision of the Secretary within 210 days after the date of the filing of the complaint, or within 90 days after the date of receipt of a written determination. 12 U.S.C. 5567(c)(4)(D)(i). ''Written determination'' refers to the Assistant Secretary's written findings issued at the close of OSHA's investigation under section 1985.105(a). *See* 12 U.S.C. 5567(c)(2)(A)(ii). The Secretary's final decision is generally the decision of the ARB issued under section 1985.110. In other words, a complainant may file an action for de novo review in the appropriate district court in either of the following two circumstances: (1) A

complainant may file a de novo action in district court within 90 days of receiving the Assistant Secretary's written findings issued under section 1985.105(a), or (2) a complainant may file a de novo action in district court if more than 210 days have passed since the filing of the complaint and the Secretary has not issued a final decision. The plain language of 12 U.S.C. 5567(c)(4)(D)(i), by distinguishing between actions that can be brought if the Secretary has not issued a ''final decision'' within 210 days and actions that can be brought within 90 days after a ''written determination,'' supports allowing de novo actions in district court under either of the circumstances described above.

However, it is the Secretary's position that complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint or within 90 days of the complainant's receipt of the Assistant Secretary's written findings. Thus, for example, after the ARB has issued a final decision denying a whistleblower complaint, the complainant no longer may file an action for de novo review in federal district court. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals. *See* 12 U.S.C. 5567(c)(4)(E) (providing that an order with respect to which review could have been obtained in the court of appeals shall not be subject to judicial review in any criminal or other civil proceeding).

Under CFPA, the Assistant Secretary's written findings become the final order of the Secretary, not subject to judicial review, if no objection is filed within 30 days. *See* 12 U.S.C. 5567(c)(2)(C). Thus, a complainant may need to file timely objections to the Assistant Secretary's findings in order to preserve the right to file an action in district court.

This section also requires that, within seven days after filing a complaint in district court, a complainant must provide a file-stamped copy of the complaint to OSHA, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the District Court complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. This provision is necessary to notify OSHA that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed. The section also incorporates the statutory provisions which allow for a jury trial at the request of either party in a district court action, and which specify the remedies and burdens of proof in a district court action.

Section 1985.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of CFPA requires.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, section 1985.103) which was previously reviewed as a statutory requirement of CFPA and approved for use by the Office of Management and Budget (OMB), and was assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995). A non-material change has been submitted to OMB to include the regulatory citation.

V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure, practice, and interpretation within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for these regulations, which provide the procedures for the handling of retaliation complaints. Although this is a procedural rule not subject to the notice and comment procedures of the APA, OSHA is providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after OSHA receives and reviews the public's comments.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. OSHA also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132

The Office of Management and Budget has concluded that this rule is a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866. Executive Order 12866, reaffirmed by Executive Order 13563, requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) of Executive Order 12866 as rules that may ''[h]ave an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' The rule is procedural and interpretative in nature. Because it simply implements procedures necessitated by enactment of CFPA, the rule is expected to have a negligible economic impact. Therefore, no economic impact analysis under Section 6(a)(3)(C) of Executive Order 12866 has been prepared. For the same reason, and the fact that no notice of proposed rulemaking has been published, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995. 2 U.S.C. 1531 *et seq.* Finally, this rule does not have ''federalism implications,'' in that it does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or

practice.'' 5 U.S.C. 553(b)(A). Rules that are exempt from APA notice and comment requirements are also exempt from the Regulatory Flexibility Act (RFA). See SBA Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act 9 (May 2012); also found at: *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.* This is a rule of agency procedure, practice, and interpretation within the meaning of that section; and therefore the rule is exempt from both the notice and comment rulemaking procedures of the APA and the requirements under the RFA.

List of Subjects in 29 CFR Part 1985

Administrative practice and procedure, Employment, Consumer financial protection, Investigations, Reporting and recordkeeping requirements, Whistleblower.

Authority and Signature

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC on March 21, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1985 is added to read as follows:

PART 1985—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER THE EMPLOYEE PROTECTION PROVISION OF THE CONSUMER FINANCIAL PROTECTION ACT OF 2010

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

Sec.

1985.100 Purpose and scope.
1985.101 Definitions.
1985.102 Obligations and prohibited acts.
1985.103 Filing of retaliation complaint.
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Subpart B—Litigation

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1985.107 Hearings.
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1985.109 Decision and orders of the administrative law judge.
1985.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1985.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.
1985.112 Judicial review.
1985.113 Judicial enforcement.
1985.114 District court jurisdiction of retaliation complaints.
1985.115 Special circumstances; waiver of rules.

Authority: 12 U.S.C. 5567; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary of Labor's Order No. 2–2012, 77 Fed. Reg. 69378 (Nov. 16, 2012).

Subpart A—Complaints, Investigations, Findings, and Preliminary Orders

§ 1985.100 Purpose and scope.

(a) This part implements procedures of the employee protection provision of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (CFPA or the Act), Public Law 111–203, 124 Stat. 1376, 1955 (July 21, 2010) (codified at 12 U.S.C. 5567). CFPA provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to the offering or provision of consumer financial products or services.

(b) This part establishes procedures under CFPA for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf, and sets forth OSHA's interpretations of CFPA. These rules, together with those codified at 29 CFR part 18, set forth the procedures under CFPA for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements.

§ 1985.101 Definitions.

As used in this part:

(a) *Affiliate* means any person that controls, is controlled by, or is under common control with another person.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under CFPA.

(c) *Bureau* means the Bureau of Consumer Financial Protection.

(d) *Business days* means days other than Saturdays, Sundays, and Federal holidays.

(e) *CFPA* means Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, 1955 (July 21, 2010) (codified at 12 U.S.C. 5567).

(f) *Complainant* means the person who filed a CFPA complaint or on whose behalf a complaint was filed.

(g) *Consumer* means an individual or an agent, trustee, or representative acting on behalf of an individual.

(h) *Consumer financial product or service* means any financial product or service that is:

(1) Described in one or more categories in 12 U.S.C. 5481(15) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(2) Described in clause (i), (iii), (ix), or (x) of 12 U.S.C. 5481(15)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in paragraph (h)(1) of this section.

(i) *Covered employee* means any individual performing tasks related to the offering or provision of a consumer financial product or service. The term ''covered employee'' includes an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by a covered person or service provider where such individual was performing tasks related to the offering or provision of a consumer financial product or service at the time that the individual engaged in protected activity under CFPA.

(j) *Covered person* means—

(1) Any person that engages in offering or providing a consumer financial product or service, or

(2) Any affiliate of such a person if such affiliate acts as a service provider to such person, or

(3) Any service provider to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(k) *Federal consumer financial law* means any law described in 12 U.S.C. 5481(14).

(l) *OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

(m) *Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(n) *Respondent* means the person named in the complaint who is alleged to have violated the Act.

(o) *Secretary* means the Secretary of Labor or person to whom authority under CFPA has been delegated.

(p) *Service provider* means any person that provides a material service to a

covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(1) Participates in designing, operating, or maintaining the consumer financial product or service; or

(2) Processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes);

(3) The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person:

(i) A support service of a type provided to businesses generally or a similar ministerial service; or

(ii) Time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(q) Any future statutory amendments that affect the definition of a term or terms listed in this section will apply in lieu of the definition stated herein.

§ 1985.102 Obligations and prohibited acts.

(a) No covered person or service provider may terminate or in any other way retaliate against, or cause to be terminated or retaliated against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, any covered employee or any authorized representative of covered employees because such employee or representative, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee), engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) A covered employee or authorized representative is protected against retaliation (as described in paragraph (a) of this section) by a covered person or service provider because he or she:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency, information relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, 1955 (July 21, 2010), or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) Testified or will testify in any proceeding resulting from the administration or enforcement of any provision of Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, 1955 (July 21, 2010), or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) Filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) Objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition subject to the jurisdiction of, or enforceable by, the Bureau.

§ 1985.103 Filing of retaliation complaint.

(a) *Who may file.* A person who believes that he or she has been discharged or otherwise retaliated against by any person in violation of CFPA may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the complainant resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of CFPA occurs, any person who believes that he or she has been retaliated against in violation of the Act may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint equitably tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

§ 1985.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, OSHA will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also notify the respondent of its rights under paragraphs (b) and (f) of this section and § 1985.110(e). OSHA will provide an unredacted copy of these same materials to the complainant (or the complainant's legal counsel if complainant is represented by counsel) and to the Bureau.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent and the complainant each may submit to OSHA a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent and the complainant each may request a meeting with OSHA to present its position.

(c) OSHA will provide to the complainant (or the complainant's legal counsel if complainant is represented by counsel) a copy of all of respondent's submissions to OSHA that are responsive to the complainant's whistleblower complaint at a time permitting the complainant an opportunity to respond. Before providing such materials to the complainant, OSHA will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also provide the complainant with an opportunity to respond to such submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing (i.e. a non-frivolous allegation) that a protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence

of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, further investigation of the complaint will not be conducted if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, OSHA will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1985.105, if OSHA has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated CFPA and that preliminary reinstatement is warranted, OSHA will contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials, OSHA will redact them, if necessary, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigators, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of OSHA's notification pursuant to this paragraph, or as soon thereafter as OSHA and the respondent can agree, if the interests of justice so require.

§ 1985.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of CFPA.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The preliminary order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested (or other means that allow OSHA to confirm receipt), to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1985.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

Subpart B—Litigation

§ 1985.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under CFPA, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1985.105. The objections, request

for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

§ 1985.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1985.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Copies of documents must be sent to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of OSHA, or where the Assistant Secretary is participating in the proceeding, or where service on OSHA and the Associate Solicitor is otherwise required by these rules.

(b) The Bureau, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at the Bureau's discretion. At the request of the Bureau, copies of all documents in a case must be sent to the Bureau, whether or not it is participating in the proceeding.

§ 1985.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to § 1985.104(e) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent reasonable attorney fees, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB), U.S. Department of Labor. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

§ 1985.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration (SSA) allocating any back pay award to the appropriate calendar quarters.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent reasonable attorney fees, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1985.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying OSHA, orally or in writing, of his or her withdrawal. OSHA then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. OSHA will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1985.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, but before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of

the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1985.113.

§ 1985.112 Judicial review.

(a) Within 60 days after the issuance of a final order under §§ 1985.109 and 1985.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

§ 1985.113 Judicial enforcement.

Whenever any person has failed to comply with a final order, including one approving a settlement agreement, issued under CFPA, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. The Secretary also may file a civil action seeking enforcement of the order in the United States district court for the District of Columbia. Whenever any person has failed to comply with a preliminary order of reinstatement, the person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate district court of the United States.

§ 1985.114 District court jurisdiction of retaliation complaints.

(a) The complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy, either:

(1) Within 90 days after receiving a written determination under § 1985.105(a) provided that there has been no final decision of the Secretary; or

(2) If there has been no final decision of the Secretary within 210 days of the filing of the complaint.

(b) At the request of either party, the action shall be tried by the court with a jury.

(c) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1985.109. The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including:

(1) Reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(2) The amount of back pay, with interest;

(3) Compensation for any special damages sustained as a result of the discharge or discrimination; and

(4) Litigation costs, expert witness fees, and reasonable attorney fees.

(d) Within seven days after filing a complaint in Federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

§ 1985.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three days notice to all parties, waive any rule or issue such orders that justice or the administration of CFPA requires.

[FR Doc. 2014–07380 Filed 4–2–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0408; FRL–9909–11–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware pursuant to the Clean Air Act (CAA). Whenever new or revised national ambient air quality standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Delaware has made a submittal addressing the infrastructure requirements for the 2008 ozone NAAQS.

DATES: This final rule is effective on May 5, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2013–0408. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control (DNREC), 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 30, 2013 (78 FR 53709), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. In the NPR, EPA proposed approval of Delaware's submittal that provides the basic elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain, and enforce the 2008 ozone NAAQS.

II. Summary of SIP Revision

On March 27, 2013, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a SIP revision that addresses the infrastructure elements specified in section 110(a)(2) of the CAA, necessary to implement, maintain and enforce the 2008 ozone NAAQS. This submittal addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L), and (M). EPA has analyzed the above identified submission and is approving the submittal as addressing the requirements of section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA. As discussed in the NPR, EPA will take separate action on the portions of the submittal which address section 110(a)(2)(I) for the Part D, Title I nonattainment planning requirements and section 110(a)(2)(D)(i)(I) which addresses significant contribution to nonattainment or interference with maintenance of the NAAQS in another state.

The rationale for EPA's rulemaking action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD for this rulemaking is available at *www.regulations.gov,* Docket number EPA–R03–OAR–2013–0408.

III. Public Comments and EPA Responses

EPA received three sets of comments on the August 30, 2013 proposed approval of Delaware's 2008 ozone infrastructure SIP. The commenters included the State of Connecticut, the Delaware Solid Waste Authority (DSWA), and the Sierra Club. A full set of these comments is provided in the docket for today's final rulemaking action.

A. State of Connecticut

Comment: The State of Connecticut asserts that its ability to attain the 2008 ozone NAAQS is compromised by interstate transport of pollution from upwind states. Connecticut claims it would require additional reductions from upwind emissions to address transported emissions into Connecticut and to be able to attain the 2008 ozone NAAQS based on modeling from the Ozone Transport Commission and modeling done by EPA for the Cross State Air Pollution Rule (CSAPR). Connecticut comments that remaining measures to reduce in-state emissions were limited and not cost effective. Connecticut asserts that it and other states like Delaware had done their fair share to reduce in-state emissions while upwind states failed to fulfill minimal obligations under the CAA. Connecticut states that section 110(a)(1) of the CAA requires states like Delaware to submit, within three years of promulgation of a new NAAQS, a plan which provides for implementation, maintenance, and enforcement of such NAAQS within the state. Connecticut states that Delaware had submitted a plan to address its good neighbor obligations under section 110(a)(2)(D)(i)(I) of the CAA for Delaware's March 27, 2013 infrastructure SIP for the 2008 ozone NAAQS. Connecticut states that it had previously commented on Delaware's draft infrastructure SIP for the 2008 ozone NAAQS by stating Connecticut believed Delaware's already adopted control measures are sufficient to alleviate Delaware's contribution to Connecticut's ozone problems by December 15, 2015, which is Connecticut's attainment deadline for the 2008 ozone NAAQS.

Connecticut argues that EPA lacks the discretion to defer action on Delaware's good neighbor portion of Delaware's infrastructure SIP for 2008 ozone NAAQS (for section 110(a)(2)(D)(i)(I) of the CAA). Connecticut further argues that the CAA does not give EPA discretion to approve a SIP without the good neighbor provision on the grounds that EPA would take separate action on Delaware's obligations under section 110(a)(2)(D)(i)(I). Connecticut asserts that EPA should either approve Delaware's infrastructure SIP with respect to its impact on Connecticut's ambient ozone levels or address Delaware's failure to satisfy its good neighbor obligations by promulgating a Federal Implementation Plan (FIP) under section 110(c)(1) of the CAA within two years to address section 110(a)(2)(D)(i)(I) of the CAA.

Response: EPA acknowledges the commenter's concerns with regard to the interstate transport of ozone and ozone precursors. EPA also agrees in general with the commenter that each state should address its contribution to another state's nonattainment and that section 110(a)(1) of the CAA requires states like Delaware to submit within three years of promulgation of a new or revised NAAQS a plan which provides for implementation, maintenance and enforcement of such NAAQS within the state. Many of the commenter's concerns, however, go to issues beyond the scope of this rulemaking action and the commenter does not allege that deferring action on Delaware's SIP will have any negative impact on Connecticut. To the contrary, the commenter asserts that ''it is very likely that the adopted control programs noted in the DNREC proposed SIP are sufficient to alleviate Delaware's contributions to Connecticut's ozone problems'' by Connecticut's attainment deadline for the 2008 eight-hour ozone NAAQS.

In this rulemaking action, EPA is not taking any final action with respect to the provisions in section 110(a)(2)(D)(i)(I)—the portion of the good neighbor provision that addresses emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. EPA did not propose to take any action with respect to Delaware's obligations pursuant to section 110(a)(2)(D)(i)(I) and is not, in this notice, taking any such action. As explained in this rulemaking action, while section 110(k) of the CAA requires EPA to act on all SIP submissions whether required or not, nothing in section 110(k) requires EPA to act on all parts of a SIP submission in a single action or requires EPA to act on Delaware's section 110(a)(2)(D)(i)(I) submission at this time. Moreover, even if EPA were to disapprove the 110(a)(2)(D)(i)(I) portion of the SIP submitted by Delaware, pursuant to the U.S. Court of Appeals for the District of Columbia (DC Circuit Court) opinion in *EME Homer City,* any such disapproval would not at this time trigger an obligation for EPA to promulgate a FIP within two years.

EPA disagrees with the commenter that EPA cannot defer action on the 110(a)(2)(D)(i)(I) portion of the Delaware SIP submittal and therefore must now approve or disapprove Delaware's section 110(a)(2)(D)(i)(I) SIP submission for the 2008 ozone NAAQS. EPA indicated in its notice of proposed rulemaking that it intended to take separate rulemaking action on the 110(a)(2)(D)(i)(I) portion of Delaware's SIP submission and nothing in the CAA bars EPA from concluding that action on that portion of the submittal should be deferred. EPA found Delaware's March 27, 2013 infrastructure SIP for the 2008 ozone NAAQS complete on May 20, 2013. Therefore, pursuant to section 110(k)(2) of the CAA, EPA has until May 20, 2014 to act on all portions of Delaware's submittal. In this case, EPA has chosen to act on a portion of the SIP submittal prior to that deadline. The commenter has not identified any provision of the CAA that prohibits EPA from doing so. The commenter has also not identified any provision of the CAA that prohibits EPA from approving a SIP without the good neighbor provision or

that prohibits EPA from deciding to act separately on the portion of a SIP submission addressing that provision. Section 110(k)(3) of the CAA authorizes EPA to approve a plan in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which such plan meets the requirements of the CAA. This authority to approve the states' SIP revisions in separable parts was included in the 1990 Amendments to the CAA to overrule a decision in the Court of Appeals for the Ninth Circuit holding that EPA could not approve individual measures in a plan submission without either approving or disapproving the plan as a whole. *See* S. Rep. No. 101–228, at 22, 1990 U.S.C.C.A.N. 3385, 3408 (discussing the express overruling of *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1987)).

As such, EPA interprets its authority under section 110(k)(3) as affording EPA the discretion to approve or conditionally approve individual elements of Delaware's infrastructure SIP submission for the 2008 ozone NAAQS, separate and apart from any action with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to that NAAQS. EPA views discrete infrastructure SIP requirements, such as the requirements of section 110(a)(2)(D)(i)(I) of the CAA, as severable from the other infrastructure elements and interprets section 110(k)(3) of the CAA as allowing it to act on individual severable measures in a plan submission. While EPA acknowledges it has an obligation under section 110(k)(2) to act on the 110(a)(2)(D)(i)(I) portion of the March 27, 2013 SIP submittal, EPA believes it has discretion under section 110(k) of the CAA to act upon the various individual elements of the State's infrastructure SIP submission, separately or together, as appropriate. The commenter has not raised a compelling legal or environmental rationale for an alternate interpretation. As the time for EPA to act upon the 110(a)(2)(D)(i)(I) portion of Delaware's submittal has not yet expired, EPA believes it may appropriately act upon the remainder of the SIP submittal and take action on the 110(a)(2)(D)(i)(I) portion in a separate action. And the decision to defer action on the portion of the submission addressing section 110(a)(2)(D)(i)(I) of the CAA is reasonable in light of the uncertainty created by the Supreme Court review of the DC Circuit Court decision in *EME Homer City*—a decision which, among other things, interpreted that section of the CAA.

Additionally, EPA notes that the commenter has not demonstrated that EPA could take either of the actions requested. The commenter has neither demonstrated that the 110(a)(2)(D)(i)(I) portion of the SIP submission is sufficient to prohibit any emissions that significantly contribute to nonattainment or interfere with maintenance in any other state, nor demonstrated that EPA at this time could establish a two year deadline for EPA to promulgate a FIP addressing any such emissions. In light of the DC Circuit Court opinion in *EME Homer City,* there is not at this time any basis for contending that EPA must issue a FIP within two years of any future disapproval of Delaware's 110(a)(2)(D)(i)(I) SIP submission as EPA has not yet quantified Delaware's good neighbor obligations under the 2008 ozone NAAQS.

EPA has historically interpreted the CAA as requiring states to submit SIPs addressing the requirements of section 110(a)(2)(D)(i)(I) of the CAA within three years of the promulgation or revision of a NAAQS. Similarly, EPA has interpreted the CAA as providing that any disapproval of a 110(a)(2)(D)(i)(I) SIP submission, or a finding that a state has failed to make such a submission, would trigger an obligation for EPA to promulgate a FIP within two years if the state did not correct the SIP deficiency within that time. EPA continues to agree that the plain language of the statute establishes these obligations. However, the DC Circuit Court clearly articulated in its opinion in *EME Homer City* that SIPs under section 110(a)(2)(D)(i)(I) of the CAA are not due until EPA has defined a state's contribution to nonattainment or interference with maintenance in another state. *See EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 U.S. 2857 (2013). EPA has not yet done this for the 2008 ozone NAAQS. While the Supreme Court has agreed to review the *EME Homer City* decision, the DC Circuit Court's decision currently remains in place. EPA intends to act in accordance with the *EME Homer City* opinion unless it is reversed or otherwise modified by the Supreme Court. *See also* 78 FR 14683 (concluding that, under the DC Circuit Court opinion in *EME Homer City,* disapproval of a 110(a)(2)(D)(i)(I) SIP submitted by Kentucky did not start a FIP clock).

Further, because the EPA rule known as CSAPR reviewed by the DC Circuit Court in *EME Homer City* was designated by EPA as a ''nationally applicable'' rule within the meaning of section 307(b)(1) of the CAA with petitions for review of CSAPR required to be filed in the DC Circuit Court, EPA believes the DC Circuit Court's decision in *EME Homer City* is also nationally applicable. As such, EPA does not intend to take any actions, even if they are only reviewable in another Federal Circuit Court of Appeals that are inconsistent with the decision of the DC Circuit Court. For this reason, even if EPA were to disapprove the 110(a)(2)(D)(i)(I) SIP submission from Delaware, any such disapproval would not at this time trigger an obligation for EPA to issue a FIP within two years.

In sum, the concerns raised by the commenter do not establish that it is inappropriate or unreasonable for EPA to approve the portions of Delaware's March 27, 2013 infrastructure SIP submission for the 2008 ozone NAAQS described in the proposed approval. Moreover, EPA notes that it is actively working with state partners to assess next steps to address air pollution that crosses state boundaries and has begun work on a rulemaking to address transported air pollution affecting the ability of states in the eastern half of the United States to attain and maintain the 2008 ozone NAAQS. That rulemaking action is separate from this SIP approval rulemaking action. It is also technically complex and must comply with the rulemaking requirements of section 307(d) of the CAA.

B. Delaware Solid Waste Authority

Comment: DSWA comments on the possibility of Delaware adopting the Ozone Transport Commission's anti-idling recommendations for certain motor vehicles. DSWA expresses its concern with the temperature exemptions meant to safeguard the equipment operators. DSWA recommends changing the temperature range when exemptions are allowed from anti-idling regulations from below 25 degrees Fahrenheit and above 85 degrees Fahrenheit to below 40 degrees Fahrenheit and above 75 degrees Fahrenheit. DSWA asserts the recommended temperature exemption was overly optimistic and the narrower temperature range (below 40 degrees Fahrenheit and above 75 degrees Fahrenheit) would allow operation of heating and air conditioning systems in certain motor vehicles when idling when temperature control may be necessary for safeguarding operators of those motor vehicles.

Response: EPA appreciates DSWA's comment. However, in this rulemaking action, EPA is neither approving nor disapproving any existing state rules or regulations into the Delaware SIP. Thus, the comment is not relevant to this

rulemaking action. Delaware already has an anti-idling regulation, Regulation 1145, Excessive Idling of Heavy Duty Vehicles. In addition, EPA has previously approved this regulation, Regulation 1145, into the Delaware SIP. *See* 40 CFR 52.420(c) and 74 FR 51792, October 8, 2009. While Delaware's infrastructure SIP for the 2008 ozone NAAQS has listed Regulation 1145 as one enforceable control measure for section 110(a)(2)(A) of the CAA which meets applicable requirements of the CAA, EPA is acting on the infrastructure SIP as meeting the section 110(a)(2) requirements overall. As EPA stated in ''Guidance on Infrastructure SIP Elements under CAA Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both.'' Infrastructure SIP Guidance at p. 2. EPA has established that Delaware's existing SIP meets requirements of section 110(a)(2)(A) of the CAA and is not adding any regulations to the Delaware SIP. As DSWA is commenting about suggested changes in a provision which is already Delaware law, EPA suggests DSWA pursue its comments with DNREC. EPA believes Delaware's infrastructure SIP adequately address section 110(a)(2)(A) of the CAA for the 2008 ozone NAAQS.

C. Sierra Club

Comment 1: Sierra Club contends that EPA cannot approve the section 110(a)(2)(A) portion of Delaware's 2008 ozone infrastructure SIP revision because the plain language of 110(a)(2)(A) of the CAA, legislative history of the CAA, case law, EPA regulations such as 40 CFR 51.112(a), and EPA interpretations in rulemakings, require the inclusion in an infrastructure SIP of enforceable emission limits to prevent NAAQS violations in areas not designated nonattainment. Specifically, Sierra Club cites air monitoring reports for Kent County, Delaware indicating a violation of the NAAQS based on Kent County's 2010–2012 design value. The commenter states EPA must disapprove the infrastructure SIP because it impermissibly fails to include enforceable eight-hour ozone emission limits to ensure attainment and maintenance of the NAAQS in areas designated attainment. Sierra Club comments that Delaware had only added two provisions, related to visibility and state boards, to its ''old SIP'' which addressed the 1997 ozone NAAQS and claims the Delaware SIP is insufficient for Delaware to attain and maintain the 2008 ozone NAAQS as evidenced by the monitoring data from Kent County showing violation of the 2008 ozone NAAQS for 2010–2012.

The commenter alleges that this violation in Kent County, a designated attainment area, demonstrates that the Delaware infrastructure SIP lacks adequate emission limits to attain and maintain the 2008 ozone NAAQS and thus EPA must disapprove the infrastructure SIP. Sierra Club notes that Delaware has not specified how it plans to address the violation in Kent County nor established emission limits to reduce the ''dangerous ozone concentrations'' in the county. The commenter states EPA must require Delaware to amend its infrastructure SIP to include enforceable eight-hour ozone emission limits that ensure sources cannot cause violations of the 2008 ozone NAAQS in areas designated attainment. Sierra Club contends that the infrastructure SIP must be disapproved because it fails to include adequate enforceable eight-hour emission limitations for sources of ozone precursors to ensure attainment and maintenance of the NAAQS in areas designated attainment in violation of section 110(a)(1) and (a)(2)(A) of the CAA and 40 CFR 51.112.

Response 1: EPA disagrees with the commenter that the statute is clear on its face that infrastructure SIPs must include detailed attainment and maintenance plans for all areas of the state and must be disapproved if air quality data that became available late in the process or after the infrastructure SIP was due and submitted changes the status of areas within the state. In subsections (a) through (e) of this rulemaking action, EPA addresses the commenter's specific arguments that the statutory language, legislative history, case law, EPA regulations, and prior rulemaking actions by EPA mandate the narrow interpretation they advocate. EPA believes that section 110(a)(2)(A) is reasonably interpreted to require states to submit SIPs that reflect the first step in their planning for attaining and maintaining a new or revised NAAQS and that they contain enforceable control measures and a demonstration that the state has the available tools and authority to develop and implement plans to attain and maintain the NAAQS.

As an initial matter, EPA disagrees that air quality monitoring that became available four years following promulgation of the 2008 ozone NAAQS and after the ozone infrastructure SIP was submitted provides a basis for disapproving the Delaware ozone infrastructure SIP. States must develop SIPs based on the information they have during the SIP development process and data that becomes available after that process is completed cannot undermine the reasonable assumptions that were made by the state based on the information it had available as it developed the plan. Thus, the data cited by the commenter should not be considered in determining whether the SIP should be approved. The suggestion that Delaware's ozone infrastructure SIP must include measures addressing a violation of the standard that did not occur until shortly after the SIP was due and submitted cannot be supported. The CAA provides states with three years to develop infrastructure SIPs and states cannot reasonably be expected to address the annual change in an area's design value for each year over that period, nor to predict the air quality data in periods after development and submission of the SIPs. Moreover, the CAA recognizes and has provisions to address changes in air quality over time, such as an area slipping from attainment to nonattainment or changing from nonattainment to attainment. These include provisions providing for redesignation in section 107(d) of the CAA and provisions in section 110(k)(5) of the CAA allowing EPA to call on the state to revise its SIP, as appropriate.

The commenter suggests that EPA must disapprove the Delaware ozone infrastructure SIP because the fact that an area in Delaware has air quality data slightly above the standard proves that the infrastructure SIP is inadequate to demonstrate maintenance for that area. EPA disagrees because we do not believe that section 110(a)(2)(A) of the CAA requires detailed planning SIPs demonstrating either attainment or maintenance for specific geographic areas of the state. The infrastructure SIP is triggered by promulgation of the NAAQS, not designation. Moreover, infrastructure SIPs are due three years following promulgation of the NAAQS and designations are not due until two years (or in some cases three years) following promulgation of the NAAQS. Thus, during a significant portion of the period that a state has available for developing the infrastructure SIP, it does not know what the designation will be for individual areas of the state.[1]

[1] While it is true that there may be some monitors within a state with values so high as to make a

Continued

In light of the structure of the CAA, EPA's long-standing position regarding infrastructure SIPs is that they are general planning SIPs to ensure that the state has adequate resources and authority to implement a NAAQS in general throughout the state and not detailed attainment and maintenance plans for each individual area of the state.

Our interpretation that infrastructure SIPs are more general planning SIPs is consistent with the statute as understood in light of its history and structure. When Congress enacted the CAA in 1970, it did not include provisions requiring states and the EPA to label areas as attainment or nonattainment. Rather, states were required to include all areas of the state in ''air quality control regions'' (AQCRs) and section 110 set forth the core substantive planning provisions for these AQCRs. At that time, Congress anticipated that states would be able to address air pollution quickly pursuant to the very general planning provisions in section 110 and could bring all areas into compliance with the NAAQS within five years. Moreover, at that time, section 110(a)(2)(A)(i) of the CAA specified that the section 110 plan provide for ''attainment'' of the NAAQS and section 110(a)(2)(B) specified that the plan must include ''emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance [of the NAAQS].'' In 1977, Congress recognized that the existing structure was not sufficient and many areas were still violating the NAAQS. At that time, Congress for the first time added provisions requiring states and EPA to identify whether areas of the state were violating the NAAQS (i.e., were nonattainment) or were meeting the NAAQS (i.e., were attainment) and established specific planning requirements in section 172 of the CAA for areas not meeting the NAAQS. In 1990, many areas still had air quality not meeting the NAAQS and Congress again amended the CAA and added yet another layer of more prescriptive planning requirements for each of the NAAQS, with the primary provisions for ozone in section 182 of the CAA. At that same time, Congress modified section 110 to remove references to the section 110 SIP providing for attainment, including removing pre-existing section 110(a)(2)(A) in its entirety and renumbering subparagraph (B) as section 110(a)(2)(A) of the CAA. Additionally, Congress replaced the clause ''as may be necessary to insure attainment and maintenance [of the NAAQS]'' with ''as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Thus, the CAA has significantly evolved in the more than 40 years since it was originally enacted. While at one time section 110 did provide the only detailed SIP planning provisions for states and specified that such plans must provide for attainment of the NAAQS, under the structure of the current CAA, section 110 is only the initial stepping-stone in the planning process for a specific NAAQS. And, more detailed, later-enacted provisions govern the substantive planning process, including planning for attainment of the NAAQS.

For all of these reasons, EPA disagrees with the commenter that EPA must disapprove an infrastructure SIP revision if there are monitored violations of the standard in the state and the section 110(a)(2)(A) revision does not have detailed plans for demonstrating how the state will bring that area into attainment. Rather, EPA believes that the proper inquiry at this juncture is whether the state has met the basic structural SIP requirements appropriate at the point in time EPA is acting upon the submittal.

Moreover, as addressed in EPA's proposed approval for this rule, Delaware submitted a list of existing emission reduction measures in the SIP that control emissions of volatile organic compounds (VOCs) and nitrogen oxides (NOx). Delaware's SIP revision reflects several provisions that have the ability to reduce ground level ozone and its precursors. The Delaware SIP relies on measures and programs used to implement previous ozone NAAQS. Because there is no substantive difference between the previous ozone NAAQS and the more recent ozone NAAQS, other than the level of the standard, the provisions relied on by Delaware will provide benefits for the new NAAQS; in other words, the measures reduce *overall* ground-level ozone and its precursors and are not limited to reducing ozone levels to meet one specific NAAQS.

EPA shares the commenter's concern regarding Kent County's violation of the 2008 eight-hour ozone NAAQS in 2010–2012 and will work appropriately with the State to address any issues.[2] Further, in approving Delaware's infrastructure SIP revision, EPA is affirming that Delaware has sufficient authority to take the types of actions required by the CAA in order to bring such areas back into attainment.

a. The Plain Language of the CAA

Comment 2: The commenter states that on its face the CAA ''requires I–SIPs to be adequate to prevent violations of the NAAQS.'' In support, the commenter quotes the language in section 110(a)(1) which requires states to adopt a plan for implementation, maintenance, and enforcement of the NAAQS and the language in section 110(a)(2)(A) of the CAA which requires SIPs to include enforceable emissions limitations as may be necessary to meet the requirements of the CAA and which commenter claims includes the maintenance plan requirement. Sierra Club notes the CAA definition of emission limit and reads these provisions together to require ''enforceable emission limits on source emissions sufficient to ensure maintenance of the NAAQS.''

Response 2: EPA disagrees that section 110 is ''clear on its face'' and must be interpreted in the manner suggested by Sierra Club. As explained earlier in this rulemaking action, section 110 of the CAA is only one provision that is part of the complicated structure governing implementation of the NAAQS program under the CAA, as amended in 1990, and it must be interpreted in the context of not only that structure, but also of the historical evolution of that structure. In light of the revisions to section 110 since 1970 and the later-promulgated and more specific planning requirements of the CAA, EPA reasonably interprets the requirement in section 110(a)(2)(A) that the plan provide for ''implementation, maintenance and enforcement'' to mean that the infrastructure SIP must contain enforceable emission limits that will aid in attaining and/or maintaining the NAAQS and that the state demonstrate that it has the necessary tools to implement and enforce a NAAQS, such as adequate state personnel and an enforcement program. With regard to the requirement for emission limitations, EPA has interpreted this to mean for purposes of section 110 of the CAA that the state may rely on measures already in place to address the pollutant at issue or any new control measures

nonattainment designation of the county with that monitor almost a certainty, the geographic boundaries of the nonattainment area associated with that monitor would not be known until EPA issues final designations. In any event, the Kent County area of concern to the commenter does not fit that description.

[2] EPA notes that preliminary monitoring data for 2013 indicates that Kent County, Delaware is not violating the 2008 ozone NAAQS for the period 2011–2013. The 2013 data is uncertified. States are required to certify 2013 data by May 1, 2014.

that the state may choose to submit. As EPA stated in ''Guidance on Infrastructure SIP Elements under CAA Sections 110(a)(1) and 110(a)(2),'' dated September 13, 2013 (Infrastructure SIP Guidance), ''[t]he conceptual purpose of an infrastructure SIP submission is to assure that the air agency's SIP contains the necessary structural requirements for the new or revised NAAQS, whether by establishing that the SIP already contains the necessary provisions, by making a substantive SIP revision to update the SIP, or both. Overall, the infrastructure SIP submission process provides an opportunity . . . to review the basic structural requirements of the air agency's air quality management program in light of each new or revised NAAQS.'' Infrastructure SIP Guidance at p. 2.

The commenter makes a general allegation that Delaware does not have regulations sufficient to ensure compliance with the 2008 ozone NAAQS ''proven by the fact that Kent County violated the 2008 Ozone NAAQS.'' EPA addressed the adequacy of Delaware's infrastructure SIP for 110(a)(2)(A) purposes to meet applicable requirements of the CAA in the TSD accompanying the August 30, 2013 NPR and explained why EPA believes the SIP includes enforceable emission limitations and other control measures necessary for maintenance of the 2008 ozone NAAQS throughout the state. For Delaware, including Kent County, these include Delaware's enforceable emission limitations and other control measures at: 7 DE Admin. Codes 1113, 1124, 1141, 1144, 1145, 1146, and 1148. These regulations are identified as part of the Delaware SIP at 40 CFR 52.420(c). Enforceable emission limitations and schedules are also contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were approved on April 8, 2010 (75 FR 17863) and October 5, 2012 (77 FR 60914), respectively.

b. The Legislative History of the CAA

Comment 3: Sierra Club cites two excerpts from the legislative history of the CAA Amendments of 1970 claiming they support an interpretation that SIP revisions under section 110 of the CAA must include emissions limitations sufficient to show maintenance of the NAAQS in Delaware, citing the Senate Committee Report and the subsequent Senate Conference Report accompanying the 1970 CAA.

Response 3: As provided in the previous response, the CAA, as enacted in 1970, including its legislative history, cannot be interpreted in isolation from the later amendments that refined that structure and deleted relevant language from section 110 concerning demonstrating attainment. In any event, the two excerpts of legislative history cited by the commenter merely provide that states should include enforceable emission limits in their SIPs and they do not mention or otherwise address whether states are required to include maintenance plans for all areas of the state as part of the infrastructure SIP. Moreover, the cited legislative history pertains to section 110 as promulgated in 1970 and not to section 110 as amended by the CAA Amendments of 1990. As provided earlier in this rulemaking action, the TSD for the proposed rule explains why EPA believes the SIP includes enforceable emissions limitations for the State of Delaware including Kent County.

c. Case Law

Comment 4: Sierra Club also discusses several cases applying the CAA which Sierra Club claims support their contention that courts have been clear that section 110(a)(2)(A) of the CAA requires enforceable emissions limits in infrastructure SIPs to prevent violations of the NAAQS. Sierra Club first cites to language in *Train* v. *NRDC,* 421 U.S. 60, 78 (1975), addressing the requirement for ''emission limitations'' and stating that emission limitations ''are specific rules to which operators of pollution sources are subject, and which if enforced should result in ambient air which meet the national standards.'' Sierra Club also cites to *Pennsylvania Dept. of Envtl. Resources* v. *EPA,* 932 F.2d 269, 272 (3d Cir. 1991) for the proposition that the CAA directs EPA to withhold approval of a SIP where it does not ensure maintenance of the NAAQS and *Mision Industrial, Inc.* v. *EPA,* 547 F.2d 123, 129 (1st Cir. 1976), which quoted section 110(a)(2)(B) of the CAA of 1970. The commenter contends that the 1990 Amendments do not alter how courts have interpreted the requirements of section 110 of the CAA, quoting *Alaska Dept. of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 470 (2004) which in turn quoted section 110(a)(2)(A) of the CAA and also states that ''SIPs must include certain measures Congress specified'' to ensure attainment of the NAAQS. The commenter also quotes several additional opinions in this vein. *Mont. Sulphur & Chem. Co.* v. *EPA,* 666 F.3d 1174, 1180 (9th Cir. 2012) (''The Clean Air Act directs states to develop implementation plans—SIPs—that 'assure' attainment and maintenance of [NAAQS] through enforceable emissions limitations''); *Hall* v. *EPA* 273 F.3d 1146, 1153 (9th Cir. 2001) (''Each State must submit a [SIP] that specif[ies] the manner in which [NAAQS] will be achieved and maintained within each air quality control region in the State''). Finally, they cited *Mich. Dept. of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) for the proposition that EPA may not approve a SIP revision that does not demonstrate how the rules would not interfere with attainment and maintenance of the NAAQS.

Response 4: None of the cases cited by the commenter support the commenter's contention that section 110(a)(2)(A) is clear that infrastructure SIPs must include detailed plans providing for attainment and maintenance of the NAAQS in all areas of the state nor do they shed light on how section 110(a)(2)(A) of the CAA may reasonably be interpreted. With the exception of *Train,* none of the cases cited by the commenter concerned the interpretation of section 110(a)(2)(A) of the CAA (or section 110(a)(2)(B) of the pre-1990 CAA). Rather, in the context of a challenge to an EPA action on revisions to a SIP that were required and approved as meeting other provisions of the CAA or in the context of an enforcement action, the D.C. Circuit Court references section 110(a)(2)(A) (or section 110(a)(2)(B) of the pre-1990 CAA) in the background section of its decision.

In *Train,* 421 U.S. 60, a case that was decided almost 40 years ago, the D.C. Circuit Court was addressing a state revision to an attainment plan submission made pursuant to section 110 of the CAA, the sole statutory provision at that time regulating such submissions. The issue in that case concerned whether changes to requirements that would occur before attainment was required were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The D.C. Circuit Court concluded that EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). Thus the issue was not whether a section 110 SIP needs to provide for attainment or whether emissions limits are needed as part of the SIP; rather the issue was which statutory provision governed when the state wanted to revise the emission limits in its SIP if such revision would not impact attainment or

maintenance of the NAAQS. To the extent the holding in the case has any bearing on how section 110(a)(2)(A) of the CAA might be interpreted, it is important to realize that in 1975, when the opinion was issued, section 110(a)(2)(B) (the predecessor to section 110(a)(2)(A)) expressly referenced the requirement to attain the NAAQS, a reference that was removed in 1990.

The decision in *Pennsylvania Dept. of Envtl. Resources* was also decided based on the pre-1990 provision of the CAA. At issue was whether EPA properly rejected a revision to an approved plan where the inventories relied on by the state for the updated submission had gaps. The D.C. Circuit Court quoted section 110(a)(2)(B) of the pre-1990 CAA in support of EPA's disapproval, but did not provide any interpretation of that provision. Yet, even if the D.C. Circuit Court had interpreted that provision, EPA notes that it was modified by Congress in 1990; thus, this decision has little bearing on the issue here.

At issue in *Mision Industrial,* 547 F.2d 123, was the definition of ''emissions limitation'' not whether section 110 of the CAA requires the state to demonstrate how all areas of the state will attain and maintain the NAAQS as part of their infrastructure SIPs. The language from the opinion quoted by the commenter does not interpret but rather merely describes section 110(a)(2)(A). The commenter does not raise any concerns about whether the measures relied on by the state in the infrastructure SIP are ''emissions limitations'' and the decision in this case has no bearing here.[3] In *Mont. Sulphur & Chem. Co.,* 666 F.3d 1174, the D.C. Circuit Court was reviewing a FIP that EPA promulgated after a long history of the state failing to submit an adequate SIP. The D.C. Circuit Court cited generally to section 107 and 110(a)(2)(A) of the CAA for the proposition that SIPs should assure attainment and maintenance of NAAQS through emission limitations, but this language was not part of the court's holding in the case. The commenter suggested that *Alaska Dept. of Envtl. Conservation,* 540 U.S. 461, stands for the proposition that the 1990 CAA Amendments do not alter how courts interpret section 110. This claim is inaccurate. Rather, the D.C. Circuit Court quoted section 110(a)(2)(A), which, as noted previously, differs from the pre-1990 version of that provision and the court makes no mention of the changed language. Furthermore, the commenter also quotes the D.C. Circuit Court's statement that ''SIPs must include certain measures Congress specified'' but that statement specifically referenced the requirement in section 110(a)(2)(C)of the CAA, which requires an enforcement program and a program for the regulation of the modification and construction of new sources. Notably, at issue in that case was the state's ''new source'' permitting program, not its infrastructure SIP.

Two of the cases cited by the commenter, *Mich. Dept. of Envtl. Quality,* 230 F.3d 181, and *Hall,* 273 F.3d 1146, interpret section 110(l) of the CAA, the provision governing ''revisions'' to plans, and not the initial plan submission requirement under section 110(a)(2) for a new or revised NAAQS, such as the infrastructure SIP at issue in this instance. In those cases, the D.C. Circuit Court cited to section 110(a)(2)(A) of the CAA solely for the purpose of providing a brief background of the CAA.

d. EPA Regulations, Such as 40 CFR 51.112(a)

Comment 5: The comments cite to 40 CFR 51.112(a), providing that ''[e]ach plan must demonstrate that the measures, rules and regulations contained in it are adequate to provide for the timely attainment and maintenance of the [NAAQS].'' The commenter asserts that this regulation requires all SIPs to include emissions limits necessary to ensure attainment of the NAAQS. The commenter states that ''[a]lthough these regulations were developed before the Clean Air Act separated infrastructure SIPs from nonattainment SIPs—a process that began with the 1977 amendments and was completed by the 1990 amendments—the regulations apply to I–SIPs.'' The commenter relies on a statement in the preamble to the 1986 action restructuring and consolidating provisions in part 51, in which EPA stated that ''[i]t is beyond the scope of th[is] rulemaking to address the provisions of Part D of the Act . . .'' (51 FR 40656, November 7, 1986).

Response 5: The commenter's reliance on 40 CFR 51.112 to support its argument that infrastructure SIPs must contain emission limits ''adequate to prohibit NAAQS violations'' and adequate or sufficient to ensure the maintenance of the NAAQS is not supported. As an initial matter, EPA notes and the commenter recognizes this regulatory provision was initially promulgated and ''restructured and consolidated'' prior to the CAA Amendments of 1990, in which Congress removed all references to ''attainment'' in section 110(a)(2)(A). And, it is clear on its face that 40 CFR 51.112 applies to plans specifically designed to attain the NAAQS. EPA interprets these provisions to apply when states are developing ''control strategy'' SIPs such as the detailed attainment and maintenance plans required under other provisions of the CAA, as amended in 1977 and again in 1990, such as section 175A and 182. The commenter suggests that these provisions must apply to section 110 SIPs because in the preamble to EPA's action ''restructuring and consolidating'' provisions in part 51, EPA stated that the new attainment demonstration provisions in the 1977 Amendments to the CAA were ''beyond the scope'' of the rulemaking. It is important to note, however, that EPA's action in 1986 was not to establish new substantive planning requirements, but rather was meant merely to consolidate and restructure provisions that had previously been promulgated. EPA noted that it had already issued guidance addressing the new ''Part D'' attainment planning obligations. Also, as to maintenance regulations, EPA expressly stated that it was not making any revisions other than to re-number those provisions. *Id.* at 40657.

Although EPA was explicit that it was not establishing requirements interpreting the provisions of new ''part D'' of the CAA, it is clear that the regulations being restructured and consolidated were intended to address control strategy plans. In the preamble, EPA clearly stated that 40 CFR 51.112 was replacing 40 CFR 51.13 (''Control strategy: SO_x and p.m. (portion)''), 51.14 (''Control strategy: CO, HC, O_x and NO_2 (portion)''), 51.80 (''Demonstration of attainment: Pb (portion)''), and 51.82 (''Air quality data (portion)''). *Id.* at 40660. Thus, the present-day 51.112 contains consolidated provisions that are focused on control strategy SIPs and the infrastructure SIP is not such a plan.

e. EPA Interpretations in Other Rulemakings

Comment 6: The commenter also references two prior EPA rulemaking actions where EPA disapproved or proposed to disapprove SIPs and claims they were actions in which EPA relied on section 110(a)(2)(A) of the CAA and 40 CFR 51.112 to reject infrastructure SIPs. The commenter first points to a 2006 partial approval and partial disapproval of revisions to Missouri's existing plan addressing the sulfur dioxide (SO_2) NAAQS. In that action,

[3] While the commenter does contend that the State shouldn't be allowed to rely on emission reductions that were developed for the prior ozone standards (which we address above), commenter does not claim that any of the measures are not ''emissions limitations'' within the definition of the CAA.

EPA cited section 110(a)(2)(A) of the CAA as a basis for disapproving a revision to the State plan on the basis that the State failed to demonstrate the SIP was sufficient to ensure maintenance of the SO_2 NAAQS after revision of an emission limit and cited to 40 CFR 51.112 as requiring that a plan demonstrates the rules in a SIP are adequate to attain the NAAQS. Second, Sierra Club cites a 2013 proposed disapproval of a revision to the SO_2 SIP for Indiana, where the revision removed an emission limit that applied to a specific emissions source at a facility in the State. EPA relied on 40 CFR 51.112(a) in proposing to reject the revision, stating that the State had not demonstrated that the emission limit was ''redundant, unnecessary, or that its removal would not result in or allow an increase in actual SO_2 emissions.'' EPA further stated in that proposed disapproval that the State had not demonstrated that removal of the limit would not ''affect the validity of the emission rates used in the existing attainment demonstration.''

Response 6: EPA does not agree that the two prior actions referenced by the commenter establish how EPA reviews infrastructure SIPs. It is clear from both the final Missouri rule and the proposed Indiana rule that EPA was not reviewing initial infrastructure SIP submissions under section 110 of the CAA, but rather reviewing revisions that would make an already approved SIP designed to demonstrate attainment of the NAAQS less stringent. EPA's partial approval and partial disapproval of revisions to restrictions on emissions of sulfur compounds for the Missouri SIP in 71 FR 12623 addressed a control strategy SIP and not an infrastructure SIP. The Indiana action provides even less support for the commenter's position. As an initial matter, the Indiana action is a proposal and thus cannot be presumed to reflect the Agency's final position. In any event, the review in that rule was of a completely different requirement than the 110(a)(2)(A) SIP. Rather, in that case, the State had an approved SO_2 attainment plan and was seeking to remove from the SIP provisions relied on as part of the modeled attainment demonstration. EPA proposed that the State had failed to demonstrate under section 110(l) of the CAA why the SIP revision would not result in increased SO_2 emissions and thus interfere with attainment of the NAAQS. Nothing in that rulemaking addresses the necessary content of the initial infrastructure SIP for a new or revised NAAQS. Rather, it is simply applying the clear statutory requirement that a state must demonstrate why a revision to an approved attainment plan will not interfere with attainment of the NAAQS.

Comment 7: Sierra Club states that EPA should disapprove Delaware's infrastructure SIP submittal for the 2008 ozone NAAQS with regard to section 110(a)(2)(D)(i)(II) (visibility prong) and 110(a)(2)(J) because the commenter asserts that Delaware failed to submit its five-year progress report for regional haze by the required date and EPA has not evaluated the report or taken final action on that report. Sierra Club states that Delaware's five-year progress report for regional haze was due on September 25, 2013 pursuant to 40 CFR 51.308(g) because Delaware's initial regional haze SIP was submitted on September 25, 2008. Sierra Club states EPA could not assess the efficacy of Delaware's regional haze SIP without reviewing the five-year progress report nor determine if the Delaware regional haze SIP was effective in improving visibility in other states. In addition, the commenter contends that Delaware does not have adequate best available retrofit technology (BART) limits because Delaware based its BART determination on comparing reductions that would be obtained under its multi-pollutant rule from BART and non-BART eligible sources to the reductions that would be obtained from just BART eligible sources applying BART. Therefore, Sierra Club states EPA should disapprove the visibility elements of the Delaware infrastructure SIP submittal for 2008 ozone NAAQS because NO_X is a visibility impairing pollutant.

Response 7: EPA disagrees with the commenter that EPA must disapprove the visibility elements of Delaware's ozone infrastructure SIP due to allegedly inadequate BART limits in its regional haze SIP. The Delaware regional haze SIP did not include source-specific BART emission limits but rather required alternative measures that the State showed would achieve greater reasonable progress than BART. *See* (76 FR 27973, May 13, 2011). EPA agreed, finding that the total emission reductions from Delaware's Regulation 1146, a multi-pollutant regulation for EGUs, greatly exceeded the reductions to be expected from BART at the four BART-eligible units in Delaware. *Id.; see also* (76 FR 42557, July 19, 2011). Although the commenter is now suggesting that the demonstration that Regulation 1146 would provide for greater reasonable progress than BART was flawed, EPA approved Delaware's regional haze plan as meeting the regional haze requirements, including those addressing BART, in July 2011. (76 FR 42557, July 19, 2011).

The adequacy of the measures in the Delaware regional haze SIP addressing the BART requirements, however, is irrelevant to the question of whether Delaware's SIP meets the requirements of section 110(a)(2)(D) of the CAA with respect to visibility. EPA interprets the visibility provisions in this section of the CAA as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set to protect Class I areas in other states. The regional haze rule at 40 CFR 51.308(d)(3) includes a similar requirement. EPA notes that in 2011, EPA determined that Delaware's regional haze SIP adequately prevents sources in Delaware from interfering with the reasonable progress goals adopted by other states to protect visibility during the first planning period. *See* 76 FR 27979. Specifically, EPA found that the Delaware regional haze SIP included the appropriate enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals set by New Jersey for the one Class I area influenced by Delaware emissions. *Id.* EPA also found that the Delaware regional haze SIP met the requirements of section 110(a)(2)(D)(i)(II) of the CAA regarding visibility for the 1997 eight-hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. 76 FR 27984 (proposal); 76 FR 42557 (final). EPA notes that the requirements of section 110(a)(2)(D)(i)(II) of the CAA regarding visibility for the 2008 ozone NAAQS are the same as those for the 1997 eight-hour ozone NAAQS and the earlier $PM_{2.5}$ standards. The commenter has not explained how the allegedly inadequate BART determination would affect these prior findings.

EPA also disagrees with the commenter that EPA must disapprove Delaware's ozone infrastructure SIP because the State has not submitted and EPA has not approved a regional haze progress report. The regional haze regulations at 40 CFR 51.308(g) require Delaware (and other states) to submit a report to EPA five years from the submittal of its initial regional haze SIP. In the report, the state must, among other things, assess whether its current regional haze SIP is sufficient to enable nearby states to meet their established reasonable progress goals. Subsequent to EPA's proposed approval of the ozone infrastructure SIP, Delaware submitted as a proposed SIP revision, dated September 24, 2013, its five-year progress report on its approved regional haze SIP. In a separate rulemaking

signed February 11, 2014, EPA has proposed to approve Delaware's progress report; however, final action on the September 24, 2013 submittal is not due pursuant to section 110(k)(2) of the CAA at this time. *See* (79 FR 10442, February 25, 2014). EPA accordingly disagrees with the commenter that EPA's *approval* of Delaware's five-year progress report is a required structural element necessary before EPA may approve Delaware's infrastructure SIP for element 110(a)(2)(D)(i)(II).

EPA also disagrees with the commenter that Delaware's five-year report was overdue at the time EPA proposed to approve Delaware's infrastructure SIP for the 2008 ozone NAAQS. On August 30, 2013, the date of EPA's proposed action on the Delaware infrastructure SIP, Delaware was under no obligation as yet to submit its five-year progress report to meet the requirements in 40 CFR 51.308(g). As correctly identified by Sierra Club, the Delaware five-year progress report required by 40 CFR 51.308(g) was due on September 25, 2013. Although EPA has not taken *final* action to approve Delaware's progress report, from EPA's review of data provided by Delaware in its five-year progress report, including EPA's review of emissions data from 2008 through 2011 on Delaware electric generating units (EGUs) from EPA's Clean Air Markets Division (CAMD) as provided by the State in its SIP submittal, emissions of SO_2, the primary contributor to visibility impairment in the Mid-Atlantic/Northeast Visibility Union (MANE–VU) region, have declined significantly in the State since the Delaware regional haze SIP was submitted to EPA on September 25, 2008. Emissions of NO_X from EGUs also have declined significantly since the regional haze SIP submittal. Specifically, Delaware's five-year progress report notes that total SO_2 emissions from point sources using ''currently available'' information were significantly less than the 2018 point source projections in the Delaware 2008 regional haze SIP submittal.[4] EPA's review of visibility data from Delaware in its five-year progress report also shows the Class I area impacted by sources within Delaware is meeting or below its reasonable progress goals. In addition, based on EPA's review of the Delaware five-year progress report as discussed in EPA's proposed approval of the report, EPA has no reason to question the accuracy of Delaware's negative declaration to EPA pursuant to 40 CFR 51.308(h) that no revision to Delaware's regional haze SIP is needed at this time to achieve established goals for visibility improvement and emissions reductions.

Therefore, based upon EPA's review of the relevant visibility data, emissions data, and modeling results provided by Delaware in the five-year progress report and upon Delaware's approved regional haze SIP, EPA continues to believe that the State's existing SIP contains adequate provisions prohibiting sources from emitting visibility impairing pollutants in amounts which would interfere with neighboring states' SIP measures to protect visibility.

In addition, with regard to the visibility protection aspect of section 110(a)(2)(J) of the CAA, as discussed in the TSD accompanying the NPR for this rulemaking, EPA stated that it recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the establishment of a new NAAQS such as the 2008 ozone NAAQS, however, the visibility and regional haze program requirements under part C of Title I of the CAA do not change and there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Given this, Delaware was under no obligation to address section 110(a)(2)(J) in its 2008 ozone infrastructure SIP.

Comment 8: Sierra Club contends that EPA should not approve Delaware's 2008 eight-hour ozone infrastructure SIP revision because Delaware's SIP fails to incorporate the 2008 ozone NAAQS of 75 parts per billion (ppb) in Delaware Regulation 1103 and therefore fails to meet requirements of section 110(a)(2)(A) and 110(a)(2)(E)(i) of the CAA.

Response 8: Sierra Club is correct that Regulation 1103, as reflected in the existing Delaware SIP, does not reference the 2008 ozone NAAQS. However, Sierra Club fails to explain why they believe the failure of this regulation to reference the 2008 ozone standard would prevent approval of the infrastructure SIP. Regulation 1103 specifically provides ''[t]he absence of a specific ambient air quality standard shall not preclude actions by the Department to control contaminants to assure protection, safety, welfare, and comfort of the people of the State of Delaware.'' Thus, even in the absence of an explicit reference to the 2008 ozone NAAQS, Regulation 1103 clearly provides that the State has the authority to adopt and implement regulations for that standard. Moreover, Sierra Club does not cite and EPA is not aware of any other provisions in Delaware's regulations that would undermine such authority. While certain regulations reference specific ozone NAAQS in the ''purposes'' section (*see e.g.,* Regulation 1142) in the context of describing the designation of areas for those standards, we have not identified any regulations that would expire or would no longer be effective for purposes of the 2008 ozone NAAQS. In short, EPA sees nothing in the SIP that indicates that the State does not have the ability to implement and enforce the 2008 ozone NAAQS. Although we do not believe that the failure of Regulation 1103 to specifically reference the 2008 ozone NAAQS renders the infrastructure SIP unapprovable, EPA notes that the State recently revised Regulation 1103 to expressly include that standard and submitted that regulation to EPA as a SIP revision dated February 17, 2014. EPA plans to act on that SIP submission shortly.

Comment 9: Sierra Club contends that EPA should not approve Delaware's 2008 eight-hour ozone infrastructure SIP revision until EPA and Delaware clarify what was intended by citing to two provisions of Delaware regulations in EPA's TSD for the NPR. First, Sierra Club comments that EPA cited to 7 DE Admin. Code 1137 to satisfy section 110(a)(2)(F) of the CAA. The commenter states it could not find 7 DE Admin. Code 1137 in the Delaware General Assembly: Delaware Regulations: Administrative Code: Title 7: 1000: 1100. Second, the commenter mentions that EPA cited in its TSD to 7 Del. C. Chapter 29 in discussing the requirements of section 110(a)(2)(J) of the CAA relating to public notification and states 7 Del. C. Chapter 29 is not relevant to the 2008 ozone NAAQS.

Response 9: EPA agrees with the commenter regarding the incorrect reference to these two provisions; however, EPA disagrees with the commenter that EPA cannot approve the Delaware infrastructure SIP submittal for 2008 ozone NAAQS. After reviewing Delaware's March 27, 2013 infrastructure SIP submittal and EPA's TSD reviewing that SIP submittal, EPA acknowledges that Delaware inadvertently included a citation to Delaware Regulation 1137 in its March 27, 2013 SIP submittal listing provisions meeting requirements in section 110(a)(2)(F) of the CAA, and EPA inadvertently also refers to Delaware Regulation 1137 when discussing in the TSD how Delaware met the requirements of section 110(a)(2)(F) of

[4] Delaware's five-year progress report calculated total SO_2 emissions from point sources using 2008 emissions inventory information supplemented with 2011 SO_2 emissions data for EGUs from EPA's CAMD to compare ''currently available'' data to projections for 2018 which were in Delaware's 2008 regional haze SIP submittal.

the CAA. Sierra Club correctly identified that there is no Delaware Regulation 1137. However, EPA believes this was merely a typographical mistake within a list of applicable regulations which do address Delaware's programs for monitoring and reporting in both Delaware's SIP submittal and in EPA's TSD. As mentioned in the TSD, Delaware has numerous regulations within its program and SIP for requiring installation and maintenance of monitoring equipment and periodic emissions reporting including 7 DE Admin. Codes 1112, 1123, 1124, 1126, 1131, 1139, 1140, 1141, 1142, and others in the approved Delaware SIP, which is identified at 40 CFR 52.420(c). EPA maintains these provisions appropriately support Delaware's ozone infrastructure SIP for section 110(a)(2)(F) for adequate provisions for monitoring and reporting. EPA's and Delaware's inadvertent inclusion of the reference to Regulation 1137 was merely a typographical mistake and immaterial to EPA's conclusion regarding approvability of the Delaware SIP submission.

Regarding Sierra Club's second comment, EPA acknowledges it inadvertently refers to 7 Del. C. Chapter 29 as an additional provision which satisfies section 110(a)(2)(J)'s requirements relating to public notification. EPA believes the remaining Delaware provision discussed in EPA's TSD for section 110(a)(2)(J) requirements related to public notice, 7 Del. C. Chapter 60, adequately supports that Delaware has met the requirements of section 110(a)(2)(J) of the CAA. 7 Del. C. Chapter 60 requires SIP revisions and new or amended regulations to undergo public notice and hearing, publication in newspapers and in the Delaware Register, and opportunity for comment by the public and local political subdivisions. Therefore, EPA believes it appropriately proposed that Delaware's March 27, 2013 infrastructure SIP submittal for the 2008 ozone NAAQS meets all requirements of section 110(a)(2)(F) and 110(a)(2)(J) of the CAA. EPA's inadvertent mention of 7 Del. C. Chapter 29 is immaterial to EPA's conclusion regarding approvability of the Delaware SIP submission.

IV. Final Action

EPA is approving Delaware's submittal which provides the basic program elements specified in sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2008 ozone NAAQS, as a revision to the Delaware SIP. This rulemaking action does not include approval of Delaware's submittal for section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the 3-year submission deadline of section 110(a)(1) of the CAA and will be addressed in a separate process. This rulemaking action also does not include approval of the portion of Delaware's submittal relating to section 110(a)(2)(D)(i)(I) which will be addressed in a separate rulemaking action.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Delaware's section 110(a)(2) infrastructure elements for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: March 21, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I— Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding an entry for Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	Statewide	3/27/13	4/3/14 [*Insert Federal Register page number where the document begins and date*].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–07459 Filed 4–2–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 246

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective* April 3, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6088; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION:

This final rule amends the DFARS as follows:

1. Correct typographical error at 246.710(1)(ii).

List of Subjects in 48 CFR Part 246

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 246 is amended as follows:

PART 246—QUALITY ASSURANCE

■ 1. The authority citation for 48 CFR part 246 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

246.710 [Amended]

■ 2. Section 246.710 paragraph (1)(ii) is amended by removing ''alternate'' and adding ''alternate I'' in its place.

[FR Doc. 2014–07398 Filed 4–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD215

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2014 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 31, 2014, through 1200 hrs, A.l.t., May 31, 2014.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The B season allowance of the 2014 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 3,636 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2014 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,136 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting

directed fishing for pollock in Statistical Area 630 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 28, 2014.

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

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

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

Dated: March 31, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–07448 Filed 3–31–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130903776–4274–02]

RIN 0648–BD66

Fisheries of the Exclusive Economic Zone Off Alaska; Modifications to Identification Markings on Fishing Gear Marker Buoys

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

ACTION: Final rule.

SUMMARY: NMFS publishes a regulatory amendment to revise the identification marking requirements for fishing gear marker buoys (buoys) used in Federal waters off Alaska. This final rule eliminates the requirement that hook-and-line, longline pot, and pot-and-line buoys be marked with the vessel's name. The requirement to mark buoys with either the vessel's Federal fisheries permit number or Alaska Department of Fish and Game number remains in effect. This action is needed to remove a regulatory requirement that is unnecessary. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP), the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA Groundfish FMP), and other applicable laws.

DATES: Effective May 5, 2014.

ADDRESSES: Electronic copies of the Categorical Exclusion and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Sustainable Fisheries Division, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS Alaska Region manages the U.S. groundfish fisheries in the Exclusive Economic Zone off Alaska under the BSAI and GOA Groundfish FMPs. These FMPs were prepared by the North Pacific Fishery Management Council, under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.,* and other applicable laws, and approved by the Secretary of Commerce. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

This final rule implements a regulatory amendment to remove the requirement that hook-and-line, longline pot, and pot-and-line buoys be marked with the vessel's name. Under this final rule, these vessels are relieved from unnecessary compliance costs. NMFS published a proposed rule for this regulatory amendment in the **Federal Register** on January 3, 2014 (79 FR 381). The 30-day comment period on the proposed rule ended on February 3, 2014. NMFS received one comment letter during the comment period on the proposed rule that supported the proposed action. A summary of this comment and NMFS' response is provided in the ''Comments and Responses'' section of this preamble. There were no changes to the regulatory text between the proposed rule and this final rule.

Background

Federal regulations pertaining to gear markings for groundfish are set forth at § 679.24. These regulations apply to operators of vessels required to carry a Federal fisheries permit (FFP) while fishing in the groundfish and halibut fisheries in Federal waters off Alaska. Buoys are used to indicate the positions of hook-and-line, pot, and pot-and-line gear in these fisheries. Federal regulations at § 679.24(a) require that buoys carried on board or used by any vessel subject to 50 CFR part 679 that is using hook-and-line, longline pot, or pot-and-line gear must be marked with the vessel's name and either the vessel's FFP number or the vessel's Alaska Department of Fish and Game (ADF&G) vessel registration number. In addition, the markings ''shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.''

These regulations apply to ''vessels regulated under this part,'' which refers to those vessels required to carry FFPs under § 679.4(b). FFPs are required for vessels fishing for groundfish (a legal category that does not include halibut) in the GOA or BSAI, or fishing for any non-groundfish species when incidentally caught groundfish must be retained. Regulations at § 679.7(f)(8) prohibit vessels with individual fishing quota (IFQ) halibut or sablefish on board from discarding rockfish or Pacific cod under various conditions. Thus, vessels used to fish for halibut IFQ are required to have FFPs and comply with all regulations in 50 CFR part 679 that apply to vessels required to have FFPs, including requirements for marking buoys. Other non-groundfish fisheries

have no comparable discard prohibitions.

Identification markings on buoys in the Federal waters off Alaska also are regulated by the State of Alaska (State) and the International Pacific Halibut Commission (IPHC). The State shares management responsibilities with NMFS for king crab and Tanner crab in the Federal waters off Alaska, and regulates the buoy identification markings in these fisheries. The State requires at least one buoy on each commercial king or Tanner crab pot or ring net to be legibly marked with the permanent ADF&G license number of the vessel using the gear (5 AAC 34.051; 5 AAC 35.051). Identification marking requirements for halibut gear buoys are set by the IPHC. The IPHC's regulations for 2014 require that all setline or skate buoys carried on board or used by any U.S. vessel for commercial halibut fishing shall be marked with the vessel's state license number or the vessel's registration number. Both State and IPHC commercial identification markings must be maintained in a legible condition, in characters at least four inches high (10.2 cm) and one-half-inch (1.3 cm) wide, in a contrasting color, and visible above the water. The principal difference between the State and IPHC commercial regulations and 50 CFR part 679 is the requirement for buoys to be marked with the vessel name.

Information on the extent of compliance with the existing regulations is not available; however, non-compliance has not been raised as a concern by enforcement agencies.

This final rule eliminates the requirement that buoys carried on board or marking the location of hook-and-line, longline pot, and pot-and-line gear deployed by vessels with FFPs be marked with the vessel's name. This action is needed to remove a regulatory requirement that experience has shown is not necessary. While one vessel may share the same name as another vessel, vessel identification numbers are exclusive and unique to the recipient vessel. Therefore, this rule eliminates the requirement in § 679.24(a) to mark buoys with the vessel's name, but maintains the requirement for marking buoys with either the vessel's FFP number or ADF&G number. This action should reduce costs to vessel owners by reducing the labor and materials needed to mark buoys. In addition, this action makes buoy marking regulations at § 679.24(a) consistent with State crab and IPHC regulations.

Comments and Responses

NMFS received one comment letter during the public comment period for the proposed rule to implement this regulatory amendment. This letter was received from a representative of the affected fishing industry. A summary of the comment and NMFS' response follows.

Comment 1: The commenter expressed general support for the proposed regulatory amendment.

Response: NMFS acknowledges this comment.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the BSAI and GOA Groundfish FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law.

Executive Order 12866

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

Regulatory Impact Review

An RIR was prepared for this action that assesses all costs and benefits of available regulatory alternatives. The RIR describes the potential size, distribution, and magnitude of the economic impacts this action may be expected to have. The RIR finds that this action has a positive net economic impact to commercial fishing operations since it reduces the cost of compliance with identification marking requirements for buoys. This action does not create additional administrative costs and does not impose new requirements on fishing operations, or modify other existing ones. A copy of the RIR is available from NMFS (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

This section constitutes the Final Regulatory Flexibility Analysis (FRFA) for this action, prepared pursuant to the requirements of the Regulatory Flexibility Act (RFA). This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604(a) of the RFA.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The description of this rule, the need for it, and its objectives are described in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published the proposed rule on January 4, 2014 (79 FR 381), with comments invited through February 3, 2014. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS received no comments on the IRFA; therefore, no changes were made to the rule as a result of comments on the IRFA.

Number and Description of Small Entities Regulated by the Final Rule

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment is considered the universe for purposes of this analysis. In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Vessels directly regulated by this action are those required to carry an FFP, and that use hook-and-line, pot, or pot-and-line gear in Federal groundfish or halibut fisheries in the GOA or BSAI.

NMFS estimates that, in 2012, the most recent year for which gross revenues information is available, 761 entities would have been directly regulated by this action. NMFS estimates that of those 693 would have been small entities. The Small Business Administration (SBA) defines a small commercial finfish fishing entity as one that has annual gross sales of less than $19 million; a shellfish fishing small entity is one with less than $5 million annual gross revenue, and other marine fishing operations are small if they have less than $7 million in gross revenue. 78 FR 37398 (July 22, 2013). Median gross revenues for the small entities would have been about $327,000, while 75 percent would have had gross revenues under about $779,000, and 25 percent would have had gross revenues under about $144,000. The 99th percentile of gross revenues was about $2,974,000. Accordingly, under any of the SBA's size standards for fishing operations, all affected entities are ''small.'' This action will reduce, in a small way, the reporting and recordkeeping requirements of small entities participating in the BSAI and GOA groundfish fisheries.

Reporting and Recordkeeping Requirements

This action will reduce, in a small way, the recordkeeping and reporting requirements of small entities participating in the BSAI and GOA groundfish fisheries.

Description of Alternatives Considered

A FRFA also requires a description of any significant alternatives to the preferred alternative that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the rule on small entities. The preferred alternative (the action alternative removing the requirement that vessel names be placed on marker buoys) places somewhat smaller obligations on directly regulated small entities than the alternative of retaining the status quo. Thus, there are no alternatives that have a smaller adverse economic impact on directly regulated small entities.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Collection-of-Information Requirements

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by Office of Management and Budget (OMB) under control number 0648–0353. Public reporting burden is estimated to average per response 10 minutes or less, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 28, 2014.

Samuel D. Rauch III,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

■ 2. In § 679.24, revise paragraph (a)(1) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(1) All hook-and-line, longline pot, and pot-and-line marker buoys carried on board or used by any vessel regulated under this part shall be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number.

* * * * *

[FR Doc. 2014–07467 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 64
Thursday, April 3, 2014

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board), following an internal review of MSPB regulations and after consideration of comments received from MSPB stakeholders, is proposing to amend its rules of practice and procedure by amending its regulations governing how jurisdiction is established over Board appeals.

DATES: Submit written comments on or before May 5, 2014.

ADDRESSES: Submit your comments concerning this proposed rule by one of the following methods and in accordance with the relevant instructions:

Email: mspb@mspb.gov. Comments submitted by email can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML and PDF. If possible, commenters are asked to use a text format and not an image format for attachments. An email should contain a subject line indicating that the submission contains comments to the Board's proposed rule regarding jurisdiction. The Board asks that parties use email to submit comments if possible. Submission of comments by email will assist MSPB to process comments and speed future actions, including publication of a final rule.

Fax: (202) 653–7130. Faxes should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning the Board's proposed rule regarding jurisdiction.

Mail or other commercial delivery: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419.

Hand delivery or courier: Comments should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: As noted above, MSPB requests that commenters use email to submit comments, if possible. All comments received will be made available online at the Board's Web site, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body of a comment.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 7, 2012, the Board published a proposed rule proposing amendments to 5 CFR 1201.56. 77 FR 33663. Now, as then, 5 CFR 1201.56 provides without qualification that the Board's jurisdiction must be proven by preponderant evidence. In the proposed rule, the Board noted that 5 CFR 1201.56 is in conflict with a significant body of Board case law holding that certain jurisdictional elements may be established by making nonfrivolous allegations. The Board therefore proposed to amend this regulation to allow the use of nonfrivolous allegations to establish certain jurisdictional elements.

The Board received numerous thoughtful comments concerning the proposed amendments to this regulation. Because many of the comments addressed matters that went well beyond the scope of the original proposed rule, the Board decided to withdraw the proposed rule and reconsider the existing regulation in light of the comments and internal discussions spurred by the comments. 77 FR 62350.

Continuing Review

Shortly after the withdrawal of the proposed amendments to 5 CFR 1201.56, the Board directed an internal MSPB working group (MSPB regulations working group) to thoroughly review 5 CFR 1201.56 and any related issues concerning the Board's jurisdiction. The MSPB regulations working group thereafter developed several options for the Board to consider. On November 8, 2013, the Board published a solicitation of public comments in the **Federal Register** seeking additional public comment on the various options developed by the MSPB regulations working group. 78 FR 67076. Pursuant to this solicitation of public comments, the text, summaries, and analyses of the options developed by the MSPB regulations working group were made available for review at the Board's Web site (*www.mspb.gov/regulatoryreview/index.htm*). In response to the request for public comment, the Board received 72 pages of comments from 26 commenters. The options prepared by the MSPB regulations working group and all comments received in response to the request for comments are available on the Board's Web site and will remain posted there under the heading ''Regulatory Review Initiative'' through the completion of this rulemaking.

Summary of Proposed Changes/Section-by-Section Analysis

Following a review of the proposals submitted by the MSPB regulations working group and the public comments received by the Board in response to its request for comments, the Board has decided to propose the following amendments to its regulations governing how jurisdiction is established over Board appeals.

Section 1201.4 General Definitions

The Board proposes to transfer the definitions of ''substantial evidence,'' ''preponderance of the evidence,'' and ''harmful error'' from 5 CFR 1201.56(c)

to this regulation as paragraphs (p), (q) and (r) to consolidate important definitions in one regulation. None of these definitions are otherwise changed. The Board also proposes to add a new definition of ''nonfrivolous allegation'' in paragraph (s) that defines this term as an assertion that, if proven, could establish the matter at issue. The definition further explains that an allegation made under oath or penalty of perjury will be considered nonfrivolous when it is more than conclusory, plausible on its face, and material to the legal issues in the appeal. This definition is consistent with current Board case law.

Section 1201.56 Burden and Degree of Proof

5 CFR 1201.56 currently provides that the appellant bears the burden of proving jurisdiction by preponderant evidence; that the agency bears the burden of supporting a performance-based action by substantial evidence and supporting any other action by preponderant evidence; and that the appellant will prevail if he or she can establish a successful affirmative defense under 5 U.S.C. 7701(c)(2) (specifically, that the agency action was based on a harmful procedural error, constituted a prohibited personnel practice, or was not in accordance with law). The foregoing principles do not apply, however, in four categories of appeals: An individual right of action (IRA) appeal under the Whistleblower Protection Act, 5 U.S.C. 1221; an appeal under the Veterans Employment Opportunities Act (VEOA), 5 U.S.C. 3330a(d); an appeal under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4324, in which the appellant alleges discrimination or retaliation in violation of 38 U.S.C. 4311; and an appeal of denial of restoration under 5 CFR part 353.

To correct this anomaly, this proposed rule would amend section 1201.56 to limit its applicability to appeals other than IRA appeals, VEOA appeals, USERRA discrimination and retaliation appeals, and denial of restoration appeals and insert a new regulation, revised section 1201.57, to address the burden and degree of proof and scope of review in such appeals.

The Board further proposes to transfer the definitions of ''substantial evidence,'' ''preponderance of the evidence,'' and ''harmful error'' from 5 CFR 1201.56 to 5 CFR 1201.4. Finally, the Board also proposes to add a new requirement that the administrative judge inform the parties of the proof required as to the issues of jurisdiction, the timeliness of the appeal, and affirmative defenses.

The following authorities justify the Board's proposed rule limiting the coverage of section 1201.56 to appeals other than IRA, VEOA, USERRA (discrimination and retaliation), and denial of restoration appeals, as well as the proposed creation of a new regulation (section 1201.57) covering such appeals: *Yunus* v. *Department of Veterans Affairs,* 242 F.3d 1367, 1371 (Fed. Cir. 2001) (to establish jurisdiction in an IRA appeal, the appellant must prove that he has exhausted his remedy before the Office of Special Counsel and make nonfrivolous allegations that he engaged in whistleblowing activity by making a protected disclosure and the disclosure was a contributing factor in the agency's decision to take or fail to take a personnel action); *Williams* v. *Department of the Air Force,* 97 M.S.P.R. 252, ¶ 6 (2004) (to establish jurisdiction in a VEOA appeal involving a claimed violation of veterans' preference rights, the appellant must show that he exhausted his remedy with the Department of Labor and make nonfrivolous allegations that he is a preference eligible and the agency violated his rights under a statute or regulation relating to veterans' preference); *Weed* v. *Social Security Administration,* 112 M.S.P.R. 323, ¶ 13 n.5 (2009) (to establish jurisdiction in a VEOA appeal involving a claimed violation of the right to compete, the appellant must show that he exhausted his remedy with the Department of Labor and make nonfrivolous allegations that he is a veteran as described in 5 U.S.C. 3304(f)(1) and the agency denied him the right to compete under merit promotion procedures for a vacant position for which the agency accepted applications from outside its own workforce); *Gossage* v. *Department of Labor,* 118 M.S.P.R. 455, ¶ 10 (2012) (to establish jurisdiction in a USERRA discrimination case, the appellant must make nonfrivolous allegations that an executive agency committed discrimination based on his past military service or obligation to perform service); *Chambers v. Department of the Interior,* 116 M.S.P.R. 17, ¶ 12 (2011) (the appellant bears the burden of proof on the merits in an IRA appeal); *Dale* v. *Department of Veterans Affairs,* 102 M.S.P.R. 646, ¶ 13 (2006) (the appellant bears the burden of proof on the merits in a VEOA appeal); *Clavin* v. *U.S. Postal Service,* 99 M.S.P.R. 619, ¶ 6 (2005) (the appellant bears the burden of proof on the merits in a USERRA discrimination case); *Marren* v. *Department of Justice,* 51 M.S.P.R. 632, 638–39 (1991) (in an IRA appeal, the Board lacks authority to adjudicate an appellant's affirmative defense under 5 U.S.C. 7701(c)(2)), *aff'd,* 980 F.2d 745 (Fed. Cir. 1992) (Table); *Goldberg* v. *Department of Homeland Security,* 99 M.S.P.R. 660, ¶ 11 (2005) (in a VEOA appeal, the Board lacks authority to adjudicate an appellant's affirmative defense under 5 U.S.C. 7701(c)(2)); *Bodus* v. *Department of the Air Force,* 82 M.S.P.R. 508, ¶¶ 14–17 (1999) (in a USERRA discrimination case, the Board lacks authority to adjudicate an appellant's affirmative defense under 5 U.S.C. 7701(c)(2)).

The Board justifies the proposed rule excluding denial of restoration appeals from the coverage of section 1201.56 as follows. Until recently, the Board had held that jurisdiction over a restoration appeal was established by nonfrivolous allegations that the agency violated the appellant's restoration rights under 5 CFR part 353. *Chen* v. *U.S. Postal Service,* 97 M.S.P.R. 527, ¶ 12 (2004). In *Bledsoe* v. *Merit Systems Protection Board,* 659 F.3d 1097 (Fed. Cir. 2011), the court affirmed the Board's dismissal of a restoration appeal for lack of jurisdiction, but found that the Board's jurisdiction must be established in such appeals by preponderant evidence as required by 5 CFR 1201.56, citing *Garcia* v. *Department of Homeland Security,* 437 F.3d 1322 (Fed. Cir. 2006) (en banc). As a result, the Board found it necessary to overrule *Chen* in *Latham* v. *U.S. Postal Service,* 117 M.S.P.R. 400, ¶ 10 (2012) and to apply the preponderance of the evidence standard for jurisdictional determinations in restoration appeals. However, the court also stated in *Garcia* that, if the Board has a sufficient basis, it may adopt a nonfrivolous allegation standard for an appeal by changing its regulation on jurisdiction in accordance with notice and comment rulemaking procedures. 437 F.3d at 1343. The Board finds that it is appropriate in restoration appeals to apply the nonfrivolous allegation standard.

Section 1201.57 Establishing Jurisdiction in Appeals Not Covered by Section 1201.56; Burden and Degree of Proof; Scope of Review

This proposed regulation, which the Board proposes to insert in place of existing section 1201.57, would make clear that, in contrast to an appeal governed by section 1201.56, in IRA appeals, VEOA appeals, USERRA discrimination and retaliation appeals, and denial of restoration appeals, the appellant is not required to establish all jurisdictional elements by preponderant evidence and bears the burden of proof on the merits. This proposed regulation

also contains a provision requiring administrative judges to provide notice to the parties of the specific jurisdictional, timeliness, and merits elements that apply in a particular appeal, as well as a provision directing the parties to statutes and regulations that contain additional information concerning such appeals.

Sections 1201.57, 1201.58, and 1201.59

In order to allow the insertion of new section 1201.57, the Board proposes to redesignate existing section 1201.57 as section 1201.58 and existing section 1201.58 as section 1201.59.

List of Subjects in 5 CFR Part 1201

Administrative practice and Procedure.

Accordingly, for the reasons set forth in the preamble, the Board proposes to amend 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. In § 1201.4, add new paragraphs (p), (q), (r), and (s) as follows:

§ 1201.4 General definitions.

* * * * *

(p) *Substantial evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(q) *Preponderance of the evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(r) *Harmful error.* Error by the agency in the application of its procedures that is likely to have caused the agency to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

(s) *Nonfrivolous allegation.* A nonfrivolous allegation is an assertion that, if proven, could establish the matter at issue. An allegation generally will be considered nonfrivolous when, under oath or penalty of perjury, an individual makes an allegation that:

(1) Is more than conclusory;

(2) Is plausible on its face; and

(3) Is material to the legal issues in the appeal.

■ 3. Revise § 1201.56 to read as follows:

§ 1201.56 Burden and degree of proof.

(a) *Applicability.* This section does not apply to the following types of appeals which are covered by § 1201.57:

(1) An individual right of action appeal under the Whistleblower Protection Act, 5 U.S.C. 1221;

(2) An appeal under the Veterans Employment Opportunities Act, 5 U.S.C. 3330a(d);

(3) An appeal under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4324, in which the appellant alleges discrimination or retaliation in violation of 38 U.S.C. 4311; and

(4) An appeal under 5 CFR 353.304, in which the appellant alleges a failure to restore, improper restoration of, or failure to return following a leave of absence.

(b) *Burden and degree of proof.* (1) *Agency.* Under 5 U.S.C. 7701(c)(1), and subject to the exceptions stated in paragraph (c) of this section, the agency bears the burden of proof and its action must be sustained only if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence (as defined in § 1201.4(p)); or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence (as defined in § 1201.4(q)).

(2) *Appellant.* (i) The appellant has the burden of proof, by a preponderance of the evidence (as defined in § 1201.4(q)), with respect to:

(A) Issues of jurisdiction;

(B) The timeliness of the appeal; and

(C) Affirmative defenses.

(ii) In appeals from reconsideration decisions of the Office of Personnel Management (OPM) involving retirement benefits, if the appellant filed the application, the appellant has the burden of proving, by a preponderance of the evidence (as defined in § 1201.4(q)), entitlement to the benefits. Where OPM proves by preponderant evidence an overpayment of benefits, an appellant may prove, by substantial evidence (as defined in § 1201.4(p)), eligibility for waiver or adjustment.

(c) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to reverse the action of the agency, even where the agency has met the evidentiary standard stated in paragraph (b) of this section, if the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at its decision (as defined in § 1201.4(r));

(2) Shows that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(d) *Administrative Judge.* The administrative judge will inform the parties of the proof required as to the issues of jurisdiction, the timeliness of the appeal, and affirmative defenses.

§§ 1201.57 and 1201.58 [Redesignated as §§ 1201.58 and 1201.59]

■ 4. Redesignate §§ 1201.57 and 1201.58 as §§ 1201.58 and 1201.59, respectively.

■ 5. Add § 1201.57 to read as follows:

§ 1201.57 Establishing jurisdiction in appeals not covered by § 1201.56; burden and degree of proof; scope of review.

(a) *Applicability.* This section applies to the following types of appeals:

(1) An individual right of action (IRA) appeal under the Whistleblower Protection Act, 5 U.S.C. 1221;

(2) A request for corrective action under the Veterans Employment Opportunities Act (VEOA), 5 U.S.C. 3330a(d);

(3) A request for corrective action under the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4324, in which the appellant alleges discrimination or retaliation in violation of 38 U.S.C. 4311; and

(4) An appeal under 5 CFR 353.304, in which an appellant alleges a failure to restore, improper restoration of, or failure to return following a leave of absence (denial of restoration appeal).

(b) *Matters that must be proven by a preponderance of the evidence.* An appellant who initiates an appeal covered by this section has the burden of proof, by a preponderance of the evidence (as defined in § 1201.4(q)), on the following matters:

(1) When applicable, exhaustion of a statutory complaint process that is preliminary to an appeal to the Board;

(2) Timeliness of an appeal under 5 CFR 1201.22;

(3) Standing to appeal, when disputed by the agency or questioned by the Board. (An appellant has ''standing'' when he or she falls within the class of persons who may file an appeal under the law applicable to the appeal.); and

(4) The merits of an appeal, if the appeal is within the Board's jurisdiction and was timely filed.

(c) *Matters that must be supported by nonfrivolous allegations.* Except for matters described in paragraphs (b)(1) and (3) of this section, in order to establish jurisdiction an appellant who initiates an appeal covered by this section must make nonfrivolous

allegations (as defined in § 1201.4(s)) with regard to the substantive jurisdictional elements applicable to the particular type of appeal he or she has initiated.

(d) *Scope of the appeal.* Appeals covered by this section are limited in scope. With the exception of denial of restoration appeals, the Board will not consider matters described at 5 U.S.C. 7701(c)(2) in an appeal covered by this section.

(e) *Notice of jurisdictional, timeliness, and merits elements.* The administrative judge will provide notice to the parties of the specific jurisdictional, timeliness, and merits elements that apply in a particular appeal.

(f) *Additional information.* For additional information on IRA appeals, the reader should consult 5 CFR part 1209. For additional information on VEOA appeals, the reader should consult 5 CFR part 1208, subparts A & C. For additional information on USERRA appeals, the reader should consult 5 CFR part 1208, subparts A & B.

For additional information on denial of restoration appeals, the reader should consult 5 CFR part 353, subparts A & C.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2014–07443 Filed 4–2–14; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–DET–0035]

RIN 1904–AD04

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination of Computer and Battery Backup Systems as a Covered Consumer Product

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of extension of public comment period.

SUMMARY: This document announces an extension of the time period for submitting comments on the proposed determination of coverage for computer and battery backup systems (hereafter referred to as ''computer systems''). The comment period is extended to April 15, 2014.

DATES: The comment period for the proposed determination of coverage relating to computer systems published on February 28, 2014 (79 FR 11345) is extended to April 15, 2014.

ADDRESSES: Interested persons may submit comments, identified by docket number EERE–2013–BT–DET–0035, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Computers2013DET0035@ee.doe.gov.* Include EERE–2013–BT–DET–0035 and/or RIN 1904–AD04 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, Proposed Determination for computers, EERE–2013–BT–DET–0035 and/or RIN 1904–AD04, 1000 Independence Avenue SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *DOE_computer_standards@ee.doe.gov*.

In the Office of General Counsel, contact Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On February 28, 2014, DOE published an updated notice of proposed determination (NOPD) in the **Federal Register** (79 FR 11345) to determine that computer systems meet the criteria for classification as a covered product under the Energy Policy and Conservation Act, as amended (EPCA, 42 U.S.C 6291, et seq.). The NOPD provided for the submission of comments from interested parties by March 31, 2014. Thereafter, interested parties requested an extension of the comment period. The Information Technology Industry Council (ITI) stated that they wanted to provide clear guidance and propose definitions related to the scope of coverage for this rulemaking. The Consumer Electronics Association (CEA) stated additional time will enable them to complete and reference findings from their latest comprehensive energy use study in the comments, and gather additional feedback from impacted CEA members concerning scope and product classifications.

Based on ITI and CEA's requests, DOE determines that an extension of the public comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the comment period until April 15, 2014 to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by April 15, 2014 to be timely submitted.

Issued in Washington, DC, on March 26, 2014.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2014–07361 Filed 4–2–14; 8:45 am]

BILLING CODE 6450–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2014–4; Order No. 2035]

Periodic Reporting (Proposals One Through Two)

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the initiation of a proceeding to consider proposed changes in analytical principles (Proposals One through Two). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 11, 2014. *Reply comments are due:* April 18, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Proposals
III. Notice and Comment
IV. Ordering Paragraphs

I. Introduction

On March 27, 2014, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes to two analytical methods for use in periodic reporting.[1] The Petition identifies the proposed analytical method changes filed in this docket as Proposals One through Two.

II. Proposals

A. Proposal One: Proposed Change in RPW Methodology for Use of Additional PostalOne! and Self Service Kiosk Data To Replace ODIS–RPW Statistical Sampling Estimates

The Postal Service currently utilizes statistical sampling estimates from the Origin Destination Information System-Revenue, Pieces, and Weight (ODIS–RPW) to measure national revenue, pieces, and weight for Business Reply Mail (BRM), International Business Reply Service (IBRS) and Merchandise Return Service (MRS) mail. The Postal Service proposes to replace ODIS–RPW estimates with data from its PostalOne! system (PostalOne data) and Self-Service Kiosk data (SSK data) for its Revenue, Pieces, and Weight (RPW) Report. *Id.* at 2. Because PostalOne and SSK data reflect ''census'' information, that is, information collected from previous BRM, IBRS, and MRS mailings, the Postal Service asserts that these data do not contain the sampling errors that are inherent in statistical sampling systems such as ODIS–RPW. *Id.* at 2, 6. The Postal Service suggests performing ratio adjustments to account for those offices that do not use the PostalOne system for processing BRM, IBRS, and MRS pieces. *Id.* at 6–7.

B. Proposal Two: TRACS Change to Fed Ex Night Turn Distribution Key

The Postal Service employs a distribution key to assign volume variable costs for the Fed Ex Night Turn air carrier in the Transportation Cost System (TRACS). The distribution key is currently based on an ongoing statistical sampling of mail conveyed through the Fed Ex Night Turn air carrier system. *Id.* at 11. The Postal Service proposes to replace the statistical sampling data with operations data obtained from the Surface Air Management System (SAMS), the Product Tracking System (PTS), the Foreign Postal Settlement (FPS) system, and data regularly collected by TRACS. It maintains that portions of the Postal Service census data are now sufficiently reliable to be the basis of the distribution key. *Id.*

III. Notice and Comment

The Commission establishes Docket No. RM2014–4 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposals One through Two no later than April 11, 2014. Reply comments are due no later than April 18, 2014. Pursuant to 39 U.S.C. 505, Cassie D'Souza 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. RM2014–4 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 Two), filed March 27, 2014.

2. Comments by interested persons in this proceeding are due no later than April 11, 2014. Reply comments are due no later than April 18, 2014.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Cassie D'Souza to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–07399 Filed 4–2–14; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposals One Through Two), March 27, 2014 (Petition).

Notices

Federal Register
Vol. 79, No. 64
Thursday, April 3, 2014

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

DEPARTMENT OF AGRICULTURE

Forest Service

Chippewa National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Chippewa National Forest (NF) Resource Advisory Committee (RAC) will meet in Walker, Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is review RAC members' roles and responsibilities, review project proposals, and develop project priorities.

DATES: The meeting will be held Thursday, June 19, 2014 at 9:30 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Walker Ranger District Office, 201 Minnesota Ave. East, Walker, Minnesota 56484.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Chippewa NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Todd Tisler, RAC Coordinator, by phone at 218–335–8629, or via email at *ttisler@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/chippewa.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 9, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Todd Tisler, RAC Coordinator, Chippewa NF Supervisor's Office, 200 Ash Avenue Northwest, Cass Lake, Minnesota 56633; or by email to *ttisler@fs.fed.us,* or via facsimile to 218–335–8637.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dates: March 27, 2014.

Darla Lenz,

Chippewa National Forest Supervisor.

[FR Doc. 2014–07434 Filed 4–2–14; 8:45 am]

BILLING CODE 3411–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket No. ATBCB–2013–0001]

RIN 3014–AA42

Rail Vehicles Access Advisory Committee Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: On May 23, 2013, we, the Architectural and Transportation Barriers Compliance Board (Access Board), established the Rail Vehicles Access Advisory Committee (Committee) to advise us on revising and updating our accessibility guidelines issued pursuant to the Americans with Disabilities Act for transportation vehicles that operate on fixed guideway systems (e.g., rapid rail, light rail, commuter rail, intercity rail, and high speed rail). The Committee will hold its third meeting on the following dates and times.

DATES: The Committee will meet on April 10, 2014, from 10 a.m. to 5 p.m. and on April 11, 2014, from 9:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111. Call-in information and a communication access real-time translation (CART) web streaming link will be posted on the Access Board's Rail Vehicles Access Advisory Committee Web site page at *www.access-board.gov/rvaac.*

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0072 (TTY). Electronic mail address: *rvaac@access-board.gov.*

SUPPLEMENTARY INFORMATION: On May 23, 2013, we published a notice establishing a Rail Vehicles Access Advisory Committee (Committee) to make recommendations to us on matters associated with revising and updating our accessibility guidelines issued pursuant to the Americans with

Disabilities Act for transportation vehicles that operate on fixed guideway systems (e.g., rapid rail, light rail, commuter rail, intercity rail, and high speed rail). See 78 FR 30828 (May 23, 2013).

The Committee will hold its third meeting on April 10, 2014, from 10 a.m. to 5 p.m. and on April 11, 2014, from 9:30 a.m. to 3 p.m. The agenda for the April meeting includes: Educational presentations; deliberation of committee member concerns pertaining to the accessibility of rail vehicles; consideration of process-related matters; and subcommittee meetings. On April 10, the Communications subcommittee will meet during the afternoon. On April 11, the On-Board Circulation subcommittee will meet in the morning and the Boarding and Alighting subcommittee will meet in the afternoon. Subcommittee meetings will occur in the same meeting room as the Committee meeting. The preliminary meeting agenda, along with information about the Committee, is available on our Web site (*www.access-board.gov/rvaac*).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the Committee on issues of interest to them during a public comment period scheduled for the first day. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate in subcommittees.

The meetings will be accessible to persons with disabilities. An assistive listening system, communication access real-time translation (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information).

Persons wishing to provide handouts or other written information to the Committee are requested to provide electronic formats to Paul Beatty via email at least five business days prior to the meetings so that alternate formats can be distributed to Committee members.

David M. Capozzi,

Executive Director.

[FR Doc. 2014–07445 Filed 4–2–14; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Business Meeting.

DATE AND TIME: Friday, April 11, 2014; 9:30 a.m. EST

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda
II. Program Planning
- Discussion of Concept Papers and Future Briefings

III. Management and Operations
- Staff Director's Report

IV. State Advisory Committee (SAC) Appointments
- Idaho

V. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: March 31, 2014.

Marlene Sallo,

Staff Director.

[FR Doc. 2014–07515 Filed 4–1–14; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Panel Member Survey to Develop Indicators of Resilient Coastal Tourism.

OMB Control Number: 0648–xxxx.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 29.

Average Hours per Response: Webinars, 60 minutes; surveys, 30 minutes.

Burden Hours: 116.

Needs and Uses: This request is for a new information collection.

The purpose of this survey is to better understand the factors that shape the tourism industry's ability to adapt to or bounce back from external shocks such as natural disasters, climate change, and economic downturns (i.e,. resiliency) in order to develop a set of indicators to measure the resiliency of coastal tourism. To help gather this information, NOAA will conduct a multi-round, iterative survey process based on the Delphi Method, which is a structured method for eliciting and combining expert opinion. The method requires indirect interaction among experts through a moderator. Experts make individual judgments, and these judgments are shared anonymously with the whole group. After viewing other experts' judgments, each expert is then given the opportunity to revise his or her own judgments, and the process is repeated. Theoretically, the goal of the Delphi study is to reach a consensus after a few rounds. In reality this rarely happens; thus, at the end of the Delphi rounds, the experts' final judgments are typically combined mathematically.

NOAA will apply the Delphi Method to a multi-round survey of panels of individuals with experience and insight into tourism resiliency and/or the tourism industry in two geographic areas: (1) The Central North Carolina Coast, and (2) the San Francisco Bay Area (inner and outer coast). Data to be collected through the survey include factors that may prevent or facilitate tourism resiliency as well as ranking or rating of those factors; suggested resiliency indicators; relevance and usefulness of resiliency indicators; and levels of respondent certainty with regard to their responses.

Affected Public: Business or other for-profit organizations; not-for-profit organizations; state, local or tribal governments.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–07425 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–33–2014]

Foreign-Trade Zone (FTZ) 72—Indianapolis, Indiana, Notification of Proposed Production Activity, OHL Contract Logistics, LLC, (Kitting—Subassemblies and Parts for Heavy Trucks, Excavation Machinery), Plainfield, Indiana

OHL Contract Logistics, LLC (OHL), an operator of FTZ 72, submitted a notification of proposed production activity to the FTZ Board for its facility located in Plainfield, Indiana within FTZ 72. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 12, 2014.

The OHL facility is located within Site 16 of FTZ 72. The facility is used for the production of kits comprised of parts, components, and subassemblies for heavy trucks, excavation machinery, and related equipment. Pursuant to 15 CFR 400.14(b), FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt OHL from customs duty payments on the foreign status materials/components used in export production. On its domestic sales, OHL would be able to choose the duty rates during customs entry procedures that apply to: Grease kits; sealant kits; antifreeze kits; plastic tube kits; plastic brake line guard kits; body down sensor kits; rubber hose kits; hydraulic breather hose kits; rubber gasket kits; seal kits; mount kits; mudguard kits; strut damper kits; manual (drawings, repair, decal) kits; mirror kits; insulation kits; drain plug kits; hoist support kits; fitting kits; plug assembly kits; fuel cap breather kits; metal tank/container/can kits; accumulator kits; steel fastener/nut/washer/ring/shim/clamp kits; steel isolator kits; bushing installation kits; crimper kits; tool kits; keys kits; hinge kits; mounting/fitting kits; service center line kits; steel tubing kits; oil drain kits; fuel line kits; shutdown kits; switch kits; housing kits; cover kits; gear kits; hydraulic motor parts kits; actuators kits; cylinder kits; engine seal kits; hydraulic pump kits; lubricating kits; bracket kits; air-conditioning compressor and mounting kits; blower kits; exhaust kits; rectifier enclosure kits; cooling duct-chassis kits; electrical kits; air-conditioning kits; heat exchanger kits; oil/fuel/air filter kits; load weigh kits; engine/transmission lift kits; jack kits; hoist kits; kingpin bushing kits; lift assembly kits; reduction valve kits; check/relief valve kits; valve repair kits; sample port kits; fast fuel kits; seal kits; fittings kits; hoist valve parts kits; hydraulic breather relocation kits; bearing assembly/repair kits; differential repair kits; PTO overhaul kits; bearing kits; roller/spider/carrier bearing repair kits; thrust washer kits; grid motor with air duct kits; electric/DC motor kits; rectifier repair kits; battery equalizer kits; battery cable kits; battery kits; disconnect switch kits; DC converter kits; magnetic cap kits; voltage regulator kits; gauge kits; headlight kits; flasher kits; backup alarm kits; windshield washer kits; hot start kits; engine heater kits; mine management telemetry kits; software diagnostic/update kits; smart card kits; radio-cassette kits; safety monitor retrofit kits; speed limiting kits; indicator light kits; indicator panel parts kits; grid box resistor update kits; circuit breaker kits; electrical switch kits; junction kits; regulator kits; terminal kits; electrical repair kits; instrumentation kits; diode installation kits; tail light kits; power cable kits; wiring harness kits; electrical kits; bearing hub isolator kits; wiring/electrical conduit kits; cab assembly kits; body parts/accessories kits; driveline kits; driveline guide kits; fan and belt kits; hoist valve parts kits; lever assembly kits; shield rework kits; steering upgrade kits; tank repair kits; tower assembly kits; track rod lug kits; transmission guard kits; brake part kits; shifter replacement kits; spindle kits; axle and parts kits; hydraulic tube kits; wheel kits; suspension seal kits; frame repair kits; radiator mount kits; exhaust kits; piston-ring kits; shift selector kits; handle assembly kits; driveshaft kits; steering kits; frame repair kits; PTO driveline kits; planetary kits; journal and shim kits; dust cap-seal kits; pump isolation kits; fuel tank/fittings kits; fuel tank vent hose kits; frame re-work kits; fall protection kits; inverter plate installation kits; cab connector guard kits; hydraulic tank kits; coolant tube kits; air duct kits; air inlet silencer kits; anchor shackle kits; high arc re-work kits; yoke assembly kits; tank breather kits; hoist cylinder kits; fluid level sensor kits; transducer kits; temperature gauge kits; fuel level kits; speedometer/tachometer kits; instrument conversion kits; electrical current instrument kits; body angle sensor kits; camera kits; controller kits; and, seat kits (duty rate ranges from free–9.0%; 12¢/doz+5.5%) for the foreign status materials/components noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials/components sourced from abroad include: Greases; nitrogen cartridges; primers; solvents; sealing compounds; lubricants; anti-seize pastes; adhesives; refrigerants; anti-freeze/coolants; plastic tubing/shrink/hose assemblies/tapes/protectors/handles/knobs/packing-sealing materials/assemblies/rings/o-rings/seals/ring wear/moldings/ring backs/guides/wipers/rods/bases/seal steps/packing materials/v-belts/cable ties/boots/louvers/sleeves/fuel tanks/caps; rubber pads/tapes/mudguards/belts/hoses and assemblies/fittings/brake hoses/fasteners/sound insulators/gaskets/washers/seals/covers/guards/mounts/vibration mounts/moldings/air baffles/dampers/valves/bushings/boots/valve vacuators; tool bags of textile materials (HTSUS Subheading 4202.12); paper marker wire (labels)/gaskets; service bulletins; instruction manuals; drawings; cards; schematics; transfers; decals; Mylar films; felt hoses/seals/pads/covers; ducts; looms; gaskets; abrasive strips; insulation blankets; exhaust blankets; brake linings/pads; carbon fiber gaskets; glass; mirrors; fiberglass covers; steel bars/wires/caps/tubes/weldments/fittings/unions/flanges/tanks/accumulators/tie wires/rings/cable strands/springs/bushings; locks; fasteners (screws, bolts, nuts, pins, cotter pins); spacers; steel rods/clamps/plugs/threaded inserts/gaskets/shackles; copper fittings/washers/plugs/up rings; aluminum manifold blocks/tubes/caps/plates; hand tools; clamps and related assemblies; service tool kits; gauges; locks/keys; hinges; base metal mountings and fittings; latches; supports; brackets; bracket/mount/clamp assemblies; steel flex tubing; plates; name plates and related assemblies; yokes; hydraulic cylinders and related parts; electric motors; pumps/pump kits and parts; compressors; fans; rectifier enclosures; air-conditioning/heat units/clutches; condensing units; drain hose kits; actuators; coolers; filters; air cleaners; elements; breather vents; haultronics kits; fire suppression system parts;

engine/transmission lifts; lifter weldments; drills; data cables/adapters; converters; valves and assemblies; valve covers; tie rods; controllers; manifolds; solenoids; hand taps; bearings and related assemblies; cups; cones; shafts; driveshafts; cranks; bushings; gears; couplings; hubs; pulleys and related adapters; pinions; motors (*e.g.,* grid box, traction) and related parts; transformers; converters; wiring harnesses; battery equalizers; connectors; rectifiers and covers; arc chute kits; magnetic caps; batteries; cable assemblies; controllers and panels; lamps; headlamps; tail lamps; parts of lighting equipment; indicators; horns; load weigh assembly boxes; alarms; lenses; flashers; telemetry devices; interface cables; cameras and related harnesses; radios; monitors; displays; speed limiters; indicator boxes; voltage sensors; potentiometers; fuses and holders; circuit breakers; relays; modules; socket assemblies; blocks; terminals; splices; buss bars; contacts; receptacles; isolators and related assemblies; junction boxes; jumpers; panels; ECUs; electrical cables; loadweigh equipment; boards; moldings; FPGA cards; conduits; camera cables; sub-cabs; air baffles; retainers; straps; stamped body parts (*e.g.,* boxes, fenders, guards); bands; deflectors; machining daggers; heat shields; disks and locators; levers; door/body templates; sheet metal walkways; fuel lines; gussets; keepers; anchors; platforms; channels; support frames; sleeves; housings; grilles; frame parts and lugs; handles; steps; tank protective parts; brakes and related parts; ring seals; oil pans; strips; shims; drive axles and related parts; road wheels and related parts; rings; guides; air coolers; mufflers; exhaust parts; engine parts (*e.g.,* pistons, rings); cylinders; sockets; steering parts; fuel tanks; hydraulic tanks; insulated boxes; sensors (*e.g.,* fluid, velocity, pressure, temperature); transducers; senders; tachometers; testing instruments; loadweigh equipment; thermostats; grommets; puller plate assemblies; tool assemblies; outlet sections; plungers; arms; links; pivots; heaters; resistors; switches; electrical plugs; electrical boxes; warning systems; software; balls-electrical; diodes; integrated circuit parts; electrical sensors/brushes/brush holders/brush springs/insulation/insulators; motor vehicle parts (bars, covers, pads, weldments, rods, tubes, angles, bases, drums); power train parts; tube assemblies; sensor assemblies; and, seats and related supports (duty rate ranges from free to 9.9%, 12¢/doz+5.5%). Inputs included in certain textile categories (classified within HTSUS Subheading 4202.12) will be admitted to the zone under domestic (duty-paid) status or privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

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 May 13, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Pierre Duy at *Pierre.Duy@trade.gov*, (202) 482–1378.

Dated: March 27, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–07483 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–32–2014]

Foreign-Trade Zone (FTZ) 75—Phoenix, Arizona, Notification of Proposed Production Activity, Isola USA Corporation (Dielectric Prepreg and Copper-Clad Laminate), Chandler, Arizona

The City of Phoenix, Arizona, grantee of FTZ 75, submitted a notification of proposed production activity to the FTZ Board on behalf of Isola USA Corporation (Isola), located in Chandler, Arizona. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 19, 2014.

A separate application for usage-driven site designation at the Isola facility was submitted and will be processed under Section 400.38 of the Board's regulations. The facility is used to produce customized dielectric prepreg and copper-clad laminate sheets used by its customers to fabricate multilayer printed circuit boards. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status material and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Isola from customs duty payments on the foreign status material used in export production. On its domestic sales, Isola would be able to choose the duty rates during customs entry procedures that apply to customized dielectric prepreg and copper-clad laminate sheets (duty rates—4.2% and 3%, respectively) for foreign-status electrical grade woven fiberglass rolls (HTSUS 7019.52.4010, duty rate—7.3%). Customs duties also could possibly be deferred or reduced on foreign status production equipment.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 13, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For Further Information Contact: Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–07481 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews; 2013–2014

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

DATES: *Effective Date:* April 3, 2014.

SUMMARY: The Department of Commerce (''the Department'') has received timely requests for new shipper reviews (''NSRs'') of the antidumping duty (''AD'') order on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam''). The Department has determined that requests meet the statutory and regulatory requirements for initiation. The period of review (''POR'') for these NSRs is August 1, 2013, through January 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–0116.

SUPPLEMENTARY INFORMATION:

Background

The AD order on fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003.[1] On February 28, 2014, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214, the Department received NSR requests from Nam Phuong Seafood Co., Ltd. and NTACO Corporation (together, ''the requesting companies'').[2] The requesting companies certified that they are the producers and exporters of the subject merchandise upon which the requests are based.[3]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), the requesting companies certified that they did not export subject merchandise to the United States during the period of investigation (''POI'').[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), the requesting companies certified that, since the initiation of the investigation, they have never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), the requesting companies also certified that their export activities were not controlled by the central government of Vietnam.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), the requesting companies submitted documentation establishing the following: (1) The date on which they first shipped subject merchandise for export to the United States; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.[7]

Finally, the Department conducted a U.S. Customs and Border Protection (''CBP'') database query and confirmed the price, quantity, date of sale, and date of entry of the requesting companies' sales.[8]

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), and based on the evidence provided by the requesting companies, we find that the requests submitted by the requesting companies meet the requirements for initiation of the NSRs for shipments of fish fillets from Vietnam produced and exported by the requesting companies.[9] The POR is August 1, 2013, through January 31, 2014.[10] Absent a determination that the case is extraordinarily complicated, the Department intends to issue the preliminary results of these NSRs within 180 days from the date of initiation and the final results within 270 days from the date of initiation.[11]

It is the Department's usual practice, in cases involving non-market economies (''NMEs''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the NME entity-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to the requesting companies that will include a section requesting information with regard to the requesting companies' export activities for separate rate purposes. Each NSR will proceed if the responses provide sufficient indication that the requesting companies are not subject to either *de jure* or *de facto* government control with respect to their exports of subject merchandise.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the requesting companies in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because the requesting companies certified that they both produced and exported the subject merchandise, the sales of which are the basis for each new shipper review request, we will instruct CBP to permit the use of a bond only for subject merchandise which the requesting companies both produced and exported.

Interested parties requiring access to proprietary information in these NSRs should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: March 26, 2014.

Gary Taverman,

Senior Advisor for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–07486 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 47909 (August 12, 2003).

[2] *See* Letter from Nam Phuong regarding Request for Bi-Annual New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Review Period 8/1/13–1/31/14, dated February 28, 2014 (''Nam Phuong's NSR Request) and Letter from NTACO regarding Request for Bi-Annual New Shipper Review Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Review Period 8/1/13–1/31/14, dated February 28, 2014 (''NTACO's NSR Request'').

[3] *See* Nam Phuong's NSR Request at Exhibit 1 and NTACO's NSR Request at Exhibit 1.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *See* Nam Phuong's NSR Request at Exhibits 2, 3, and 4; and NTACO's NSR Request at Exhibits 2, 3, and 4.

[8] The Department will place the results of the completed CBP database query along with Nam Phuong's and NTACO's entry documents on the record shortly after the publication of this notice.

[9] *See* ''Memorandum to the File, from Scot Fullerton, Program Manager, ''Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: New Shipper Initiation Checklists'', dated concurrently with this notice and herein incorporated by reference.

[10] *See* 19 CFR 351.214(g)(1)(i)(B).

[11] *See* section 751(a)(2)(B)(iv) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–850]

Certain Oil Country Tubular Goods From Taiwan: Amended Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: As a result of the correction of a significant ministerial error, the Department of Commerce (the Department) preliminarily determines that certain oil country tubular goods (OCTG) from Taiwan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is July 1, 2012, through June 30, 2013. Interested parties are invited to comment on this amended preliminary determination.

DATES: *Effective Date:* February 25, 2014.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Hermes Pinilla, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue NW., Washington, DC 20230; telephone: (202) 482–0410 or (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the *Preliminary Determination* on February 25, 2014.[1] On February 24, 2014, Tension Steel Industries Co., Ltd. (Tension Steel), alleged that the Department made a significant ministerial error.

Scope of the Investigation

The merchandise covered by the investigation is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock.

Excluded from the scope of the investigation are: Casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

Significant Ministerial Error

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Further, 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa.[2]

Ministerial Error Allegation

Tension Steel argues that the Department did not properly convert rebates and commissions reported for Canadian sales. Tension Steel asserts that, although it reported rebates and commissions incurred on Canadian sales in U.S. dollars, the Department treated them as if they were reported in Taiwanese dollars.

We agree. Moreover, pursuant to 19 CFR 351.224(g)(2), this error is significant because the correction of the error results in a difference between a weighted-average dumping margin of greater than *de minimis* and a weighted-average dumping margin of zero or *de minimis*. Therefore, we are correcting the error alleged by Tension Steel and amending our preliminary determination accordingly.

Amended Preliminary Determination

We are amending the preliminary determination of sales at less than fair value for OCTG from Taiwan to reflect the correction of a ministerial error made in the margin calculations of that determination. Correcting this error results in an amended preliminary determination that sales were made at not less than fair value. As a result of the correction of the ministerial error, the revised weighted-average dumping margin is as follows:

Exporter/manufacturer	Weighted-average dumping margin
Tension Steel Industries Co., Ltd	0.00%

The other respondent selected for individual examination, Chung Hung Steel Corp, also received a zero margin in the *Preliminary Determination*. Consistent with section 733(d)(1)(A) of the Act, in this amended preliminary determination, the Department has not calculated a weighted-average dumping margin for all other producers or exporters because it has not made an affirmative amended preliminary determination of sales at less than fair value.

Postponement of Final Determination

In the *Preliminary Determination,* we postponed the final determination based on requests from the respondents, Chung Hung Steel Corp. and Tension Steel Industries Co., Ltd.[3] Because this amended preliminary determination is negative, we are basing our postponement of the final determination on the request submitted by Maverick Tube Corporation, a petitioner in this investigation. Pursuant to section 735(a)(2)(B) of the Act and 19 CFR 351.210(b)(2)(i), on February 11, 2014, Maverick Tube Corporation requested that in the event of a negative preliminary determination in this

[1] *See Certain Oil Country Tubular Goods From Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 79 FR 10495 (February 25, 2014) (*Preliminary Determination*).

[2] *See* 19 CFR 351.224(g)(1) and (2).

[3] *See Preliminary Determination,* 79 FR at 10497.

investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In accordance with 19 CFR 351.210(b)(2)(i), because our amended preliminary determination is negative and no compelling reasons for denial exist, we are granting this petitioner's request and are continuing to postpone the final determination until not later than 135 days after the publication of the Department's original preliminary determination notice in the **Federal Register** on February 25, 2014.

Suspension of Liquidation

We will instruct the U.S. Customs and Border Protection to terminate the suspension of liquidation of all entries of OCTG from Taiwan and release any cash deposits posted. These instructions will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we notified the International Trade Commission (ITC) of our amended preliminary determination. If our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of OCTG, or sales (or the likelihood of sales) for importation, of the merchandise under investigation, within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: March 27, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–07485 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD213

Marine Mammals; File No. 18694

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mervi Kunnasranta, Ph.D., University of Eastern Finland, University of Eastern Finland, P.O. Box 111, 80101 Joensuu Finland, has applied in due form for a permit to conduct commercial/educational photography on harbor seals (*Phoca vitulina*).

DATES: Written, telefaxed, or email comments must be received on or before May 5, 2014.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild.

Dr. Kunnasranta requests a three-year photography permit to film the freshwater harbor seal population at Lake Iliamna, Alaska. Filmmakers plan to obtain footage using digital and full high definition video and still cameras with telephoto lenses from several platforms: single or twin engine survey aircrafts, small vessels, or from shore. Additional footage may be obtained from static, digital cameras placed onshore and anchored underwater. Filming would take place for approximately one week between spring and fall annually, most likely during the seals' molt period in summer, after pupping; up to 280 seals may be approached and filmed annually. Obtained footage will be part of an international documentary film presenting the world's other freshwater seal species, to be published in Europe.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 31, 2014.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–07466 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

DATES: The Advisory Board will meet on Friday, April 25, 2014 from 9:30 a.m. to approximately 3:00 p.m.

ADDRESSES: The Advisory Board will be held in Room 116 of the NTIS Facility at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Borzino, (703) 605–6405, *bborzino@ntis.gov*.

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The morning session will focus on a review of NTIS performance in the first

half of Fiscal Year 2014. The afternoon session is expected to focus on program plans for the remainder of Fiscal Year 2014. A final agenda and summary of the proceedings will be posted at NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.aspx*).

The NTIS Facility is a secure one. Accordingly persons wishing to attend should call the NTIS Visitors Center, (703) 605–6040, to arrange for admission. If there are sufficient expressions of interest, up to one-half hour will be reserved for public comments during the afternoon session. Questions from the public will not be considered by the Board but any person who wishes to submit a written question for the Board's consideration should mail or email it to the NTIS Visitor Center, *bookstore@ntis.gov*, not later than April 16, 2013.

Dated: March 31, 2014.

Bruce Borzino,

Director.

[FR Doc. 2014–07451 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2014–0018]

Patents for Humanity Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) recently concluded a twelve-month pilot program called Patents for Humanity to incentivize the use of patented technologies for humanitarian purposes, culminating with an awards ceremony in April 2013. Following the success of this pilot, the USPTO is continuing Patents for Humanity as an annual awards competition. The USPTO will announce an application period each year of the competition. For 2014, applications will be accepted from April 15 to September 15, 2014. Participants will submit program applications describing what actions they have taken with their patented technology to either address humanitarian needs among an impoverished population or further research by others on humanitarian technologies. Applications will be accepted in five categories: (1) Medicine, (2) Nutrition, (3) Sanitation, (4) Household Energy, and (5) Living Standards. Independent judges will review the program applications, and Federal employees from other agencies will recommend awards based on these reviews.

For the 2014 competition, two types of awards will be made: Patents for Humanity Awards and honorable mentions. The Patents for Humanity Award is the top award for applicants best representing the Patents for Humanity principles. Patents for Humanity Award recipients in 2014 will receive a certificate to accelerate select matters before the USPTO and public recognition for their efforts, including an award ceremony sponsored by the USPTO. Honorable mentions in 2014 will receive accelerated examination of one patent application and a featured writeup on the USPTO Web site. A portion of honorable mentions may be awarded for the best up and coming technologies. The USPTO expects to award roughly ten Patents for Humanity Awards and up to twenty honorable mentions in 2014. The exact number of awards may vary depending on the number and quality of program applications received. Types of awards for subsequent years will be announced with the application period in the **Federal Register**.

Patents for Humanity certificates awarded through the 2014 competition can be redeemed to accelerate one of the following matters: An *ex parte* reexamination proceeding, including one appeal to the Patent Trial and Appeal Board (PTAB) from that proceeding; a patent application, including one appeal to the PTAB from that application; or an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an *ex parte* reexamination, without accelerating the underlying matter which generated the appeal. *Inter partes* reexaminations and interference proceedings are not eligible for acceleration, nor are post-grant reviews, *inter partes* reviews, covered business method reviews, derivation proceedings, or supplemental examinations. Certificates awarded are not transferable to other parties.

DATES: Program applications for 2014 will be accepted from April 15 to September 15, or until 300 applications are received, whichever comes first.

FOR FURTHER INFORMATION CONTACT: For questions about the program, contact Edward Elliott, Office of Policy and International Affairs, by telephone at 571–272–7024; or by facsimile transmission to 571–273–0123; or by mail addressed to: Patents for Humanity Program, Attention: Edward Elliott, Office of Policy and International Affairs, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: In September 2010, the USPTO requested comments from the public on proposals to incentivize the development and distribution of technologies that address humanitarian needs. *See Request for Comments on Incentivizing Humanitarian Technologies and Licensing Through the Intellectual Property System,* 75 FR 57261 (September 20, 2010), 1359 *Off. Gaz. Pat. Office* 121 (October 12, 2010). A pilot program was announced in February 2012. *See* 77 FR 6544 (February 8, 2012).

Application Process

The remainder of this notice describes the terms and conditions of the annual program and details for 2014. To enter the competition, applicants must submit program applications describing how their actions satisfy the competition criteria given below. Program applications are not patent applications but separate documents created for this program. The term ''application'' throughout this notice shall mean program application, rather than patent application, unless otherwise noted. Likewise, ''applicant'' shall mean program applicant, rather than patent applicant, unless otherwise noted.

Each year, the USPTO will announce an application period for submitting Patents for Humanity applications. Applications for 2014 will be accepted from April 15 to September 15, 2014, or until 300 applications are received, whichever occurs first. That is, if that limit is reached before the application deadline, then the application period will close. Applications must be submitted electronically to an on-line application portal by following the instructions posted at *http://www.uspto.gov/patentsforhumanity.* Submissions will be publicly available on the application portal after being screened for inappropriate material. Submissions containing incomplete or inappropriate material will not be considered.

For consistent and timely evaluation, applications will consist of a core section and supplements. Application forms will be available from the USPTO Web site at *http://www.uspto.gov/patentsforhumanity.* The core section will address how the applicant meets the defined competition criteria within a strict five-page limit. Applications exceeding this limit may be removed from consideration. Applicants may supplement the core section with any supporting material they wish to

provide, such as project brochures, adoption data, case studies, published articles, or third party testimonials. Judges will review the core section of every application they evaluate. Judges may review any, all, or none of each application's supplementary material at their discretion.

After the application period ends, judges will review and score the applications. Based on these reviews, USPTO will forward the top-scoring applications to reviewers from participating Federal agencies to recommend award recipients. Final decisions on awards are made at the discretion of the Director of the USPTO. The program's goal is to complete the recommendation process within 90 days of the close of the application period.

The USPTO will endeavor to balance the number of awards in each category to reflect the quality of applications received. The USPTO may reassign applications to other categories or modify categories as needed. The actual number of awards given may vary depending on the number and quality of submissions.

Once awards have been determined, the USPTO will notify the awardees and schedule a public awards ceremony. The USPTO will attempt to notify awardees four weeks before the ceremony date if circumstances permit.

This program involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this program has been reviewed and approved by OMB under 5 CFR 1320.13.

Judging Process

Applications will be reviewed by independent judges chosen from outside the USPTO. The qualifications for judges are described below. Each judge will review a set of applications based on the judging criteria and selection factors below, and then submit their scores and evaluations to the USPTO.

Each application will be reviewed by multiple judges. To encourage fair, open, and impartial evaluations, judges will perform their reviews independently, and the reviews will not be released to the public as permissible by law. After awards have been made, applicants may request from the USPTO a copy of the reviews for their application with the judges' names redacted. Reviews will be sent to either the address on file with the application or another address verified as belonging to the applicant.

After judges have submitted their evaluations, the top scoring applications will be forwarded to reviewers from participating Federal agencies to make recommendations on awards. The USPTO will request these recommendations be provided within 90 days of the end of the application period, if possible. After the recommendations are received and final recipients chosen, the USPTO will notify winners and schedule a public awards ceremony.

All awards are subject to the approval of the Director of the USPTO. Results may not be challenged for relief before the USPTO.

Eligibility

The competition is open to any patent owners, patent applicants, or patent licensees, including inventors who have not assigned their ownership rights to others, assignees, and exclusive or non-exclusive licensees. Each program application must involve technology that is the subject of one or more claims in an issued U.S. utility patent or a pending U.S. utility patent application owned or licensed by the applicant. If using a patent application as the basis for the program application, applicants must show that a Notice of Allowance for one or more claims from that patent application has been issued before any certificate will be awarded. Honorary recognition may be given without this showing at the Director's discretion. Inventions from any field of technology applied to one of the competition categories may participate.

Applicants may team together to submit a single joint application covering the actions of multiple parties. At least one applicant in a joint application must meet the eligibility criteria above. Only one certificate will be issued to a team of joint applicants selected for an award, and the certificate can be redeemed only in one matter (e.g., a single patent application examination, a single *ex parte* reexamination proceeding, etc.). Joint applications must designate a single applicant as the recipient for any acceleration certificate awarded on their application, and that recipient must meet the applicant eligibility criteria described in this notice. The designated recipient may be changed at any time before a certificate is issued by written consent of all parties to the application.

Licensees and patent owners may team together to submit a joint program application where both parties contributed to a humanitarian endeavor. Alternatively, patent owners or licensees may apply on their own based on actions they have performed without the other party. For applications which do not list a patent owner as a joint applicant, the licensee must notify the patent owner and provide them a copy of their completed application before the close of the application period. Within 14 days of being notified, patent owners may submit a two-page written statement regarding such an application with any additional information they wish the judges to consider. The lack of such a statement will not prejudice an application.

There is no preset limit on the number of awards that can be given per technology or per program applicant. Applicants can determine how many program applications to submit and which actions and technologies to cover in each application. However, the diversity requirement discourages granting multiple awards to the same technology or applicant. *See Selection Factors,* below, for more information.

Competition Criteria

Program applications must demonstrate how the applicants' actions have increased the use of patented technology to address humanitarian issues. For this competition, a *humanitarian issue* is one significantly affecting the public health or quality of life of an impoverished population. Judges will examine whether the criteria have been met for a humanitarian issue based on the description in the application.

Applicants will select which category best fits their application, chosen from the following: (1) Medicine, (2) Nutrition, (3) Sanitation, (4) Household Energy, and (5) Living Standards. Medicine encompasses technology for any medical treatment or service, including medicines and vaccines, diagnostic equipment, medical devices, implants, assistive devices, epidemiology, and preventive medicine. Nutrition includes not only agricultural technology like drought-resistant crops, more nutritious crop strains, and farming equipment, but also technologies which improve food production, processing, preservation and storage, or preparation. Sanitation includes not only issues with clean water and waste treatment, but also other environmental issues with a demonstrable impact on human health, such as air pollution, toxic substances, chemical exposure, or land mines. Household Energy involves providing power to homes and communities for light, heating, cooking, or other basic needs in areas without reliable electricity. Living Standards encompasses a wide range of issues that empower people to escape poverty, such

as education, literacy, access to information, communications, internet access, access to markets, and microfinance. Technologies in this category include portable computers, cell phones, or internet access devices being used to foster literacy, education, or other life-changing knowledge.

Applicants will designate the category in which they wish their application to be considered. The Office may reassign an application to another category at its discretion. Categories may be altered when awards are made to better reflect the applications received that year.

Within the selected category, each application must address either one of two sets of judging criteria: (1) Humanitarian use or (2) humanitarian research. The *humanitarian use* criteria recognize those who apply eligible technologies to positively impact a humanitarian issue. Examples of technologies with potential humanitarian uses include treatments for disease, medical diagnostics, water purification, more nutritious or higher-yield crops, off-grid solar lighting, and education or literacy devices, among others. The focus is on demonstrable real-world improvements in the lives of the poor. Applicants must show:

(i) Subject Matter—the applicant's technology, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively addresses a recognized humanitarian issue.

(ii) Target Population—the applicant's actions target an impoverished population affected by the humanitarian issue.

(iii) Contribution—the applicant took meaningful actions to make the technology more available for humanitarian uses. This only includes actions taken by the applicant.

(iv) Impact—the applicant's contributions have significantly advanced deployment of the technology to benefit the target population. This includes downstream actions by third parties building on the applicant's contributions.

Alternatively, the *humanitarian research* criteria recognize increasing the availability of patented technologies to other researchers for conducting research with a humanitarian purpose. Examples of technologies with potential to advance humanitarian research include patented molecules, drug discovery tools, gene sequencing or splicing devices, special-purpose seed strains, data analysis software, or other patented research material. The focus is on contributing needed tools to areas of humanitarian research lacking commercial application. Applicants under this criteria must demonstrate:

(i) Subject Matter—the applicant's technology, which is claimed in a U.S. utility patent in force at the time or a pending U.S. utility patent application, effectively supports research by others, e.g., as a tool or input.

(ii) Neglected Field—the research by others clearly targets a humanitarian issue in an area lacking significant commercial application.

(iii) Contribution—the applicant took meaningful actions to make the technology more available for research by others in the neglected field. This only includes actions taken by the applicant.

(iv) Impact—the research by others has a high potential for significant impact on the neglected field. This includes downstream actions by third parties using the applicant's contributions.

Selection Factors

In addition to the competition criteria, a number of selection factors will be considered in choosing recipients. Unlike judging criteria, selection factors are not items that applicants address in their applications. Rather, they are guiding principles for administering the competition.

Three neutrality principles apply. First, the program will be technology neutral, meaning applications may be drawn to any field of technology with patentable subject matter applied to one of the five competition categories. Second, it will be geographically neutral, meaning the impoverished population benefiting from the humanitarian activities can be situated anywhere in the world. Third, evaluations will be financially neutral, meaning the underlying financial model for the applicant's actions (for-profit or otherwise) is not considered. The focus is only on the ultimate humanitarian outcome.

Diversity of awarded technologies will also factor into selections. Part of the program's mission is to showcase the numerous ways in which the patent community contributes to humanitarian efforts. Just as no single technology addresses every humanitarian issue, no single contribution model will work in every situation. Selected awardees should therefore encompass a range of technologies, types and sizes of entities, and models of contributions.

The decision to award a certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any Federal agency.

Selection of Judges

Judges will be selected by the USPTO each award cycle. Candidates with the following qualifications will be preferred:

(1) Recognized subject matter expertise in medicine, science, engineering, economics, business, law, public policy, or a related field.

(2) Demonstrated understanding of technology commercialization.

(3) Experience with peer review processes such as grant applications or academic journal submissions.

(4) Knowledge of humanitarian issues, especially the practical challenges presented with delivering goods and services to areas with inadequate transportation, electricity, security, government, or other infrastructure.

Additionally, judges will be chosen to minimize conflicts of interest, e.g., by avoiding candidates employed by, or with clients in, industries relevant to this program. Candidates from academia are desired. A conflict of interest occurs when a judge (a) has significant personal or financial interests in, or is an employee, officer, director, or agent of, any entity participating in the competition, or (b) has a significant familial or financial relationship with an individual who is participating. When a conflict of interest does arise, the judge must recuse himself or herself from evaluating the affected applications.

Awards

Winners of the 2014 competition will receive recognition for their humanitarian efforts at a public awards ceremony with the Director of the USPTO or other executive branch official. They will also receive an acceleration certificate which can be redeemed to accelerate select matters before the USPTO. For the 2014 competition, eligible matters shall be one of the following: (i) An *ex parte* reexamination proceeding, including one appeal to the PTAB from that proceeding; (ii) a patent application, including one appeal to the PTAB from that application; or (iii) an appeal to the PTAB of a claim twice rejected in a patent application or reissue application or finally rejected in an *ex parte* reexamination. When redeemed for a patent application or an *ex parte* reexamination, only the first appeal to the PTAB arising from that matter will be accelerated. Alternatively, the certificate may be used to accelerate an appeal to the PTAB of a final rejection in a patent application or reissue application without accelerating the underlying matter which generated the

appeal. *Inter partes* reexaminations and interference proceedings are not eligible for acceleration, nor are post grant reviews, *inter partes* reviews, covered business method reviews, derivation proceedings, or supplemental examinations.

Certificates awarded in the program are not transferable to other parties.

Honorable mentions will receive a certificate for accelerated examination of one patent application and a featured writeup on the USPTO Web site. Honorable mention accelerations will only result in the acceleration of a patent application examination, and not any subsequent appeal from that application. A portion of honorable mentions may be awarded for the best up and coming technologies.

Each certificate may be redeemed only once and only towards one matter. Certificates must be redeemed within 12 months of their date of issuance. Certificates not redeemed within 12 months of issuance will expire and may not be redeemed. Holders of expiring or expired certificates may petition that the USPTO extend the redemption period of their certificate for an additional 12 months beyond the original expiration date. This petition incurs no fee. Petitioners should explain why the additional time is needed, such as not having a suitable matter or expecting a pending matter which is not yet ripe for certificate redemption. The decision whether to extend the redemption period of a certificate rests solely within the Director's discretion and cannot be challenged before the USPTO or any Federal agency. Once a certificate has been redeemed, it is no longer eligible for extension.

The certificate may be applied to an eligible matter for any patent or patent application in which the certificate holder has an ownership interest, not just those related to the recipient's Patents for Humanity submission. Certificate holders may not redeem a certificate to accelerate the matter of another patent owner or patent applicant. Types of awards for subsequent years will be announced with the application period in the **Federal Register**.

Certificate Redemption Process

When redeeming a humanitarian certificate, the certificate holder must notify the USPTO with the certificate number, the relevant application serial number or *ex parte* reexamination control number, and any other pertinent information, such as the appeal number, if assigned. The USPTO will determine whether the certificate may be redeemed by checking that the certificate is valid, that the redeeming party is the certificate holder or its agent, that the matter is eligible for certificate acceleration, and that the Office has sufficient resources to accelerate the matter without unduly impacting others. The USPTO will promptly notify the certificate holder whether the redemption is accepted. If the redemption fails for lack of ownership interest or insufficient Office resources, the certificate holder retains the certificate and may redeem it in another matter subject to the same constraints.

Under this program, there will be a limit of 15 certificate redemptions per fiscal year to accelerate *ex parte* reexaminations. This limit is due to the smaller overall number of reexamination proceedings handled by the Office compared to the larger overall number of patent applications and appeals concurrently handled by the Office. Only the first 15 accepted redemption requests for an *ex parte* reexamination in a given fiscal year will receive accelerated processing. Any number of certificates up to the number issued may be redeemed to accelerate patent applications or appeals to the PTAB without accelerating the underlying matter which generated the appeal (including appeals from *ex parte* reexaminations).

Certificates redeemed for accelerated appeals to the PTAB will receive the following treatment. Accelerated appeals will be taken out of turn for assignment to a panel. Other processing in the matter will proceed normally. The USPTO's goal in accelerated cases already docketed to the PTAB, i.e., having an appeal number, is to proceed from certificate redemption to decision in under six months if no oral arguments are heard in the case, or within three months of the date of an oral argument. For certificates redeemed in appeals not already docketed at the PTAB, the goal is to reach decision in under six months from the date of the appeal number assignment if no oral arguments are heard in the case, or within three months of the date of an oral argument. For the first quarter of FY 2014, the average pendency from appeal number assignment to decision was 27 months. However, these numbers are expected to rise in coming quarters as there has been a sharp increase in appeal requests in recent months. Pendency also varies significantly by technology area.

Certificates redeemed in *ex parte* reexamination proceedings will receive the following treatment. If redeemed with a request for reexamination, the request will be decided with a goal of two months rather than the three months provided by statute. Certificate redemption at the filing of a reexamination request will be treated as a waiver by the patent owner of the right to make a Patent Owner Statement under 37 CFR 1.530 after grant of proceeding. If the statement is waived and the request granted, a first Office action on the merits will accompany the order granting reexamination. If the reexamination request is denied, the certificate is not considered redeemed and may be applied to another matter. Patent owners may preserve the right to file a Patent Owner Statement by redeeming the certificate during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Subsequent Office actions in accelerated reexaminations will be taken out of turn as the next item to be worked on from the reexamination specialist's docket. Petitions filed in the matter will be decided in time consistent with the accelerated proceeding. An appeal to the PTAB of a final rejection in an accelerated reexamination will be taken out of turn for assignment to a PTAB panel. Any resulting Notice of Intent to Issue Ex Parte Reexamination Certificate (NIRC) will receive expedited processing to the extent possible. Accelerated *ex parte* reexaminations will normally not be merged with other co-pending proceedings, including *ex parte* reexaminations, *inter partes* reexaminations, and reissue proceedings. Where required by statute, an accelerated matter may be terminated by a decision issued in another USPTO proceeding, such as post grant review.

The USPTO's goal for processing accelerated reexaminations will be under six months from certificate redemption to final disposition, excluding time taken by the applicant for responses and any time on appeal. For the fourth quarter of FY 2013, the average pendency from filing a request for *ex parte* reexamination to an NIRC was 21.7 months, including applicant time.

Humanitarian certificates redeemed to accelerate examination of a patent application will receive the following treatment. Patent applicants must present their certificate to receive accelerated examination. If any appeal to the PTAB arises from the examination accelerated with this certificate, the first appeal will also be accelerated according to the procedures for accelerated appeals to the PTAB described herein. Accelerations for honorable mentions will follow the same rules and procedures, except that no appeals will be accelerated. The

USPTO's goal in examinations accelerated by certificate will be a final disposition within 12 months of accelerated status being granted, not including the time for any appeals to the PTAB. As of January 2014, the average pendency for Track One prioritized examinations was 5.1 months from petition grant to allowance, while the average pendency for all applications was 28.3 months.

Acceleration Requirements

In order to receive acceleration, the patent owner or patent applicant must agree to the following conditions. Accelerated patent applications may not contain at any time more than four independent claims, more than thirty total claims, or any multiple dependent claims. A humanitarian certificate can be redeemed in a patent application appeal or reissue application appeal to the PTAB at any time after a docketing notice has issued and before the matter is assigned to a PTAB panel. A certificate can only be redeemed for reexamination acceleration at the following points: (i) With the request for reexamination; (ii) during the period for patent owner comment after grant of proceeding; or (iii) when a final rejection is appealed to the PTAB. Certificates will not be accepted for reexamination proceedings at other times. During an accelerated reexamination, no more than three new independent claims and 20 total new claims may be added. New claims are those beyond the number contained in the patent at the time of the reexamination request. Claims may be added without triggering this limit by canceling an equal number of existing claims. All submissions in accelerated examinations must be filed electronically via EFS-Web. All petitions filed in the matter must be filed in good faith. Petitions for Revival and Requests for Continued Reexamination may not be filed. Failure by the applicant to abide by these conditions may result in the acceleration being revoked without return of the certificate and the matter reverting to normal processing.

Acceleration Recommendations

To receive the greatest benefit from acceleration in an *ex parte* reexamination proceeding, the applicant is requested to do the following. The Patent Owner's Statement will be considered to be waived when a certificate is filed with a request for reexamination. If the patent owner desires to reserve the right to make a statement, however, the certificate should be filed instead during the statutory window for filing the Patent Owner's Statement after the reexamination proceeding has been granted. Acceleration will proceed from that point forward.

Even where submissions in the accelerated matter are not required to be filed electronically, those submissions should be filed electronically. Conducting more than one examiner interview during prosecution should be avoided. Responses to all Office actions should be submitted within one month of receiving the Office action. Petitions should be avoided as much as possible. Failure to meet these conditions may result in longer processing times by the USPTO than the goals given above, but the matter will continue to receive accelerated processing as described herein to the extent possible.

In all instances, certificate redemption is subject to available USPTO resources at the Director's discretion. If accelerating the matter would negatively impact other applicants, the USPTO may decline to redeem the certificate.

Dated: March 31, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and, Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–07489 Filed 4–2–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0231]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 5, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: 2014 Pentagon/Mark Center Transportation Commuter Survey; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 2800.

Responses per Respondent: 1.

Annual Responses: 2800.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 700.

Needs And Uses: Per requirements in the Administrative Instruction (AI) 109, and the National Capital Planning Commission (NCPC) approved Base Relocation and Closure (BRAC) #133 Transportation Management Plan (TMP), the WHS Transportation Management Program Office (TMPO) will conduct surveys of both Federal and non-Federal employees in order to monitor the effectiveness of the various Pentagon and Mark Center Transportation Programs and Strategies. The purpose of the surveys is to gather travel mode choice information from DoD employees and contractors located at the Pentagon and Mark Center. Information gathered from this effort will be used to refine the DoD shuttle service and travel demand management strategies currently being implemented at each facility to reduce traffic congestion. The results of the transportation/commuter surveys will be utilized to accomplish the aforementioned tasks and to support future transportation related improvement efforts to enhance transportation to and from the Pentagon, Mark Center and DoD facilities in the National Capital Region.

Affected Public: Individuals and Households.

Frequency: Annual.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800

Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 31, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–07435 Filed 4–2–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Explore Subcommittee; Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Explore Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx*.

DATES: The Explore Subcommittee will meet from 10 a.m. to 12 p.m. on Wednesday, April 30, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Explore Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (41 CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Explore Subcommittee is to review and recommendations to the parent committee on efforts to preserve the historic essence of Arlington National Cemetery and the development of an interactive means to share the Cemetery's unique history with the nation and the world.

Proposed Agenda: The subcommittee will review and discuss: the status of the Mementos Collection designation as a Historic Memorial Collection in accordance with the parent committee's recommendations accepted by the Secretary of the Army; events planned for Arlington National Cemetery's 150th Anniversary and improvements to Cemetery walking tours and the Web site; the Living memorial and possible uses of technology to improve Cemetery capabilities to act on family desires to perpetually commemorate its loved one(s).

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–07480 Filed 4–2–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Remember Subcommittee; Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Remember Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Remember Subcommittee will meet from 1:00 p.m. to 2:00 p.m. on Wednesday, April 30, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Remembrance Subcommittee, in writing at Arlington National Cemetery,

Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Remember Subcommittee is to review and provide recommendations on preserving and care for the marble components of the Tomb of the Unknown Soldier, including addressing the cracks in the large marble sarcophagus, the adjacent marble slabs, and the disposition of the dye block already gifted to the Army.

Proposed Agenda: The subcommittee will receive an update on the repair to the cracks in the Tomb of the Unknown Soldier and discuss possible courses of action for disposition of the dye block already gifted to the Army. The subcommittee also will discuss the committee process for review of memorial monument requests pending with the Department of the Army for placement at Arlington National Cemetery.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Women in Military Service for America is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–07474 Filed 4–2–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery Honor Subcommittee; Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Honor Subcommittee of the Advisory Committee on Arlington National Cemetery (ACANC). The meeting is open to the public. For more information about the Committee and the Honor Subcommittee, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

DATES: The Honor Subcommittee will meet from 2:30 p.m.–4:30 p.m. on Wednesday, April 30, 2014.

ADDRESSES: Women in Military Service for America Memorial, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Ms. Renea C. Yates; Designated Federal Officer for the committee and the Honor Subcommittee, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil*, or by phone at 703–614–1248.

SUPPLEMENTARY INFORMATION: This subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The primary purpose of the Honor Subcommittee is to review and provide recommendations to the parent committee on extending the future locations and availability of active burial gravesites at Arlington National Cemetery, veteran eligibility criteria, and master planning.

Proposed Agenda: The subcommittee will receive an update on the status of concept development for the Tomb of Remembrance and initial concept planning for the Southern Expansion (formerly the Navy Annex property); will discuss the ANC Master Plan and the Millennium Project; and conduct an initial review of the current burial eligibility and honors wait times (specifically for military honors) and the impact of such wait times.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-

come basis. The Women in Military Service for America is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–07472 Filed 4–2–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Regarding the Energy Priorities and Allocations System

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed extension of a collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. 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, including the validity of the methodology and assumptions used; (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.

DATES: Comments regarding this proposed information collection extension must be received on or before June 2, 2014. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Dr. Kenneth Friedman, U.S. Department of Energy, OE–30, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202–586–2623, or by email at *Kenneth.friedman@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Kenneth Friedman, U.S. Department of Energy, OE–30, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5159; (2) Information Collection Request Title: Energy Priorities and Allocations System; (3) Type of Request: Extension; (4) Purpose: To meet requirements of the Defense Production Act (DPA) priorities and allocations authority with respect to all forms of energy necessary or appropriate to promote the national defense. Data supplied will be used evaluate applicants requesting special priorities assistance to fill a rated order issued pursuant to the DPA and DOE's implementing regulations. This data will also be used to conduct audits and for enforcement purposes. This collection will only be used if the Secretary of Energy determines that his authority under the DPA is necessary to maximize domestic energy supplies to prevent or address an energy shortage. The last collection by DOE under this authority was in 2001; (5) Annual Estimated Number of Respondents: 10 or more as this collection is addressed to a substantial majority of the energy industry; (6) Annual Estimated Number of Total Responses: 10 or more as this collection is addressed to a substantial majority of the energy industry; (7) Annual Estimated Number of Burden Hours: 32 minutes per response; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $0.

Statutory Authority: Defense Production Act of 1950 as amended (50 U.S.C. App. 2061, *et seq.*); Executive Order 13603.

Issued in Washington, DC, on March 28, 2014.

William Bryan,

Deputy Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–07447 Filed 4–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Public Availability of Department of Energy FY 2013 Service Contract Inventory

AGENCY: Department of Energy.

ACTION: Notice of Public Availability of FY 2013 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Energy (DOE) is publishing this notice to advise the public on the availability of the FY 2013 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that DOE completed in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-*

11052010.pdf. On December 19, 2011, OFPP issued additional guidance available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf*.

Except for minor changes to reporting deadlines, the guidance for preparing and analyzing FY 2013 inventories is essentially unchanged from OFPP's November 5, 2010, guidance for preparing the FY 2010 inventory. DOE has posted its inventory and a summary of the inventory at: *http://energy.gov/management/downloads/service-contract-inventory*.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Jeff Davis in the Strategic Programs Division at 202–287–1877 or *jeff.davis@hq.doe.gov*.

Dated: March 10, 2014.

Paul Bosco,

Director, Office of Acquisition and Project Management.

[FR Doc. 2014–07363 Filed 4–2–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–643–000.

Applicants: Pine Needle LNG Company, LLC.

Description: 2014 Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5100.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–644–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Ramapo Negotiated Rate Releases 4–01–2014 to be effective 4/1/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5131.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–645–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: 2nd Ramapo Negotiated Rate Release Filing 4–01–2014 to be effective 4/1/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5135.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–646–000.

Applicants: Equitrans, L.P.

Description: Remove Non-conforming Service Agreements—EGC to be effective 4/1/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5011.

Comments Due: 5 p.m. ET 4/8/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP10–877–009.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Re-submission of Baseline Sections 8.1 and 10.0–3.26.14 to be effective 7/1/2010.

Filed Date: 3/26/14.

Accession Number: 20140326–5060.

Comments Due: 5 p.m. ET 4/7/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 27, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07439 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–640–000.

Applicants: Tallgrass Interstate Gas Transmission, LLC.

Description: Petition of Tallgrass Interstate Gas Transmission, LLC for Limited Waiver of Tariff Provisions.

Filed Date: 3/25/14.

Accession Number: 20140325–5024.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–641–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Vol 2—Negotiated Rate Agreement-BP Energy Company to be effective 4/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5049.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: RP14–642–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Negotiated Rate Service Agreement—WGL Amendment to be effective 4/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5120.

Comments Due: 5 p.m. ET 4/7/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07432 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 27, 2014.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4436–002; ER10–2473–003; ER10–2502–003; ER10–2472–003; ER11–2724–003.

Applicants: Black Hills Power, Inc., Cheyenne Light Fuel & Power Company, Black Hills/Colorado Electric Utility Co, Black Hills Colorado IPP, LLC, Black Hills Wyoming, LLC.

Description: Third Amendment to June 28, 2013 Updated Market Power

Analysis of the Black Hills Corporation Public Utilities for the Northwest Region.

Filed Date: 3/19/14.

Accession Number: 20140319–5166.

Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–778–002.

Applicants: PacifiCorp.

Description: WECC Unscheduled Flow Mitigation Plan Amended Filing Errata to be effective 1/1/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5096.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–804–001.

Applicants: Westar Energy, Inc.

Description: Response to Deficiency Letter, Kansas Electric Power Cooperative, Inc. to be effective 3/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5129.

Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–805–001.

Applicants: Westar Energy, Inc.

Description: Response to Deficiency Letter, Full Requirements Electric Service Agreements to be effective 3/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5131.

Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–1000–001.

Applicants: Southern California Edison Company.

Description: CLGIA & Distribution Service Agmt for Portal Ridge Solar Project to be effective 12/15/2013. Filing Type: 80.

Filed Date: 3/27/14.

Accession Number: 20140327–5000.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–1179–000.

Applicants: Midcontinent Independent System Operator, Alliant Energy Corporate Services, Inc., Interstate Power and Light Company.

Description: Supplemental supporting documents to Midcontinent Independent System Operator, Inc. tariff filing of Interstate Power and Light Company.

Filed Date: 3/26/14.

Accession Number: 20140326–5177.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1302–000; ER14–1302–001.

Applicants: Seminole Retail Energy Services, L.L.C.

Description: Third supplement to February 11, 2014 and March 4, 2014 Seminole Retail Energy Services, L.L.C. tariff filing.

Filed Date: 3/26/14.

Accession Number: 20140326–5179.

Comments Due: 5 p.m. ET 4/7/14.

Docket Numbers: ER14–1594–000.

Applicants: Lone Valley Solar Park I LLC.

Description: MBR Application to be effective 5/26/2014,

Filed Date: 3/26/14.

Accession Number: 20140326–5137.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1595–000.

Applicants: Nevada Power Company.

Description: Rate Schedule No. 142 Dynamic Scheduling Agreement_Apex Generating Station to be effective 3/26/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5143.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1596–000.

Applicants: Lone Valley Solar Park II LLC.

Description: MBR Application to be effective 5/26/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5149.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1597–000.

Applicants: NV Energy, Inc.

Description: Service Agreement No. 104 Amended and Restated IOA—SCAPPA to be effective 3/26/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5151.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1598–000.

Applicants: PacifiCorp.

Description: Termination of Alpental Non-Conforming PTP Agmt—Blue Mountain to be effective 6/10/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5094.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–1599–000.

Applicants: PacifiCorp.

Description: Termination of BPA Agmt for Work at Hat Rock Switching Station to be effective 6/2/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5095.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–1600–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue No. NQ–90, Original Service Agreement No. 3795 to be effective 2/20/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5110.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–1601–000.

Applicants: PacifiCorp.

Description: OATT Revised Attachment H–1 Updated Depreciation Rates to be effective 1/1/2014.

Filed Date: 3/27/14.

Accession Number: 20140327–5143.

Comments Due: 5 p.m. ET 4/17/14.

Docket Numbers: ER14–1602–000.

Applicants: Public Service Company of Colorado.

Description: Notice of Cancellation of a Power Purchase Agreement between Yampa Valley Electric Association, Inc. and Public Service Company of Colorado.

Filed Date: 3/27/14.

Accession Number: 20140327–5153.

Comments Due: 5 p.m. ET 4/17/14.

Take notice that the Commission received the following open access transmission tariff filings:.

Docket Numbers: OA09–16–005.

Applicants: Northeast Utilities Service Company.

Description: Northeast Utilities Service Company submits 2013 Annual Refund Report—Order 890 Requirement.

Filed Date: 3/27/14.

Accession Number: 20140327–5050.

Comments Due: 5 p.m. ET 4/17/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07477 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–34–000.

Applicants: Lone Valley Solar Park I LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lone Valley Solar Park I LLC.

Filed Date: 3/26/14.

Accession Number: 20140326–5095.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: EG14–35–000.

Applicants: Lone Valley Solar Park II LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lone Valley Solar Park II LLC.

Filed Date: 3/26/14.

Accession Number: 20140326–5099.

Comments Due: 5 p.m. ET 4/16/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3125–007; ER10–3243–002; ER10–3102–007; ER10–3245–001; ER10–3249–001; ER10–3250–001; ER10–3169–005; ER10–3100–007; ER12–2570–003; ER11–2639–001; ER10–3143–009; ER13–821–003; ER10–3107–007; ER10–3109–007; ER13–618–002; ER12–1301–002.

Applicants: AL Sandersville, LLC, Chandler Wind Partners, LLC, Effingham County Power, LLC, Foote Creek II, LLC, Foote Creek III, LLC, Foote Creek IV, LLC, Michigan Power Limited Partnership, MPC Generating, LLC, Panther Creek Power Operating, LLC, Ridge Crest Wind Partners, LLC, Scrubgrass Generating Company, L.P., Walton County Power, LLC, Washington County Power, LLC, Westwood Generation, LLC, Zone J Tolling Co., LLC, Sabine Cogen, LP.

Description: Supplement to January 22, 2014 Notice of Non-Material Change in Status of AL Sandersville, LLC, et. al.

Filed Date: 3/25/14.

Accession Number: 20140325–5141.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER13–2300–002.

Applicants: Arizona Public Service Company.

Description: Cancellation of Interruptible Trans Agreement Portion of Rate Schedule No. 198 to be effective 4/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5081.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–776–002.

Applicants: Ohio Valley Electric Corporation.

Description: Order Nos. 764, 764–A and 764–B Compliance Filing Amendment to be effective 11/12/2013.

Filed Date: 3/26/14.

Accession Number: 20140326–5089.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1569–000.

Applicants: Dynegy Energy Services, LLC.

Description: Errata to March 24, 2013 Dynegy Energy Services, LLC tariff filing.

Filed Date: 3/25/14.

Accession Number: 20140325–5148.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1581–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–03–25_SA 764/766 ATC D–T Update Amendment to be effective 5/25/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5117.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1582–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–03–25_ATC D–T Update Batch 1 to be effective 5/25/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5121.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1583–000.

Applicants: American Electric Power Service Corporation, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: AEP submits 40th Revised Service Agreement No. 1336 to be effective 9/26/2013.

Filed Date: 3/25/14.

Accession Number: 20140325–5128.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1584–000.

Applicants: FirstEnergy Solutions Corp.

Description: Application of FirstEnergy Solutions Corp. under New Docket for authorization to sell electricity to two affiliated public utilities; The Potomac Edison Company and West Penn Power Company.

Filed Date: 3/25/14.

Accession Number: 20140325–5140.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1585–000.

Applicants: Dynegy Kendall Energy, LLC, Dynegy Marketing and Trade, LLC.

Description: Request for Limited Waiver of Dynegy Kendall Energy, LLC, et. al.

Filed Date: 3/25/14.

Accession Number: 20140325–5149.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1586–000.

Applicants: Dynegy Kendall Energy, LLC.

Description: Request for Limited Waiver of Dynegy Kendall Energy, LLC.

Filed Date: 3/25/14.

Accession Number: 20140325–5150.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1587–000.

Applicants: Southwest Power Pool, Inc.

Description: 2154 Midwest Energy, Inc. NITSA NOA Notice of Cancellation to be effective 12/1/2013.

Filed Date: 3/26/14.

Accession Number: 20140326–5028.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1588–000.

Applicants: KeyTex Energy, LLC.

Description: KeyTex Energy LLC, Notice of Cancellation of MBR Tariff to be effective 3/27/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5036.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1589–000.

Applicants: Ohio Valley Electric Corporation

Description: Order No. 784 Compliance Filing to be effective 12/20/2013.

Filed Date: 3/26/14.

Accession Number: 20140326–5090.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1590–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of Agreement To Sponsor Facilities Upgrades of Southwest Power Pool, Inc.

Filed Date: 3/26/14.

Accession Number: 20140326–5101.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1591–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of American Electric Power Service Corporation Letter Agreement of Southwest Power Pool, Inc.

Filed Date: 3/26/14.

Accession Number: 20140326–5125.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1592–000.

Applicants: Southwest Power Pool, Inc.

Description: Notice of Cancellation of Network Integration Transmission Service Agreement and Network Operating Agreement of Southwest Power Pool, Inc.

Filed Date: 3/26/14.

Accession Number: 20140326–5128.

Comments Due: 5 p.m. ET 4/16/14.

Docket Numbers: ER14–1593–000.

Applicants: New England Power Company.

Description: Notice of Cancellation of Interconnection Agreement with Lowell Cogeneration Co. to be effective 5/26/2014.

Filed Date: 3/26/14.

Accession Number: 20140326–5129.

Comments Due: 5 p.m. ET 4/16/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–30–000.

Applicants: PJM Interconnection, L.L.C., PJM Settlement, Inc.

Description: Application of PJM Interconnection, L.L.C., and PJM

Settlement, Inc. under Section 204 of the Federal Power Act for an order authorizing the issuance of securities.

Filed Date: 3/26/14.

Accession Number: 20140326–5102.

Comments Due: 5 p.m. ET 4/16/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07430 Filed 4–2–14; 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: ER10–2923–005.

Applicants: Sunbury Generation LP.

Description: Notice of Non-Material Change in Status of Sunbury Generation LP.

Filed Date: 3/25/14.

Accession Number: 20140325–5099.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–463–002.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Compliance Filing re Prec of Admi Pricing Rules to be effective 1/24/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5072.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1341–002.

Applicants: Solea Energy, LLC.

Description: 2nd Amended MBR Filing to be effective 3/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5065.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1409–000.

Applicants: ISO New England Inc.

Description: Supplement to February 28, 2013 Eighth Forward Capacity Auction Results Filing of ISO New England Inc.

Filed Date: 3/25/14.

Accession Number: 20140325–5102.

Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1575–000.

Applicants: Wisconsin Public Service Corporation.

Description: WPSC Annual PEB/PBOP Filing to be effective 4/1/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5046.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1576–000.

Applicants: Emera Maine.

Description: Request for Waiver of 18 CFR Section 37.6(k) of Emera Maine.

Filed Date: 3/21/14.

Accession Number: 20140321–5087.

Comments Due: 5 p.m. ET 4/11/14.

Docket Numbers: ER14–1577–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–03–25_SA 2477 Corn Belt—MidAm GFA 477 Agr to be effective 3/26/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5069.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1578–000.

Applicants: PacifiCorp.

Description: OATT EIM edits and new Attachment T to be effective 6/20/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5071.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1579–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 3555; Queue No. X4–023 to be effective 3/28/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5079.

Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1580–000.

Applicants: Southwest Power Pool, Inc.

Description: Guaranty Agreement Revisions to be effective 5/24/2014.

Filed Date: 3/25/14.

Accession Number: 20140325–5082.

Comments Due: 5 p.m. ET 4/15/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–29–000.

Applicants: PJM Interconnection, L.L.C.

Description: Application of PJM Interconnection, L.L.C., under Section 204 of the Federal Power Act for an Order authorizing the issuance of securities.

Filed Date: 3/25/14.

Accession Number: 20140325–5098.

Comments Due: 5 p.m. ET 4/15/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07429 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–70–000.

Applicants: Sunrise Power Company, LLC.

Description: Application for Approval under Section 203 of FPA of Sunrise Power Company, LLC.

Filed Date: 3/21/14.

Accession Number: 20140321–5185.

Comments Due: 5 p.m. ET 4/11/14.

Docket Numbers: EC14–71–000.

Applicants: Mesquite Solar 1, LLC.

Description: Application for Authorization of Transfer of Jurisdictional Assets and Request for Expedited Action of Mesquite Solar 1, LLC.

Filed Date: 3/24/14.

Accession Number: 20140324–5221.

Comments Due: 5 p.m. ET 4/14/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2135–004.

Applicants: Spindle Hill Energy LLC.
Description: Supplement to December 24, 2013 Triennial Report of Spindle Hill Energy LLC.
Filed Date: 3/24/14.
Accession Number: 20140324–5131.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER12–540–005; ER12–539–005; ER10–1346–005; ER10–1348–005; ER12–2205–004; ER10–1821–008; ER11–4475–008.
Applicants: APDC, Inc., Atlantic Power Energy Services (US) LLC, Frederickson Power L.P., Manchief Power Company LLC, Meadow Creek Project Company LLC, Rockland Wind Farm LLC, Goshen Phase II LLC.
Description: Errata to December 27, 2013 Updated Market Power Analysis of APDC, Inc., et al.
Filed Date: 3/19/14.
Accession Number: 20140319–5107.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1522–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–03–24—Entergy March Notice of Succession Supplement to be effective N/A under ER14–1522 Filing.
Filed Date: 3/24/14.
Accession Number: 20140324–5148.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1561–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3668 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5139.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1562–000.
Applicants: Puget Sound Energy, Inc.
Description: Tacoma IA SA No. 460 to be effective 10/1/2011.
Filed Date: 3/24/14.
Accession Number: 20140324–5150.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1563–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3667 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5163.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1564–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement 3666 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5176.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1565–000.
Applicants: Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.
Description: Original SA No. 3775 and Cancellation of SA No. 3103—AMP-Williamstown NITSA to be effective 5/1/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5179.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1566–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3587 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5184.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1567–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3586 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5191.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1568–000.
Applicants: ITC Midwest LLC.
Description: Filing of CIAC Agreement with Guthrie County REC to be effective 5/24/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5194.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1569–000.
Applicants: Dynegy Energy Services, LLC.
Description: Application for Market-Based Rate Authorization to be effective 3/25/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5211.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1570–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3566 to be effective 2/21/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5212.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1571–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM submits First Revised Service Agreement No. 3685 to be effective 2/20/2014.
Filed Date: 3/24/14.
Accession Number: 20140324–5213.
Comments Due: 5 p.m. ET 4/14/14.

Docket Numbers: ER14–1572–000.
Applicants: Southern California Edison Company.
Description: LGIA with RE Astoria LLC to be effective 3/26/2014.
Filed Date: 3/25/14.
Accession Number: 20140325–5001.
Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1573–000.
Applicants: Southwestern Electric Power Company
Description: SWEPCO–AECC Bethel Heights FA to be effective 2/24/2014.
Filed Date: 3/25/14.
Accession Number: 20140325–5034.
Comments Due: 5 p.m. ET 4/15/14.

Docket Numbers: ER14–1574–000.
Applicants: Southwestern Electric Power Company.
Description: SWEPCO–AECC Northeast Texarkana 138kV FA to be effective 2/24/2014.
Filed Date: 3/25/14.
Accession Number: 20140325–5037.
Comments Due: 5 p.m. ET 4/15/14.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH14–7–000.
Applicants: DTE Energy Company.
Description: FERC–65–B Waiver Notification and FERC–65 Notification of Holding Company Status of DTE Energy Company.
Filed Date: 3/25/14.
Accession Number: 20140325–5038.
Comments Due: 5 p.m. ET 4/15/14.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD14–9–000.
Applicants: North American Electric Reliability Corporation, Western Electricity Coordinating Council.
Description: Joint *petition for Approval of WECC Regional Reliability Standard IRO–006–WECC–2-Qualified Transfer Path Unscheduled Flow (USF) Relief.*
Filed Date: 12/20/13.
Accession Number: 20131220–5432.
Comments Due: 5 p.m. ET 4/24/14.

Docket Numbers: RD14–9–000.
Applicants: Western Electricity Coordinating Council.
Description: Supplemental Information Filing of Western Electricity Coordinating Council.
Filed Date: 3/21/14.
Accession Number: 20140321–5191.
Comments Due: 5 p.m. ET 4/24/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07442 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ14–12–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on March 25, 2014, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Oncor TFO Tariff Rate Changes, effective October 27, 2011.

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

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

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 15, 2014.

Dated: March 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07428 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ14–10–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on March 24, 2014, Oncor Electric Delivery Company LLC submitted its tariff filing per 35.28(e): Oncor TFO Tariff Rate Changes, effective September 25, 2011.

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

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

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 14, 2014.

Dated: March 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07433 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1594–000]

Lone Valley Solar Park I LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lone Valley Solar Park I LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07475 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1596–000]

Lone Valley Solar Park II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Lone Valley Solar Park II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 17, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–07476 Filed 4–2–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9909–06–Region 10]

Proposed Reissuance of NPDES General Permit for Groundwater Remediation Discharge Facilities in Idaho (Permit Number IDG911000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed reissuance of NPDES General Permit and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 proposes to reissue a National Pollutant Discharge Elimination System (NPDES) General Permit for Groundwater Remediation Discharge Facilities in Idaho (GWGP). As proposed, the GWGP authorizes the discharge of groundwater from remediation sites to Waters of the U.S. within the State of Idaho from both facilities with existing coverage and new facilities interested in seeking coverage. The draft GWGP contains technology-based and water quality-based effluent limitations for conventional and toxic water quality pollutants, along with administrative reporting and monitoring requirements, as well as standard conditions, prohibitions, and management practices. A fact sheet is available that explains the draft GWGP in detail.

Section 401 of the Clean Water Act, 33 U.S.C. 1341, requires EPA to seek a certification from the State of Idaho that the conditions of the GWGP are stringent enough to comply with State water quality standards. The Idaho Department of Environmental Quality (IDEQ) has provided a draft certification that the draft GWGP complies with State of Idaho Water Quality Standards (IDAPA 58.01.02), including the State's antidegradation policy. EPA intends to seek a final certification from IDEQ prior to issuing the final GWGP. This is also notice of the draft § 401 certification provided by IDEQ. Persons wishing to comment on the draft State certification should send written comments to Ms. Miranda Adams; Idaho Department of Environmental Quality, State Office, Surface Water Program; 1410 North Hilton Street; Boise, Idaho 83706 or via email to *Miranda.Adams@deq.idaho.gov*

DATES: The public comment period for the draft GWGP will be from the date of publication of this Notice until May 19, 2014. Comments must be received or postmarked by no later than midnight Pacific Standard Time on May 19, 2014. All comments related to the draft GWGP and Fact Sheet received by EPA Region 10 by the comment deadline will be considered prior to issuing the final GWGP.

Submitting Comments: You may submit comments by any of the following methods. All comments must include the name, address, and telephone number of the commenter.

Mail: Send paper comments to Ms. Jill Nogi, Office of Water and Watersheds; USEPA Region 10; 1200 6th Ave, Suite 900, OWW–130; Seattle, Washington 98101.

Email: Send electronic comments to *nogi.jill@epa.gov*. Make sure to write ''Comments on the Draft Idaho Groundwater Remediation General Permit'' in the subject line.

Fax: Fax comments to the attention of Jill Nogi at (206) 553–0165.

Hand Delivery/Courier: Deliver comments to Jill Nogi, EPA Region 10, Office of Water and Watersheds, Mail Stop OWW–130, 1200 6th Avenue, Suite 900, Seattle, WA 98101–3140. Call (206) 553–0523 before delivery to verify business hours.

Viewing and/or Obtaining Copies of Documents. A copy of the draft GWGP and the Fact Sheet, which explains the proposal in detail, may be obtained by contacting EPA at 1 (800) 424–4372.

Copies of the documents are also available for viewing and downloading at: *http://yosemite.epa.gov/r10/water.nsf/NPDES+Public+Notices/id_gwgp_pn_2014*. Requests may also be made to Audrey Washington at (206) 553–0523 or *washington.audrey@epa.gov*.

Public Informational Meeting: May 1, 2014; 11:00 a.m.—1:00 p.m.; in Boise, Idaho; at the Banner Building, 950 W. Bannock Street, 2nd Floor Conference Room. Presentation on the Draft GWGP from 11:00 a.m.–11:30 a.m., Q & A from 11:30 a.m.–12:30 p.m. Conference Call-In Number from 11:30 a.m.–12:30 p.m.; 1–866–299–3188; conference code 2065530775# . Open House from 12:30 p.m.–1:00 p.m.

Public Hearing: Persons wishing to request a public hearing should submit their written request by May 19, 2014 stating the nature of the issues to be raised as well as the requester's name, address, and telephone number to Jill Nogi at the address above. If a public hearing is scheduled, notice will be published in the **Federal Register**. Notice will also be posted on the Region 10 Web site, and will be mailed to all interested persons receiving letters of the availability of the Draft GWGP.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained by contacting Jill Nogi, Office of Water and Watersheds, U.S. Environmental Protection Agency, Region 10. Contact information included above in the ''Submitting Comments'' section.

SUPPLEMENTARY INFORMATION: The currently expired Groundwater General Permit NPDES General Permit, No. IDG910000 (2007 Permit), was issued by EPA on July 1, 2007. The 2007 Permit expired on June 30, 2012. The 2007 Permit remains in effect for those Permittees who obtained an administrative extension of the authorization to discharge before the permit expired. The current draft GWGP does not provide coverage for the discharge from mining operations. Those existing mining operations with an EPA administrative extension of coverage under the 2007 Permit may continue to operate under the limitations and conditions of the 2007 Permit until such time as a new permit is issued for those facilities.

In addition, EPA proposes to make the following major changes with the reissued permit:

• Revised effluent limitations based on:

1. Idaho's newer (2006) WQS. (The 2007 GWGP used Idaho's 2005 WQS.) EPA calculated different water-quality based effluent limits (WQBELs) for receiving waters designated as a Domestic Water Supply (DWS) in accordance with the State of Idaho Surface Water Quality Standards at IDAPA 58.01.02;

2. Minimum hardness values for hardness-dependent metals of 25 mg/L and 10 mg/L for cadmium; and,

3. Requiring average monthly and maximum daily effluent limits for continuous dischargers, and daily maximum effluent limits for non-continuous dischargers.

• A provision requiring a BMP Plan, which is standard for industrial permittees. The last GWGP required an Operation & Maintenance (O&M) Plan. Those requirements have now been incorporated into the BMP Plan provision;

• Requirements for more frequent monitoring and an expanded list of COCs to monitor;

• A requirement to use NetDMR, which enables the electronic submission of monitoring data and monthly discharge monitoring reports to EPA and IDEQ.

Other Legal Requirements

Endangered Species Act [16 U.S.C. 1531 et al.]. Section 7 of the Endangered Species Act (ESA) requires Federal agencies to consult with NOAA Fisheries (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (the Services) if their actions have the potential to either beneficially or adversely affect any threatened or endangered species. The Draft GWGP does not authorize discharges from groundwater remediation facilities in Idaho to any receiving waters where federally listed threatened, endangered, or candidate species, or designated or proposed critical habitat, pursuant to the ESA, are present. ESA consultation will be required for individual situations where an applicant requests a waiver to discharge to a receiving water excluded from coverage for ESA reasons. Therefore, the EPA has evaluated the Draft GWGP and has made the determination that issuance of the GWGP will have no effect on any threatened, endangered, or candidate species; designated critical habitat, or essential fish habitat; and therefore, ESA consultation is not required.

National Environmental Policy Act (NEPA) [42 U.S.C. 4321 et seq.] and Other Federal Requirements. Regulations at 40 CFR 122.49, list the federal laws that may apply to the issuance of permits i.e., ESA, National Historic Preservation Act, the Coastal Zone Act Reauthorization Amendments (CZARA), NEPA, and Executive Orders, among others.

The NEPA compliance program requires analysis of information regarding potential impacts, development and analysis of options to avoid or minimize impacts; and development and analysis of measures to mitigate adverse impacts.

Due to the fact that groundwater remediation facilities do not have any EPA-promulgated effluent limitation guidelines (ELGs) under CWA section 304 or new source performance standards (NSPS) specific to their operation, EPA determined that no Environmental Assessments (EAs) or Environmental Impact Statements (EISs) are required under NEPA. Idaho is not located in the U.S. coastal zone, so CZARA does not apply. In addition, the GWGP will not authorize the construction of any water resources facility or the impoundment of any water body or have any effect on historical property, and does exclude receiving waters with ESA species present or with Wild and Scenic River designations. Therefore, EPA has determined that the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., and the Wild and Scenic Rivers Act, 16 U.S.C. 470 et seq., also do not apply to the issuance of the GWGP.

Essential Fish Habitat (EFH). The Magnuson-Stevens Fishery Management and Conservation Act requires EPA to consult with NOAA–NMFS when a proposed discharge has the potential to adversely affect a designated EFH. The EFH regulations define an adverse effect as ''any impact which reduces quality and/or quantity of EFH . . . [and] may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.'' NMFS may recommend measures for attachment to the federal action to protect EFH; however, such recommendations are advisory, and not prescriptive in nature.

EPA has determined that the issuance of this Draft GWGP has no effect on EFH. The Draft GWGP does not authorize discharges from groundwater remediation facilities in Idaho to any receiving waters where EFH has been designated. Coordination with NMFS will be required for individual situations where an applicant requests a waiver to discharge to a receiving water excluded from coverage for EFH reasons. Therefore, the EPA has evaluated the Draft GWGP and has made the determination that issuance of the GWGP will have no effect on EFH. If, during the course of the process it is determined that the discharge may need

''extensive conservation requirements necessary to protect'' EFH, the facility may need to apply for an individual permit.

Executive Order 12866: The Office of Management and Budget (OMB) exempts this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Economic Impact [Executive Order 12291]: The EPA has reviewed the effect of Executive Order 12291 on this Draft GWGP and has determined that it is not a major rule pursuant to that Order.

Paperwork Reduction Act [44 U.S.C. 3501 et seq.] The EPA has reviewed the requirements imposed on regulated facilities in the Draft GWGP and finds them consistent with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act [5 U.S.C. 601 et seq.] The Regulatory Flexibility Act (RFA) requires that EPA prepare an initial regulatory flexibility analysis for rules subject to the requirements of the Administrative Procedures Act [APA, 5 U.S.C. 553] that have a significant impact on a substantial number of small entities. However, EPA has concluded that NPDES General Permits are not rulemakings under the APA, and thus not subject to APA rulemaking requirements or the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their regulatory actions (defined to be the same as rules subject to the RFA) on tribal, state, and local governments, and the private sector. However, General NPDES Permits are not rules subject to the requirements of the APA, and are, therefore, not subject to the UMRA.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342. I hereby provide public notice of the Draft Idaho GWGP in accordance with 40 CFR 124.10.

Dated: March 27, 2014.

Daniel D. Opalski,

Director, Office of Water and Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 2014–07460 Filed 4–2–14; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 10, 2014, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

OPEN SESSION

A. Approval of Minutes

- March 13, 2014

B. Reports

- Quarterly Report on Economic Conditions and FCS Conditions

CLOSED SESSION *

- Office of Examination Quarterly Report

Dated: April 1, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–07624 Filed 4–1–14; 4:15 pm]

BILLING CODE 6705–01–P

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 2, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov <mailto:Cathy.Williams@fcc.gov>.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0678.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

Form No.: FCC Form 312; Schedule S; Schedule B; Schedule A; FCC Form 312–EZ; FCC Form 312–R.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,880 respondents; 4,928 responses.

Estimated Time per Response: 0.5–80 hours per response.

Frequency of Response: On occasion, one time and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 308, 309, 332 and 705 unless otherwise noted.

Total Annual Burden: 34,155 hours.

Annual Cost Burden: $9,998,785.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: On August 9, 2013, the Federal Communications Commission (Commission) released a Report and Order (R&O) titled, ''In the Comprehensive Review of Licensing and Operating Rules for Satellite Services.'' FCC 13–111. In this R&O, the Commission adopted comprehensive changes to Part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services. Many of the amendments are substantive changes intended to afford licensees as much operational flexibility as possible consistent with minimizing harmful interference and easing administrative burdens on licensees, applicants, and the Commission. Additionally, this information collection is revised by incorporating existing separate information collection requirements under Part 25 into this information collection. Specifically, the revision of OMB Control No. 3060–0678 (Part 25 of the Commission's Rules) will consolidate information collections that are currently under OMB Control Nos. 3060–0768 (28 GHz Band Segmentation Plan), 3060–0955 (2 GHz Mobile Satellite Service Reports), 3060–0962 (Redesignation of the 18 GHz Band), 3060–0994 (Flexibility for Delivery of Communications by MSS Providers), 3060–1013 (Mitigation of Orbital Debris), 3060–1014 (Ku-band NGSO FSS), 3060–1059 (Global Mobile Personal Communications by Satellite (GMPCS)/E911 Call Centers), 3060–1061 (Earth Stations on Board Vessels (ESVs)), 3060–1066 (Renewal of Application for Satellite Space and Earth Station Authorization), 3060–1067 (Qualification Questions), 3060–1095 (Surrenders of Authorizations), 3060–1097 (Rules for Broadcasting Satellite Service), 3060–1106 (Vehicle Mounted Earth Stations (VMES)), 3060–1108 (Consummation of Assignments and Transfers of Control), 3060–1153 (Satellite Digital Radio Service (SDARS)), and 3060–1187 (Earth Stations Aboard Aircraft (ESAA)). Therefore, the number of respondents, number of responses, annual burden hours and annual costs have been amended from the previous submission that was approved by the Office of Management and Budget (OMB) on March 13, 2013.

The information collection requirements accounted for in this collection are needed to determine the technical and legal qualifications of applicants or licensees to operate a station and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–07473 Filed 4–2–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

Advanced Logistics, Inc. (NVO), 3301 NW 97th Avenue, Doral, FL 33172, Officers: Jose R. Castillo-Ospina, President (QI), Ricardo Castillo, Vice President, Application Type: QI Change.

All States Van Lines LLC (NVO & OFF), 340 South Stiles Street, Linden, NJ 07036, Officers: Vita Shteyn, Member (QI), Don Shteyn, Managing Member, Application Type: Name Change to Inter Movers LLC.

Aztec Marine Agencies, Inc. dba Beaumont Logistics Group (OFF), 1485 Wellington Circle, Suite 101, Beaumont, TX 77706, Officers: Rosemary Asta, President (QI), Christopher Asta, Vice President, Application Type: Change Trade Name to Acceleron Logistics LLC.

B&F International, Inc. (NVO), 18005 Savarona Way, Carson, CA 90746, Officers: Frank Noah, Vice Chairman (QI), Bong Cheon Kim, Vice Chairman, Application Type: New NVO License.

Biel & Co. South Carolina LLC dba Cutlass Logistics Ltd (OFF), 1064 Gardner Road, Suite 312, Charleston, SC 29407, Officers: Dennis J. Forsberg, Vice President-Liner Sales (QI), Thomas J. Springer, President, Application Type: New OFF License.

Brilliant Globe Logistics Inc. (NVO), 159 N. Central Avenue, 2nd Floor, Valley Stream, NY 11580, Officers: Xudong Wang, Vice President (QI), Shuping Wang, President, Application Type: Transfer to Brilliant Group Logistics Corp.

CargoLive Worldwide Logistics, LLC (NVO & OFF), 2025 East Linden Avenue, Linden, NJ 07036, Officers: Frank Conenna, LLC Manager (QI), Stephen M. Mattessich, LLC Manager, Application Type: New NVO & OFF License.

Carlo Shipping International, Inc. (NVO & OFF), 435 Division Street, Elizabeth, NJ 07201, Officer: Carlos E. Feliu, President (QI), Application Type: Add Trade Name CSI Logistics.

CMA CGM Logistics USA LLC (NVO & OFF), 1 Meadowlands Plaza, Suite 201, East Rutherford, NJ 07073, Officers: Amish B. Shah, Director of Sea Freight (QI), Nicalaos Fafoutis,

Chief Compliance Officer, Application Type: Additional QI.
Conrad E. Lim dba Allied Cargo Services (NVO), 26203 Production Avenue, Suite #2, Hayward, CA 94544, Officer: Conrad E. Lim, Sole Proprietor (QI), Application Type: New NVO License.
DCI Transport LLC (OFF), 2635 Northgate Avenue, Suite A, Cumming, GA 30041, Officers: Christie Patterson, Manager (QI), Christopher W. Purdy, Chief Executive Manager, Application Type: New OFF License.
Direct Parcel Service, Corp. dba DPS Cargo (NVO), 7701 NW 46th Street, Doral, FL 33166, Officers: Edward Recio, Secretary (QI), Veronica Morales, President, Application Type: Additional QI.
Dynamic Multimodal System, Inc. (NVO), 2050 W 190th Street, Suite 105, Torrance, CA 90504, Officer: John Kamischke, President (QI), Application Type: New NVO License.
Farenco Logistics, Inc. (NVO), 190 Lincoln Highway, Suite 303, Edison, NJ 08820, Officers: Lena Yu, President (QI), Vania Wang, Treasurer, Application Type: New NVO License.
FedEx Trade Networks Transport & Brokerage, Inc. (NVO & OFF), 128 Dearborn Street, Buffalo, NY 14207, Officers: Joseph L. Trulik, Jr., Assistant Secretary (QI), James R. Muhs, President, Application Type: QI Change.
GTS Logistics Inc (NVO), 7603 Penrose Court, Sugar Land, TX 77479, Officer: Zulfikar Momin, President (QI), Application Type: New NVO License.
Herco Freight Forwarders, Inc. (NVO & OFF), 7700 NW 81st Place, Suite 1, Medley, FL 33166, Officers: Romulo Souza, Secretary (QI), Kesia Pompeu, President, Application Type: New NVO & OFF License.
integrated freight systems LLC (OFF), 626 Calloway Drive, Sugar Land, TX 77479, Officers: Markus C. Armstrong, President (QI), Lauren M. Gayle, Secretary, Application Type: New OFF License.
JJSOL, LLC (NVO & OFF), 2233 Peachtree Road NE., Unit 705, Atlanta, GA 30309, Officers: James Burghart, Member (QI), Jyoti Solanki, Member, Application Type: New NVO & OFF License.
KTL USA, LLC dba Daimon Logistics USA (NVO), 17 Hilliard Avenue, Edgewater, NJ 07020, Officers: Serhat Ozisik, Member (QI), Ahmet Neidik, Member, Application Type: QI Change.
Matthew's Auto Transportation LLC (NVO & OFF), 16 Guenever Drive, New Castle, DE 19720, Officer: Carlos E. Valdiviezo, Member (QI), Application Type: New NVO & OFF License.
Mirach Shipping, Inc. dba Marlin Shipping (NVO & OFF), 1162 Hasting Place, Baldwin, NY 11510, Officer: Kamran Ali, President (QI), Application Type: New NVO & OFF License.
Movage, Inc. dba Movage International (NVO), 135 Lincoln Avenue, Bronx, NY 10454, Officers: Bajo Vujovic, President (QI), Traveler J. Schinz-Devico, Vice President, Application Type: QI Change.
New Life Health Care Services, LLC. dba New Life Marine Services (NVO & OFF), 3527 Brackenfern Road, Katy, TX 77449, Officers: Henry C. Onyekwere, Member (QI), Theresa Onyekwere, Office Manager, Application Type: Add OFF Service.
New York 1 Terminal, Inc. (OFF), 180 Pulaski Street, Bayonne, NJ 07002, Officers: Joel Bonhommette, President (QI), Sonia Bonhommette, Secretary, Application Type: New OFF License.
Norse Freight Forwarding, LLC (NVO), 125 Commerce Drive, Suite A, Fayetteville, GA 30214, Officers: Johnny S. Flaten, Managing Member (QI), Robert S. Stamey, Member, Application Type: Add Trade Name Norse Container Lines, LLC.
OCC Maritime, Inc dba OCC Lloyd (NVO & OFF), 232 Andalusia Avenue, Suite 370, Coral Gables, FL 33134, Officers: Oliver Oswald, President (QI), Isabel Jimenez, Secretary, Application Type: QI Change.
Premier Van Lines International, Inc. (NVO & OFF), 2509 S. Power Road, Suite 207, Mesa, AZ 85209, Officers: James A. Haddon, President (QI), Heidi E. Lomax, Vice President, Application Type: Add OFF Service.
Propelling Trade Solutions Inc. (OFF), 873 Featherwood Drive, Diamond Bar, CA 91765, Officer: Howard S. Chang, President (QI), Application Type: New OFF License.
RH Shipping & Chartering (USA), LLC (NVO & OFF), 10077 Grogans Mill Road, Suite 310, The Woodlands, TX 77380, Officer: Rudolf Hess, Manager (QI), Application Type: New NVO & OFF License.
Savant International Logistics Ltd. (NVO), 11 Broadway, Suite 1063, New York, NY 10004, Officer: Leonard Satz, President (QI), Application Type: Transfer to Savant Customs Brokers and, Freight Forwarders.
SDK Forwarding Co. (OFF), 17795 Hickory Trail, Lakeville, MN 55044, Officer: Sandra D. Kimal, CEO (QI), Application Type: New OFF License.
Siboney Shipping, LLC (NVO), 8401 NW 90th Street, Medley, FL 33166, Officers: Derrick I. Sealy, Managing Member (QI), Kaye Graham, Managing Member, Application Type: New NVO License.
Stars International LLC (OFF), 80 Blauvelt Street, Teaneck, NJ 07666, Officers: Armand Arbolante, Manager (QI), Stellar Tung, Owner, Application Type: New OFF License.
Sunflower Worldwide Trading dba Pacific Cargo Express (NVO), 300 W. Valley Blvd., Suite G168, Alhambra, CA 91803, Officers: Karen Cheng, Secretary (QI), Chris Cheng, President, Application Type: New NVO License.
Thomas Griffin International, Inc. dba Sea Lion Ocean Freight, dba RV Shipping (NVO), 15903 Kent Ct., Tampa, FL 33647, Officer: Thomas L. Griffin, President (QI), Application Type: Add OFF Service.
TRD International, Inc. (NVO & OFF), 321 East Gardena Blvd., 2nd Floor, Gardena, CA 90248, Officers: Wonchol Yi, CEO (QI), David Lee, COO, Application Type: New NVO & OFF License.
Triton Overseas Transport, Inc. (NVO & OFF), 3340 Greens Road Building A, Suite 410, Houston, TX 77032, Officer: William R. Onorato, President (QI), Application Type: Name Change to Triton Global, Inc. & Add OFF Service.
Unimex Trade & Logistics, L.L.C. (NVO & OFF), 12014 Sara Road, Laredo, TX 78045, Officers: Cynthia Mata, Vice President-NVOCC Operations (QI), Adolfo Campero, President, Application Type: New NVO & OFF License.
V R Logistics Incorporated dba Yellow Shark Logistics (NVO & OFF), 30 Sheryl Drive, Edison, NJ 08820, Officers: Viren Bhagat, Secretary (QI), Vanita Bhagat, President, Application Type: Additional QI.
Victoria Project Cargo, LLC (NVO & OFF), 507 N. Sam Houston Parkway East, Suite 320, Houston, TX 77060, Officers: Tatiana Stanina, President (QI), Radek Maly, Treasurer, Application Type: New NVO & OFF License.
Whale Logistics (USA), Inc. (NVO), 10622 Tammy Street, Cypress, CA 90630, Officer: Jason Hsu, President (QI), Application Type: New NVO License.
Wil Shipping LLC (NVO & OFF), 18501 Pines Blvd., Suite 363, Pembroke Pines, FL 33029, Officer: Chadi Karam, Manager (QI), Application Type: New NVO & OFF License.
Woori Shipping, Inc. dba Hyundae Global Express (NVO & OFF), 3022 S. Western Avenue, Los Angeles, CA 90018, Officers: Mysungsu Kim, Vice President (QI), Youngmin Kim,

President, Application Type: New NVO & OFF License.
World Trade Shipping & Logistics Inc. (NVO & OFF), 8012 NW 29th Street, Miami, FL 33122, Officers: Mario R. Palacios, President (QI), Application Type: New NVO & OFF License.
Worldwide Export International, Corp. (NVO), 450 W. 28th Street, Bay 2, Hialeah, FL 33010, Officers: Maria I. Garrido, President (QI), Isbel Montano, Vice President, Application Type: New NVO License.

Dated: March 28, 2014.

By the Commission.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–07396 Filed 4–2–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

License No.: 001593F.
Name: Robertson Forwarding Co., Inc.
Address: 7166 NW 12th Street, Miami, FL 33126.
Date Reissued: February 7, 2014.

License No.: 019187N.
Name: Caribbean Logistic & Marketing Services, Inc.
Address: El Naranjal D–5 Calle 3, Toa Baja, Puerto Rico 00949.
Date Reissued: February 27, 2014.

License No.: 021288F.
Name: Shipping Logistics, LLC.
Address: 3340–C Greens Road, Suite 200, Houston, TX 77032.
Date Reissued: February 25, 2014.

License No.: 022216N.
Name: Sun US Transport Corp.
Address: 6449 Whittier Blvd., Los Angeles, CA 90022.
Date Reissued: February 9, 2014.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2014–07403 Filed 4–2–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 4:00 p.m. on Tuesday, April 8, 2014

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. You do not need to register to view the webcast of the meeting. A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on April 7, 2014. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. The Board will consider: (1) A draft interagency final rule implementing enhanced supplementary leverage ratio standards for large, interconnected U.S. banking organizations; (2) an interagency notice of proposed rulemaking that would modify the definition of total leverage exposure (the denominator of the supplementary leverage ratio) and the calculation of the ratio in the agencies' 2013 revised capital rule; and (3) an interagency notice of proposed rulemaking that would revise the definition of eligible guarantee under the agencies' advanced approaches risk-based capital rule.

Notes: 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/or* if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

For more information please contact: Michelle Smith, Director, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: April 1, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–07541 Filed 4–1–14; 4:15 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0955–0005–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, HHS announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0955–0005, which expires on July 31, 2014. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before June 2, 2014.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0955–0005–60D for reference.

Information Collection Request Title: ''Communications Testing for Comprehensive Communication Campaign for HITECH ACT.

OMB No.: 0955–0005.

Abstract: The Office of the National Coordinator for Health Information Technology (ONC) serves as the Health and Human Services (HHS) Secretary's principal advisor on the development, application, and use of health information technology (health IT). ONC is requesting an approval by OMB on an extension, to a previously approved generic clearance titled Communications Testing for Comprehensive Communication Campaign for HITECH ACT, 0955–0005, for collecting information through a variety of research methods for the purpose of developing and testing communications involving health information technology and health information privacy. ONC responsibilities include promoting the development of a nationwide health IT infrastructure that allows for electronic use and exchange of information and fostering the public understanding of health information technology, including educating the public about health information privacy. In order to fulfill these responsibilities, information from the public at large is necessary to determine what education is needed and what types of communication techniques will be most effective. Due to the rapidly evolving nature of health information technology, an extension of the original generic data collection is being requested to ensure that these education and communication efforts keep pace with technological advancements and the changing health information technology ecosystem.

Need and Proposed Use of the Information: This information will be used to assess the need for communications on specific topics and to assist in the development and modification of communication messages. The data will help in tailoring print, broadcast, and electronic media communications and other materials for them to have powerful and desired impacts on target audiences. The data will not be used for the purposes of making policy or regulatory decisions.

Likely Respondents: Likely respondents include consumers as well as physicians, nurses and other health care providers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form Name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Public Focus Group Interviews	144	1	1.50	216
Screening for General Public Focus Group Interviews	2,160	1	10/60	360
Web usability testing sessions	144	1	1.50	216
Screening for Web usability testing	2,160	1	10/60	360
Self-Administered Surveys	2,000	1	15/60	500
Screening for Self-Administered Surveys	8,000	.....	10/60	1,333
Omnibus Surveys	2,000	1	10/60	333
Consumer testing of notices	50	1	1.0	50
TOTAL (General Public)	16,648	.....	.....	3,368
Health Professional Focus Group Interviews	144	1	1.50	216
Screening for Professional Focus Group Interviews	2,160	1	10/60	360
Web usability testing sessions	144	1	1.50	216
Screening for Web usability testing	2,160	1	10/60	360
Self-Administered Surveys	2,000	1	15/60	500
Screening for Self-Administered Surveys	8,000	.....	10/60	1,333
Omnibus Surveys	2,000	1	10/60	333
Health Professional Individual In-Depth Interviews	100	1	45/60	75
Screening for Health Professional Individual In-Depth Interviews	1,000	1	10/60	167
TOTAL (Physician and Other Health Professional)	17,708	.....	.....	3,560

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form Name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
TOTAL (Overall)	34,366	.....	.....	6,928

ONC specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2014–07479 Filed 4–2–14; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, the Office of the Secretary seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before June 2, 2014.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–New–60D for reference.

Information Collection Request Title: Education and Training of Healthcare Providers as a Coordinated Public Health Response to Violence Against Women.

Abstract: The Office on Women's Health (OWH) is seeking a new clearance to a conduct a one year data collection associated with the pilot and evaluation of an eLearning course developed as part of the ''Education and Training of Healthcare Providers as a Coordinated Public Health Response to Violence Against Women Project''. The purpose of this data collection is to gather data from healthcare providers who have volunteered to participate in the pilot and evaluation of an e-learning course designed to educate and train healthcare providers on how to respond to intimate partner violence (IPV) against women. Information obtained from this data collection will be used to identify areas of improvement and measure the effectiveness of the e-learning course in educating healthcare providers about IPV, addressing attitudinal barriers to IPV screening, and increasing IPV screening in clinical practice. This data will also help identify any problems in the navigation and functioning of the e-learning course. The results of this evaluation will assist OWH in making revisions to the course and subsequently coordinating a national launch, making the e-learning course available to healthcare providers across the U.S. All data collection forms and activities will be used within a year time frame.

Need and Proposed Use of the Information: The piloting and evaluation of this eLearning course supports the DHHS and OWH's overall mission and strategic plan. It supports the DHHS objective of implementing ''prevention policies, programming, and interventions to prevent and respond to individuals, families, and communities impacted by domestic violence''. It also enhances OWH's capacity to provide healthcare providers with accurate, evidence-based information and identify innovative educational strategies. Furthermore, the results will also aid in the planning and development of future OWH and other public and private sector initiatives to promote IPV awareness and screening in the healthcare setting. Knowledge gained from the evaluation will inform federal, public, and private sector on how IPV knowledge, attitude, and practices may differ between healthcare providers and healthcare settings.

Likely Respondents: The respondents for this pilot and evaluation are healthcare providers (physicians, nurses, and social workers) who are members of professional associations and who provide services in Nevada, Oklahoma, and South Carolina.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Pre-Assessment	1600	1	25/60	667
Post-Assessment	1600	1	25/60	667
Follow-up Assessment	1600	1	25/60	667
Total				2001

Office of the Secretary specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2014–07395 Filed 4–2–14; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0379–60D]

60-Day Notice for Extension of Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Department of Health and Human Services (HHS).

ACTION: Notice and request for comments. Request for an extension of approval by OMB.

SUMMARY: HHS, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery, This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection,

DATES: Consideration will be given to all comments received by June 2, 2014.

ADDRESSES: Submit comments by one of the following methods:

- *Web site: www.regulations.gov.* Direct comments to Docket ID OMB–2010–0021.
- *Email: Information.CollectionClearance@hhs.gov.*
- *Phone:* (202) 690–6162.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to 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.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does 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 to 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.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Extension of approval for a collection of information.

Type of Review: Extension.

Affected Public: Individuals and households, businesses and organizations.

Estimated Number of Respondents: 9,000,000 over 3 years.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of Activities: 15.

Average Number of Respondents per Activity: 200,000.

Annual Responses: 3,000,000.

Frequency of Response: Once per request.

Average Minutes per Response: 10.

Burden hours: 500,000 hours annually.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection Regulations.gov.

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

Darius Taylor,

Deputy, Information Collection Clearance Officer.

[FR Doc. 2014–07394 Filed 4–2–14; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0261]

Food and Drug Administration

The Meaning of ''Spouse'' and ''Family'' in the Food and Drug Administration's Regulations After the Supreme Court's Ruling in United States v. Windsor—Questions and Answers: Guidance for Industry, Consumers, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance entitled ''The Meaning of 'Spouse' and 'Family' in FDA's Regulations after the Supreme Court's Ruling in *United States* v. *Windsor*—Questions and Answers: Guidance for Industry, Consumers, and FDA Staff.'' This guidance informs the public of FDA's interpretation of the effects of the Supreme Court's decision in *United States* v. *Windsor* on several of its regulations. This guidance has an immediate implementation date because FDA has determined that prior public participation is not feasible or appropriate.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4830. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4254, Silver Spring, MD 20993, 301–796–4706, email: *daniel.sigelman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled, ''The Meaning of 'Spouse' and 'Family' in FDA's Regulations after the Supreme Court's Ruling in *United States* v. *Windsor*—Questions and Answers, Guidance for Industry, Consumers, and FDA Staff'' dated March 2014.

On June 26, 2013, in *United States* v. *Windsor,* 133 S.Ct. 2675, the U.S. Supreme Court struck down as unconstitutional section 3 of the Defense of Marriage Act (Pub. L. 104–199). In the guidance we set forth how we will interpret the terms ''spouse'' and ''family'' in our regulations in accordance with this decision.

Because this guidance provides FDA's interpretation of these terms in light of a ruling of the Supreme Court, this guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (21 CFR 10.115(g)(2)). Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's Good Guidance Practices regulation.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: March 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07457 Filed 4–2–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XLLAZ910000.L12100000.XP0000LXSS150A00006100.241A]

State of Arizona Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

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), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The RAC Working Groups will meet on May 7 from 8:30 a.m. to 4:30 p.m., and the Business meeting will take place May 8 from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the BLM National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

FOR FURTHER INFORMATION CONTACT: Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9504. Persons who use a telecommunications 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 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: a welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; recommendations from the RAC Colorado River District Grazing Subcommittee; discussion and feedback on the Department of the Interior Themes and Landscape-Level Opportunities for the BLM; update on the Sonoran Landscape Project; update on the Rapid Ecoregional Assessments; reports by the RAC Working Groups; RAC questions on BLM District Manager Reports; and other items of interest to the RAC. Recommendations from the RAC Colorado River District Grazing Subcommittee will be presented to the RAC on the day of the business meeting for discussion and a vote. Members of the public are welcome to attend the Working Group and Business meetings. A public comment period is scheduled on the day of the Business meeting from 11:30 a.m. to 12 p.m. for any interested members of the public who wish to address the Council on BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. Final meeting agendas will be available two weeks prior to the meetings and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html*. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation RAC (RRAC) and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will not review recreation fee program proposals at this meeting.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2014–07441 Filed 4–2–14; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–14919; PPPWPWROP0/PX.P0118032i.00.1]

Notice of Termination of Environmental Impact Statement for General Management Plan, Devils Postpile National Monument, Mono and Madera Counties, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Termination of Environmental Impact Statement.

SUMMARY: The National Park Service is terminating the preparation of an Environmental Impact Statement (EIS) for the General Management Plan, Devils Postpile National Monument, Mammoth Lakes, California. A Notice of Intent to prepare the EIS for the General Management Plan (GMP) was published in the **Federal Register** on June 15, 2009. The National Park Service has since determined that an Environmental

Assessment (EA) rather than an EIS is the appropriate environmental documentation for the GMP. This determination includes due consideration of all public comment and other agency information received during the public scoping period.

Background: The new GMP for Devils Postpile National Monument will provide long-term guidance for resource management, visitor services and interpretive programming. The planning team originally scoped the GMP as an EIS and a Notice of Intent to prepare an EIS was published in the **Federal Register** on June 15, 2009. No concerns or issues expressed during public scoping process and subsequently during development of preliminary GMP alternatives convey either the potential for controversy or identify potential significant impacts.

In 2011, the planning team developed three action alternatives for the GMP. These three alternatives explored ways to enhance long-term preservation of park resources and provide new recreational and educational opportunities. The planning team produced a newsletter and comment form to seek public input on the preliminary alternatives in the summer of 2011. Feedback on the preliminary alternatives affirmed that the planning team provided an appropriate range of future management directions for the monument. Most of the public comments on the preliminary alternatives were supportive of various aspects of the proposed alternative concepts and desired conditions. To date, no major concerns or issues have been expressed during public involvement for the GMP that would convey the potential for public controversy.

Initial analysis of the alternatives has revealed no potential for either major or significant effects on the human environment, nor any potential for impairing park resources and values. The foreseeable potential impacts which may occur from implementing any of the alternatives are expected to be negligible to moderate in magnitude. For these reasons, the NPS determined that the appropriate level of conservation planning and environmental impact analysis for the GMP is an EA. It is also noted that many of the actions proposed in the GMP will have benefits to the monument's resources, operational needs, and visitor experiences.

SUPPLEMENTARY INFORMATION: The draft GMP and EA will be integrated. The combined document is expected to be distributed for a public review and comment period during the spring of 2014. The NPS will notify the public by direct mail, Web site postings at *http://parkplanning.nps.gov/depo,* local and regional media, and other means, to provide regularly updated information on where and how to obtain a copy of the EA, how to comment on the EA, and the confirmed dates for local public meetings during the public review period. For further information contact Deanna Dulen, Superintendent, Devils Postpile National Monument, P.O. Box 3999, Mammoth Lakes, California 93546. (telephone: (760) 924–5505; email: *Deanna_Dulen@nps.gov*).

A preferred vision for the new GMP will be presented to the public in the spring of 2014 and comments will be solicited. The official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service. Subsequently the official responsible for implementing the new GMP is the Superintendent, Devils Postpile National Monument.

Dated: January 28, 2014.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2014–07488 Filed 4–2–14; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A000 67F 134S180110; S2D2S SS08011000 SX066A00 33F 13xs501520]

Notice of Proposed Information Collection for 1029–0067; Request for Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed authority for the collection of information for the Form OSM–23, Restriction on financial interests of state employees and its associated regulations.

DATES: Comments on the proposed information collection must be received by June 2, 2014, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783 or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR part 705 and the Form OSM–23, Restriction on financial interests of state employees. OSM will request a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for part 705 is 1029–0067. Responses are mandatory in accordance with 517(g) of the Surface Mining Control and Reclamation Act of 1977.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR 705—Restrictions on financial interests of state employees.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any state regulatory authority employee or member of advisory boards or commissions established in accordance with state law or regulation to represent multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 3,642.

Total Annual Burden Hours: 1,218.

Dated: March 27, 2014.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2014–07487 Filed 4–2–14; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–912]

Certain Earpiece Devices Having Positioning and Retaining Structure and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 26, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Bose Corporation of Framingham, Massachusetts. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices having positioning and retaining structure and components thereof by reason of infringement of certain claims of U.S. Patent No. 8,311,253 (''the '253 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Docket Services Division, U.S. International Trade Commission, telephone (202) 205–1802.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 28, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain earpiece devices having positioning and retaining structure and components thereof by reason of infringement of one or more of claims 1 and 2 of the '253 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Bose Corporation, 100 The Mountain Road, Framingham, MA 01701

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Monster, Inc., 455 Valley Drive, Brisbane, CA 94005

Monster, LLC, 7251 West Lake Mead Boulevard, 3rd Floor, Las Vegas, NV 89128

Monster Technology International, Ltd., Ballymaley Business Park, Gort Road, Ennis, Co. Clare, Ireland

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 28, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–07418 Filed 4–2–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–513 and 731–TA–1249 (Preliminary)]

Sugar From Mexico; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–513 and 731–TA–1249 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of sugar, provided for in subheadings 1701.12.10, 1701.12.50, 1701.13.05, 1701.13.10, 1701.13.20, 1701.13.50, 1701.14.05, 1701.14.10, 1701.14.20, 1701.14.50, 1701.91.05, 1701.91.10, 1701.91.30, 1701.91.42, 1701.91.44, 1701.91.48, 1701.99.05, 1701.99.10, 1701.99.50, 1702.90.05, 1702.90.10, 1702.90.20, 1702.90.35, 1702.90.40, 2106.90.42, 2106.90.44, and 2106.90.46 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Mexico and are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by Monday, May 12, 2014. The Commission's views must be transmitted to Commerce within five business days thereafter, or by Monday, May 19, 2014.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* Friday, March 28, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on Friday, March 28, 2014, by the American Sugar Coalition and its members: American Sugar Cane League, Thibodaux, LA; American Sugarbeet Growers Association, Washington, DC; American Sugar Refining, Inc., West Palm Beach, FL; Florida Sugar Cane League, Washington, DC; Hawaiian Commercial and Sugar Company, Puunene, HI; Rio Grande Valley Sugar Growers, Inc., Santa Rosa, TX; Sugar Cane Growers Cooperative of Florida, Belle Glade, FL; and United States Beet Sugar Association, Washington, DC.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Friday, April 18, 2014, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.bishop@usitc.gov* and *Sharon.bellamy@usitc.gov* (do not file on EDIS) on or before Wednesday, April 16, 2014. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission,s deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Wednesday, April 23, 2014, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 FR 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: March 28, 2014.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–07420 Filed 4–2–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0070]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Explosives License or Permit

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until June 2, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher R. Reeves, Federal Explosives Licensing Center, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405, Telephone 1–877–283–3352.

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

1. *Type of Information Collection:* Extension without change of an existing collection.

2. *The Title of the Form/Collection:* Application for Explosives License or Permit.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 5400.13/5400.16.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individual or households.

Abstract: All persons intending to engage in the business of manufacturing, dealing, importing or using explosives materials must submit an ATF Form 5400.13/5400.16 Application for Explosives License or Permit to the Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The explosives application will be processed by the ATF Federal Explosives Licensing Center (FELC), and upon approval, the applicant shall receive their explosives license or permit within a ninety-day timeframe.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,200 respondents will take 1 hour and 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 15,300 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: March 31, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–07453 Filed 4–2–14; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–42]

Fred Samimi, M.D.; Decision and Order

On February 29, 2012, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Fred Samimi, M.D. (Respondent), of both Roseville and Elk Grove, California. ALJ Ex. 1, at 1. The Show Cause Order proposed the denial of Respondent's applications for DEA Certificates of Registration as a practitioner, with authority to dispense controlled substances in schedules II through V, at his proposed registered locations in Roseville and Elk Grove, California, on the ground that his registrations would be inconsistent with the public interest. *Id.*

More specifically, the Show Cause Order alleged that during undercover visits that were conducted by the Medical Board of California (MBC) in June 2006, June 2008, and December 2009, Respondent ''allowed [his] medical assistants to dispense controlled substances to patients without supervision.'' *Id.* at 1. The Order also alleged that Respondent dispensed controlled substances ''to patients without placing instruction for use on [the] labels attached to the prescription bottles.'' *Id.* at 1–2.

Next, the Show Cause Order alleged that on May 6, 2011, the MBC ''issued a Stipulated Settlement and Disciplinary Order'' to Respondent which made several findings. *Id.* at 2. First, the Show Cause Order alleged that the MBC found that during a December 10, 2009 audit of his Gold River, California clinic, the controlled substances were kept in an ''unlocked and wide open'' metal cabinet, and that Respondent told the MBC Investigator ''that the room where the cabinet was located was typically left opened and unlocked during the work day'' and that the ''room was accessed by [Respondent] and [his] staff and was only locked at the conclusion of the work day.'' *Id.*

Second, the Show Cause Order alleged that the MBC found that on January 28, 2010, ''[d]uring a follow-up . . . inspection'' of the Gold River

clinic, Respondent was dispensing controlled substances ''through the use of post office boxes'' that were located in the ''drug room,'' and ''that any person having the appropriate post office box key was able to obtain medication left in the . . . box.'' *Id.* The Show Cause Order further alleged that this practice involved maintaining ''controlled substances in an unsecured areas'' and violated 21 CFR 1301.75(b). *Id.*

Third, the Show Cause Order alleged that the MBC found that Respondent ''failed to properly document [the] transport of controlled substances from one medical clinic location to a second clinic location and further failed to document medication strengths in [his] drugs logs.'' *Id.* The Show Cause Order then alleged Respondent ''fail[ed] to properly document the transport of controlled substances between clinic locations'' and violated 21 CFR 1304.11 and 1304.21(a). *Id.*

Next, the Show Cause Order alleged that on May 26, 2011, Respondent surrendered his DEA registrations, and that while conducting an inventory of the controlled substances at his Elk Grove clinic, the Government ''learned that [he] continued storing controlled substances in an unsecured fashion,'' in that the controlled substances were ''stored on an open bookshelf inside a closet along with protein bars, vitamins, and non-controlled substances.'' *Id.* The Show Cause Order also alleged ''that the controlled substance inventories [Respondent] provided to agency investigators contained numerous inaccuracies'' and ''did not comply with the requirements of 21 CFR 1304.11.'' *Id.*

Finally, the Show Cause Order alleged that after Respondent surrendered his DEA registrations, he ''phoned in prescriptions for controlled substances under the DEA registration number of another DEA registered practitioner.'' *Id.* at 2–3. The Show Cause Order alleged that this conduct violated 21 U.S.C. 822(a)(2) and 843(a)(2). *Id.*

Following service of the Show Cause Order, Respondent requested a hearing on the allegations and the matter was placed on the docket of the Office of Administrative Law Judges. Following pre-hearing procedures, an ALJ conducted a hearing on August 1–3, 2012, in Sacramento, California. At the hearing, both parties called witnesses to testify and introduced various exhibits into the record; after the hearing, both parties filed briefs containing their proposed findings of fact, conclusions of law, and argument.

On October 17, 2012, the ALJ issued her Recommended Decision (hereinafter, R.D.). With respect to factor one—the recommendation of the state licensing board—the ALJ found that ''the Board ha[d] not made a recommendation concerning the resolution of the Respondent's DEA applications.'' R.D. 20. The ALJ also noted that ''Respondent currently holds a valid medical license in California, but that [his] license has also been the subject of recent disciplinary'' action, including a May 6, 2011 Stipulated Settlement and Disciplinary Order, which suspended his medical license for thirty days and imposed a three-year probation. *Id.* While the ALJ further noted that Respondent had ''one minor recordkeeping problem'' in that he failed to ''provid[e] the complete address of patients'' in a log of his dispensings and marijuana recommendations which he was required keep, the ALJ noted that Respondent had not received a non-compliance report for this violation. *Id.* The ALJ, applying Agency precedent, concluded that this factor neither ''weighed in favor or against the granting of Respondent's applications.'' *Id.* (citations omitted).

Similarly, with respect to factor three—Respondent's conviction record for offenses relating to the manufacture, distribution or dispensing of controlled substances—the ALJ found that there is ''no evidence that Respondent has been convicted of'' such an offense. *Id.* However, applying Agency precedent, the ALJ noted that while this factor ''weighs against a finding that Respondent's registration would be inconsistent with the public interest,'' it was not dispositive. *Id.* (citation omitted).

The ALJ then addressed factors two and four—Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances—together. The ALJ began by noting that ''[u]nder the Controlled Substances Act and Agency regulations, it is fundamental that a practitioner who directly dispenses controlled substances maintain an effective recordkeeping system,'' including initial and biennial inventories, as well as ''records of receipts, dispensings and transfers of controlled substances.'' *Id.* at 21 (citations omitted). The ALJ found that ''[t]he record demonstrates that . . . Respondent failed to maintain an accurate drug inventory'' and that ''[t]his failure made it impossible for the DEA, the Board, or the Respondent to conduct a meaningful drug audit.'' *Id.* The ALJ then observed that ''[t]he DEA's attempt to audit the Respondent's controlled substances resulted in the finding of significant shortages,'' and that ''[t]his inability to account for this significant number of dosage units creates a grave risk of diversion.'' *Id.* (citations omitted). The ALJ also noted that ''Respondent violated multiple provisions of California law in his dispensing of controlled substances.'' *Id.* at 22. The ALJ thus concluded that ''Respondent's conduct in dispensing controlled substances violated state and federal laws'' and that these ''violations weigh in favor of a finding that the Respondent's registration would be inconsistent with the public interest.'' *Id.*

As for factor five—such other conduct which may threaten public health and safety—the ALJ found that ''the record contains no evidence of other conduct related to controlled substances . . . that would threaten the public health and safety,'' concluding that there was ''no direct or credible evidence of diversion.'' *Id.* The ALJ then found that ''Respondent has accepted responsibility for his past misconduct, and he has credibly demonstrated that he has learned from his past mistakes.'' *Id.* at 23. Yet, the ALJ observed that ''the record demonstrates that [Respondent] was never able to dispense controlled substances and remain in compliance with the Board's and the DEA's regulations.'' *Id.* However, the ALJ then noted various actions Respondent took to address several of the violations found by the MBC's investigator. *Id.*

The ALJ thus concluded ''that the Government has established a prima facie case in support of denying Respondent's applications,'' explaining that ''[t]here is no doubt that the Respondent has failed properly to account for, store, and dispense controlled substances.'' *Id.* at 23–24. However, the ALJ then found that ''Respondent has sustained his burden to accept responsibility for his past misconduct and has successfully demonstrated that he will not engage in future misconduct related to his handling of controlled substances.'' *Id.* at 24. The ALJ then concluded that ''outright denial of [Respondent's] application is too severe a resolution,'' even though ''his mistakes in his dispensing of controlled substances are egregiousness enough to warrant the placing of restrictions'' limiting him to prescribing, on his registrations. *Id.*

Both parties filed exceptions to the Recommended Decision. Thereafter, the record was forwarded to me for final agency action.

Having considered the entire record in this matter, including the parties' exceptions, I adopt the ALJ's findings of fact and conclusions of law except as

discussed below. More specifically, I adopt the ALJ's conclusion that the Government established a *prima facie* case for denial of Respondent's applications. Moreover, even accepting the ALJ's finding that Respondent has credibly accepted responsibility for his misconduct, I reject the ALJ's conclusion that he has successfully demonstrated that he will not engage in future misconduct related to his handling of controlled substances, because as the ALJ herself observed, the record demonstrates that he has never been able to dispense controlled substances and remain in compliance with the MBC's and DEA's regulations. I make the following findings of fact.

Findings

Respondent is a medical doctor licensed by the Medical Board of California. GX 8. While Respondent currently practices neurology, he previously owned and operated four weight loss clinics, at which he held DEA practitioner registrations. Tr. 22–23, 494, 504. The clinics were located in Elk Grove, Roseville, Stockton, and Gold River, California. GX 9; Tr. 22–23. On May 25, 2011, after the MBC suspended Respondent's medical license for a period of thirty days, GX 8, at 5; Respondent voluntarily surrendered each of these registrations. GX 9.

On June 23, 2011, Respondent applied for a new DEA registration at his clinics in Roseville and Elk Grove, California. GX 2, at 1–4. It is these applications which are at issue in the proceedings.

The MBC Investigations

In 2006, the MBC received information that Respondent's Gold River clinic was dispensing amphetamine weight-loss medications to patients without a physician being present. Tr. 17. In response, on June 2, 2006, an MBC Investigator (hereinafter, Investigator I) went to the Gold River clinic and posed as a prospective patient. *Id.* at 17–18. Upon meeting the receptionist, Investigator I was told that while Respondent had recently purchased the clinic, he had worked there ''for quite a long time.'' *Id.* at 18. The receptionist then discussed the clinic's weight-loss programs, telling Investigator I that she would see the doctor once, and after that, she ''could come back on a weekly basis'' and buy the controlled substances from the receptionist. *Id.* The receptionist also told Investigator I that Respondent had a schedule where he rotated through the clinics, spending a day at a clinic, but that the clinics were open even when Respondent was not present and that the patients could obtain their controlled substances even when he was not physically present at the clinic. *Id.* at 23.

Upon returning to her office, Investigator I determined that Respondent was subject to a probationary order based on his having falsified his application for a California medical license for failing to disclose a since expunged misdemeanor conviction for fraud.[1] *Id.* at 19; GX 3, at 3. Thereafter, Investigator I conducted an undercover visit at the Elk Grove clinic and saw Respondent. Tr. 24. Respondent performed what Investigator I characterized as ''a cursory examination'' and authorized the dispensing of seven tablets of Tenuate (diethylpropion), a weight-loss medication and schedule IV controlled substance. *Id.* Investigator I testified that she observed Respondent ''exiting out the back door'' and that he had actually ''left the premises'' before she was given the medication, which was given to her by the clinic's receptionist. *Id.* at 24–25; *see also id.* at 140 (''I watched him walk out the door before the medication was even handed to me by the medical assistant and so he wasn't even physically inside the building when that was handed to me.'').

At the hearing, Respondent vigorously denied that he had left the clinic before the medication was dispensed to Investigator I, stating ''absolutely not, absolutely not.'' Tr. 507. He then asserted that ''I clearly remember my patients, and I remember that Friday we were extremely busy'' and ''saw more than 70 patient [sic] that day.'' *Id.* Continuing, Respondent maintained ''[t]hat Friday, definitely didn't leave. She [the Investigator] mentioned I may have left to go to lunch, but that is not true because we can pull the record for that day. I think she came sometimes toward end of the shift. Sometime—it was 4:30 or 5:00 when she came to be examined.'' *Id.* at 508.

While the ALJ did not specifically state that she found Investigator I credible, she did find that ''the medication was actually given to [her] by an unlicensed member of the Respondent's office staff.'' R.D. at 6 (citing Tr. 24–25; 151–52). Moreover, Respondent did not pull the record for that day, and in any event, it seems most unlikely that Respondent remembered the Investigator's undercover visit, which had occurred six years earlier. Accordingly, as ultimate factfinder, I find Investigator I's testimony on the issue credible and therefore adopt the ALJ's finding that Respondent had left the premises when the controlled substances were dispensed to the Investigator and that Respondent allowed his unlicensed staff to dispense controlled substances.

Investigator I testified that under California law, Respondent was required to offer her the option of obtaining a written prescription for the drug, which she could fill at a pharmacy. *Id.* at 25. However, Respondent did not do so. *Id.*

Investigator I further testified that the label on the vial which contained the medication did not list Respondent's name or directions for taking the drug. *Id.* at 26. She further testified that Respondent did not advise her as to how to take the drug, its potential side effects, its contraindications and whether to take the drug with food. *Id.*

During the visit, Investigator I made an appointment for a second visit at Respondent's Gold River clinic. *Id.* at 27. On June 23, 2006, Investigator I went to the Gold River clinic. *Id.* at 28. Investigator I met an unlicensed medical assistant, who told her that her chart was not at the clinic. *Id.* The medical assistant weighed Investigator I and called Respondent on the phone; the medical assistant then dispensed another seven tablets of Tenuate to Investigator I. *Id.* However, the label on the vial neither listed Respondent's name, nor provided the correct clinic address; instead, it gave the address for his Elk Grove clinic. *Id.* at 29. At no point during the visit did Investigator I either see Respondent or talk with him on the phone. *Id.* at 30.

According to Investigator I, Respondent's medical assistant did not have authority under state law to dispense a drug to her. *Id.* at 31. Investigator I asserted that Respondent was aiding and abetting the unlicensed practice of medicine.[2] *Id.* Moreover, once again, Investigator I was not offered a written prescription for the drug. *Id.* Investigator I testified that under the terms of Respondent's probation, he was required to comply

[1] Respondent submitted the application in June 2000; he was convicted, following a no contest plea, on December 12, 1985. GX 3, at 3. According to the MBC's findings, Respondent had switched the price tag from a less expensive to a more expensive item while shopping; he was sentenced to one year of probation and to pay a fine of $100. *Id.*

[2] Regarding his practice of allowing his receptionist and medical assistants to dispense controlled substances, Respondent justified doing so on the basis that when he purchased the clinics, he had asked the CEO (and principal owner) of the company he purchased them from about this practice. According to Respondent, he was told ''that's how we've been doing it for 20 years. The medical assistants [are] only bag handlers. The medication is in the bag pre-prescribed. They don't know what's in it. All they do is just hand over the bag to the patient. Your presence may not be required.'' Tr. 511.

with all federal and state laws. *Id.* at 32; *see also* GX 3, at 4. Thereafter, Investigator I prepared her report and provided it to Respondent's probation monitor. Tr. 32. However, the probation monitor never communicated to Investigator I what action he took, if any. *Id.* at 32–33. On February 1, 2008, the MBC issued an order restoring Respondent medical license ''to clear status and free of probation requirements,'' with an effective date of August 13, 2007. GX 4.

Respondent acknowledged that during a visit by his probation monitor, the latter had observed Respondent's practice of allowing his unlicensed employees to dispense medications and had discussed the issue with him. Tr. 511. According to Respondent, the probation monitor told him that he would have to consult with the MBC's attorney and get back to him. *Id.* Respondent admitted, however, that after the probation monitor asked the board's attorney, the monitor had told him to stop this practice. *Id.* at 511–12.

However, in June 2008, the MBC received another anonymous complaint regarding Respondent. Tr. 35–36. As before, the complainant alleged that a patient only had to see Respondent once, and that after that, Respondent's staff would dispense controlled substances to the patient. *Id.* at 36. The investigation was also assigned to Investigator I. *Id.* at 35.

As part of her investigation, Investigator I reviewed the reports that Respondent's probation monitor had filed after the 2006 matter was assigned to him. *Id.* at 36. Investigator I testified that according to the reports, Respondent had assured the monitor that he ''was not allowing his staff to dispense medications,'' that he was following the labeling requirements, and that ''he was keeping the medications under lock and key'' and that only he had the key. *Id.*

Approximately a year later,[3] Investigator I again called one of the clinics and was told that Respondent had clinics in in Roseville, Stockton, Rancho Cordova and Elk Grove, as well as the days of the week each clinic was open. GX 6, at 6. She also discussed with the receptionist the Respondent's weight-loss program and was told that for $50, she would have a consultation and be provided with medications. *Id.* The receptionist further told Investigator I that after the initial consultation, the cost was $35, which included medications, and that no appointments were needed as she would not ''have to see the doctor again.'' *Id.*

Investigator I then obtained approval to conduct more undercover visits, and solicited the assistance of another MBC investigator (hereinafter, Investigator II) to perform the visits. Tr. 37. Subsequently, Investigator II made an appointment, and on December 3, 2009, went to the Gold River clinic, where after filling out various forms, she saw Respondent. GX 6, at 6–7. Respondent dispensed to her seven tablets of phentermine 30mg, a schedule IV controlled substance. *Id.* at 7.

On December 10, 2009, both MBC Investigators returned to the Gold River clinic. Investigator II saw a medical assistant named ''Pam,'' who asked her about her week, took her weight, and told her to meet her at the front desk. GX 6, at 7. The medical assistant then went to another room, obtained a vial of seven phentermine 30mg tablets, and upon returning to the front desk, provided them to Investigator II. *Id.* Investigator II paid $35 cash for the visit and medication. *Id.* While Respondent arrived at the clinic when Investigator II was paying for the medication, he did not speak to the Investigator about the medication that was being dispensed to her. GX 8, at 3 & 18.

Shortly thereafter, Investigator I entered the clinic to perform ''a drug audit and interview'' Respondent. GX 6, at 7. Investigator I observed that the door to Respondent's drug room was open and that the drugs were stored in a metal cabinet whose doors were open.[4] Tr. 43. Respondent had on hand diethylpropion, phentermine, and phendimetrazine, which were in pre-labeled vials and contained in clear plastic bags. *Id.*

Investigator I further testified that Respondent was ''required to keep the drugs in a locked, secure area that[] . . . has limited access by employees,'' and that while Respondent could designate an employee who had access to the room, this had ''to be done formally.'' *Id.* at 44. The Investigator then explained that the room ''was wide open and could be accessed by anybody in the office, including a patient.'' *Id.*

Respondent told Investigator I that his medical assistant was opening the medication room upon her arrival at the office, and that the room remained open until the clinic closed. GX 6, at 8. Respondent stated that the patients' medications were placed in envelopes which were labeled with their names, and that when a patient came in, the medical assistant would go to the drug room, obtain the vial, and write the instructions and patient's name on the label. *Id.* Respondent ''admitted [that] he was not present while his [m]edical [a]ssistants were getting medications and dispensing them to patients,'' and that he allowed them to do this ''with no direct supervision by him even when

[3] According to her report, Investigator I had also called one of the clinics in July 2008 and discussed the two weight-loss programs offered by Respondent, including the program which used medications. GX 6, at 6. According to the report, Investigator I was told that she would see the doctor at the first two visits and get medication, but would not need to see the doctor at the third visit and would still get medication. *Id.*

[4] Respondent disputed that the medicine cabinet was open when the Inspector asked to see the drug room, testifying that ''when I walked into the med room the cabinets were closed.'' Tr. 517. He further asserted that ''the door to the med room was closed, and it has a sign on the door. It says staff only. We open and walk in and she opened the cabinets, she photographs the medication and then close[sic] the doors.'' *Id.* Respondent did, however, admit that the door to the medication room was unlocked and that he did not always keep the door locked. *Id.* at 518.

However, in her Investigation Report, the Investigator wrote: ''On 12–10–09, I went to the clinic, performed a drug audit, and interviewed [Respondent]. I made a digital recording of [the] interview which occurred after I had looked at the drug. . . . I looked at the room where he was storing his drugs and noticed a metal cabinet with the doors open. There were clear plastic bags full of medication vials on the shelves.'' GX 6, at 7.

Moreover, the interview was subsequently transcribed. During the interview, Investigator I explained to Respondent that:

With regards to the secure area of how your prescriptions are being store—your medication. It means it has to remain locked; okay? It says here . . . that's Business and Professions Code 4170 and 4172 and the regulations say that an area that is secure—I'm going to read this to you—means a locked storage area within a physician's office. The area shall be secure at all times—locked and secure at all times. The keys to the locked storage shall be available only to staff authorized by the physician to have access thereto; which means that right now it should be locked. The cabinet should be locked or that door should be locked and every time someone goes into it, the only person that should have the key should be someone who's authorized to have the key.

Now, if you're seeing the patient and you've authorized . . . Pam to go in, she has a key also. You have a key. She goes in and gets the medication. You fill out the thing, the instructions and everything, and then it gets—you dispense it to the patient. Okay? Everything is done under your direct supervision. Okay? That area's not locked. Okay? It's been open since this morning obviously. And not quite like the front door. That has to be locked all the time; okay?

GX 5, at 58–59. Finally, in the Stipulated Settlement and Disciplinary Order, ''Respondent admit[ted] the truth of each and every charge and allegation in'' the Accusation which was attached to the Order. GX 8, at 3. On point here, the Accusation alleged that:

On or about December 10, 2009, a Board investigator performed a drug audit of the Gold River clinic, and noticed that Respondent maintained the drugs he dispensed in a metal cabinet which was unlocked and wide open. On this date, Respondent stated to the Board investigator that his Medical Assistant opens the medication cabinet when she opens the office, and that the room where the cabinet is located stays open and unlocked from that time on for access by the Medical Assistant and Respondent, and that it is locked when they finally close for the day.

GX 8, at 16.

he was in the building.'' *Id.* Investigator I told Respondent that ''he needed to dispense the medications and if he were not present, then they [the medications] could not be dispensed.'' *Id.* at 8–9.

According to Investigator I, Respondent did not ''have any inventory that he could show me for his dispensing.'' Tr. 43. More specifically, Investigator I explained that Respondent ''was unable to provide an inventory . . . of these medications, how may pills he had of each strength and each type of drug.'' *Id.* at 44. Investigator I further testified that ''it was absolutely impossible to tell what his inventory should be'' as ''[i]t was an absolute disaster.'' *Id.* at 45.[5] When Investigator I discussed the inventory requirements with Respondent, the latter stated that ''he had been doing proper inventories after he was . . . educated by his probation monitor, but it was difficult, inconvenient, and time consuming, so he stopped.'' GX 6, at 8. Investigator I told Respondent ''to use a separate log for each strength of each mediation showing shipment and dispensing and had given him an example.'' *Id.* at 12; GX 5, at 23–25 (transcript of December 10, 2009 interview).

Investigator I also testified that she observed that some of the medication vials had labels which listed Respondent's clinics other than the Gold River location. Tr. 46. Investigator I testified that while controlled substances were being shipped to a particular registered location (and were therefore labeled to reflect that location), Respondent acknowledged that he was taking medications from the shipments and transferring them to his other clinics. *Id.* at 47. However, Respondent did not document these transfers. *Id.*

Investigator I explained to Respondent that the labels on his vials were non-compliant, because they did not provide proper dosing instructions as they stated only ''1/d.'' GX 6, at 8. She also told Respondent that the labels needed to list the correct address of the clinic where the drugs were being dispensed and his name as the prescribing physician. *Id.* Finally, she explained that the labels needed to contain the manufacturer's name, as well as the color, shape, and imprint of the medications. *Id.*

In the drug room, Investigator I found several post office boxes. Tr. 50. When asked what their purpose was, Respondent said that he had bought them with the idea of putting the patients' medication in them; the patients would then be given a key, which they would use to open the box, and obtain their medication. *Id.;* GX 6, at 9. Upon hearing this, Investigator I told Respondent that this ''was a really bad idea.'' Tr. 50; GX 6, at 9. Investigator I also asked Respondent if he was offering his patients a written prescription. GX 6, at 9. Respondent admitted that he was not. *Id.*

On December 15, 2009, Investigator I received two emails from Respondent addressing several of the compliance issues. *Id.* at 11; *see also* RX 9. In the first email, Respondent provided a copy of a memorandum he had written to his staff. RX 9, at 1. He also stated that he would address any deficiency he discovered ''and make sure we are by the book.'' *Id.* The second email was a copy of an email Respondent sent to his distributor, addressing the labeling issues. *Id.* at 3. Investigator I reviewed the labels and told him that they were still missing essential information including the manufacturer's name and a description of the medication. GX 6, at 11; RX 9, at 4. Thereafter, Respondent contacted his distributor and asked that the labels include the missing information. RX 9, at 4.

On some date before January 20, 2010, when Respondent was shot during an attempted car-jacking, Respondent called Investigator I and told her that he had got[ten] everything squared away'' and to ''[p]lease come and re-inspect.'' Tr. 87–88. On January 28, Investigator I returned to the Gold River clinic to conduct a re-inspection. GX 6, at 11. Upon arriving at the clinic, Investigator I found that a Dr. Mericle was filling in for Respondent while he recovered from his injuries.[6] Tr. 88.

Investigator I entered the drug room and inspected Respondent's drug inventory. Therein, she noted that Respondent still had numerous vials of medication which had the older non-compliant labels and was told by a clinic employee that Respondent ''was using up the vials with the old labels.'' GX 6, at 12. While Investigator I found that Respondent had received additional medication since her previous visit, she determined that Respondent was still not accounting for the shipments in his inventory logs. *Id.* at 11. Moreover, Respondent had not created a separate log for each drug and strength, but rather was recording ''all the medications and strengths on one piece of paper.'' *Id.* at 12. *See also* Tr. 143 (''The dispensing was all on one log, and all the medications were included on that same log. . . . It was still all jumbled together so I was unable to reconcile the inventory at that time . . .'').

The Investigator further found that Respondent ''had no accounting for his inventory'' and that vials of medication had been placed in the post office boxes, notwithstanding that she had told him it was a bad idea. GX 6, at 12. And while the Investigator was taking an inventory, a patient walked into the drug room, used ''a key which was on her personal key ring'' to open one of the post office boxes, and retrieved medication.[7] *Id.; see also* Tr. 51. The Investigator further testified that the medication ''looked to be a controlled substance.'' Tr. 51.[8]

Later, Respondent's wife arrived at the clinic. GX 6, at 13. The Investigator

[5] Investigator I further testified that ''[t]o keep an accurate record he would have to document when he received a shipment of these pills and what the quantity was of that particular strength, and then as these were being dispensed to the various patients he would have to mark that down, because that's what pharmacies do, so he would always have a running total of what his current inventory is.'' Tr. 44–45.

[6] Respondent did not return to the clinic until June 2010, when he resumed practicing on a part-time basis. Tr. 542.

[8] Regarding the use of the mailboxes, Respondent testified that at the time of the December 10, 2009 MBC inspection, he had not started using them. Tr. 527–28. Continuing, Respondent explained that the MBC Inspector wanted ''the medication hand carried from me to the patient in the clinic'' and did not want the medical assistants to ''carry medication in their hand.'' *Id.* at 528. Respondent testified that while he agreed to ''follow [the Investigator's] instruction,'' he then thought: ''Why don't I implement a mechanism, by which medical assistant do not touch medication at all? So I came up with the idea of the mailbox.'' *Id.* at 528–29. Respondent then testified: ''So I installed the mailboxes in the med room, I assigned every patient to each mailbox and I gave them explicit instruction that they need to come in, go take their vital signs, be accompanied by medical assistant, access their mailbox,'' sign a card indicating that they received their medication, and be escorted back to the front desk by the medical assistant. *Id.* at 529. Respondent explained that ''[t]hat way medical assistant had nothing to do with medication. The patient comes in supervised, get their meds and they leave.'' *Id.*

Respondent then testified that after the MBC Inspector ''point out that this is bad idea, it got to go, and we stop using it.'' *Id.; see also id.* at 540 (asserting that on January 28, 2010, the p.o. boxes were not being used). He further explained that ''[a]t that time when [the Inspector] came back for reinspection, I was in ICU fighting for my life.'' *Id.* at 529. While it is not disputed that Respondent was hospitalized at the time of the reinspection, the incident in which the patient was observed entering the drug room unaccompanied and retrieving medication from the post office box occurred seven weeks after the Inspector told Respondent that this was a bad idea.

Moreover, the MBC Inspector testified that when she spoke with Dr. Mericle, the latter stated that ''he was running the office . . . just how [Respondent] set it up. . . . He was just seeing the patients and following the office procedures that [Respondent] had put in place.'' *Id.* at 131. Consistent with Dr. Mericle's statement, Respondent testified that ''Dr. Mericle wasn't fond of it [i.e., the use of the post office boxes] either.'' *Id.* at 542. And on cross-examination, Respondent testified that Dr. Mericle had ''refused to refill those boxes,'' even after the staff told Dr. Mericle that the boxes were empty and needed to be refilled. *Id.* at 757.

and Respondent's wife went into Respondent office to discuss the ongoing compliance problems. Tr. 126–27. Upon entering the office, the Investigator observed that there were three drug vials on Respondent's desk. Tr. 55–56. The vials appeared to have been returned by patients as their labels bore the names of patients. *Id.* at 56–57. Most significantly, the medications had not been secured. *Id.* at 57. While the Inspector testified that the label on one of the vials indicated that it contained phentermine, she conceded that she did not know exactly what drugs were in the vials. *Id.* at 90–91.[9]

While Respondent testified that ''we followed every single instruction of [the MBC Inspector] to the letter,'' Tr. 530, the MBC apparently thought differently. On April 13, 2010, it brought a new Accusation against Respondent based on the issues found during the December 2009 and January 2010 visits. GX 8, at 19.

The Accusation alleged five grounds for discipline. First, the Board alleged that Respondent had ''fail[ed] to adequately label the medication labels as observed by [its] [I]nvestigator on'' December 10, 2009 and January 28, 2010. *Id.* at 16. Second, the Board alleged that Respondent failed to properly secure controlled substances, noting that the medication room and drug cabinet were left open and unlocked throughout the day, as well as the incident in which a patient was allowed to enter the drug room and retrieve medication from a mailbox. *Id.* at 16. Third, the Board alleged that Respondent ''fail[ed] to maintain a current and accurate drug inventory.'' *Id.* at 17. Fourth, the Board alleged that Respondent failed to properly consult with his patients when dispensing drugs and that he failed to offer written prescriptions. *Id.* at 17–18. Fifth, the Board alleged that Respondent aided and abetted the unlicensed practice of medicine by allowing his medical assistants to dispense drugs without his ''direct supervision.'' *Id.* at 18.

On December 10, 2010, Respondent entered into a Stipulated Settlement and Disciplinary Order with the MBC; on April 8, 2011, the Board adopted the Order, which became effective on May 6, 2011. *Id.* at 1, 10. Therein, ''Respondent admit[ted] the truth of each and every charge and allegation in [the] Accusation.'' *Id.* at 3.

However, in his testimony, Respondent stated that he signed the Stipulation ''[p]artially unwillingly,'' because he ''was told both by [the] deputy AG and my attorney that [it was] a good offer.'' Tr. 723. Respondent then testified that he felt that ''[s]ome of'' the allegations were ''exaggerated'' by the MBC's Investigator, particularly those related to his allowing his unlicensed employees to dispense drugs when he was not present. *Id.* Respondent analogized his signing of the Stipulation to signing a traffic ticket to avoid being arrested and taken to jail. *Id.* at 731–32.

The Order suspended Respondent's medical license for thirty days and placed him on probation for three years. *Id.* at 5. The Order's probationary terms include that ''Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by [him], and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of'' California law. *Id.* The record was required to include the patient's name and address, date, ''the character and quantity of controlled substance involved,'' and ''the indications and diagnosis for which the controlled substances were furnished.'' *Id.* at 5. The Order further required that Respondent ''keep these records in a separate file or ledger, in chronological order.'' *Id.* Respondent was also required to take an ethics course, ''prohibited from supervising physician assistants,'' and required to obey all federal, state and local laws, and rules governing the practice of medicine in California. *Id.*

On the issue of Respondent's compliance with the 2011 MBC Order, the Government called Mr. TW, the probation monitor who had begun supervising him on April 25, 2012; Respondent called Ms. VG, his probation monitor from the effective date of the order until the case was transferred to TW. Ms. VG testified that Respondent had ''been in compliance'' with the terms of his probation during the period in which she was his monitor. Tr. 447. According to Ms. VG, if there was ''something that I needed to have him do . . . I gave him a deadline and I believe he met them.'' *Id.* at 448. Ms. VG also testified that any such issues did not warrant writing ''a noncompliance report.'' *Id.* However, on cross-examination, Ms. VG stated that Respondent's log of his dispensings and marijuana recommendations did not include the number and street name of the patients' addresses. *Id.* at 453; *see also* GX 8, at 5.

Ms. VG subsequently testified that in ''trying to refresh her recollections,'' she had reviewed Respondent's drugs logs and ''noticed there was no street number or street name'' and that she ''did not send [Respondent] a letter advising him he needed to correct that.'' Tr. 454. Ms. VG then acknowledged that she did not have ''a good'' reason for failing to notify Respondent that he was not in compliance. *Id.* at 455.

Mr. TW testified that on May 24, 2012, he met with Respondent and reviewed his marijuana recommendation log. *Id.* at 176. Mr. TW testified that upon reviewing the logs, he noticed that they did not ''have the full address of the patient'' and included only ''the city, state and zip code.'' *Id.* According to Mr. TW, Respondent stated that Ms. VG ''had reviewed'' his log and ''told him that he no longer had to keep the address of the patients on the controlled substance log.'' *Id.* at 178. When Mr. TW asked Ms. VG about this, she explained that while she had notice that the address was not being kept in the log, ''she allowed for that to occur in a sense [that] she would not put him out of compliance with it, but not that it was okay to not complete the log in its entirety.'' [10] *Id.* at 179.

Mr. TW told Respondent that ''he need[ed] to actually keep the log in full as per the wording in the order.'' *Id.* The next day, Mr. TW sent Respondent a letter ''inform[ing] him that he would be considered to be out of compliance by not keeping that information up to date.'' *Id.* at 179–80.

On or about May 30th, Respondent sent Mr. TW an email, to which he attached scanned copies of his marijuana logs. *Id.* at 180. Mr. TW testified that upon looking at the logs, ''they still didn't include all the information that was necessary'' under the Board's order. *Id.* Mr. TW then sent Respondent an email, in which he ''cited the verbiage in the order to let [Respondent] know exactly what we needed to have as far as his controlled substance log.'' *Id.* Mr. TW clarified that the missing information was the ''address information for the patient.'' *Id.* at 181. Explaining his continued failure to comply with the order, Respondent again cited the information he claimed to have received from Ms. VG. *Id.* He further testified that he did

[9] When asked about the vials, Respondent testified that they were ''very old'' bottles which used a different labeling format. *Id.* at 527. Respondent then testified that ''[t]he patient brought it back saying that I want the kind of medication as I was taking it four years ago.'' *Id.* Respondent did not maintain that the bottles had been returned after he was shot. *Id.*

[10] While Ms. VG's statement to Mr. TW was clearly hearsay, Respondent called Ms. VG to testify and could have questioned her (but did not) about whether she made the statements to which Mr. TW testified. Tr. 179.

not include that information in the log because ''[h]is patients didn't really want to release their information to the Medical Board.'' *Id.* However, following an exchange of emails, Respondent stopped working at the marijuana facility. *Id.* at 183.

The DEA Investigation

On May 23, 2011, the Sacramento DEA field office received a copy of the MBC's Order. Tr. 206. After verifying that Respondent's medical license had been suspended, on May 25, 2011, two DEA Diversion Investigators (hereinafter, DI or DIs) went to Respondent's Roseville office. *Id.* at 210. Upon their arrival, the DIs met Ms. GA, one of Respondent's medical assistants. *Id.* at 210–11. Ms. GA told the DIs that Respondent ''was out of the country.'' *Id.* at 211. The DIs asked Ms. GA if there was another doctor with whom they could talk and met Dr. Stephen Fisher, who also said that Respondent was out of the country. *Id.* Dr. Fisher then explained that he was working for Respondent on a temporary basis and had started on May 16th. *Id.* The DIs then told Ms. GA and Dr. Fisher that they needed to speak with Respondent and eventually they spoke to him by phone. *Id.* at 212.

One of the DIs told Respondent, who was still in the country, that because his state license had been suspended, he did not ''have authority to handle controlled substances.'' *Id.* at 213. Respondent agreed to meet the DIs later that day at his Roseville clinic; the DIs brought to the meeting four voluntary surrender forms, one for each of his registrations. *Id.* at 214.

Upon meeting Respondent, the DIs again explained that in order to hold a DEA registration, he was required to have state authority to handle controlled substances, and because his license had been suspended, he did not have current authority. *Id.* The DIs then told Respondent that he could either surrender his registration or they would pursue the issuance of an Order to Show Cause to revoke his registrations. *Id.* Respondent agreed to voluntarily surrender his registration and signed the four forms manifesting his consent. *Id.* at 214–15; *see also* GX 9.

The DIs then asked Respondent if he had controlled substances at any of his clinics. *Id.* at 216–17. Respondent acknowledged that he had controlled substances at the Roseville and Elk Grove clinics. *Id.* at 217. Because controlled substances must be stored at a registered location, and following the surrendering of his registrations, the clinics were no longer registered locations, the DIs allowed Dr. Fisher to transfer his registration to the Roseville clinic and Respondent to transfer the controlled substances located at the clinic to Dr. Fisher. *Id.* However, because Respondent was no longer registered at his Elk Grove clinic, and had no doctor who could become registered there, the DI's told Respondent that they would have to take possession of these controlled substances and arranged to meet at the Elk Grove clinic the following day. *Id.*

The next day, the DIs went to the Elk Grove clinic, met another of Respondent's medical assistants, Michelle Garcia, who showed them the controlled substances. *Id.* at 218. The drugs, which included phentermine, phendimetrazine,[11] and diethylpropion, were stored in a locked closet, on a seven to eight-foot high bookshelf. *Id.* at 219. The DIs also found that nutritional products such as protein shakes and bars were stored in the closet, but they were not intermingled on the same shelf with the controlled substances. *Id.*

According to the DI, the manner in which the controlled substances were stored did not comply with the Agency's regulations. First, the closet was not a secure and substantially constructed cabinet as required by 21 CFR 1301.75(b). *Id.* at 220. Second, non-controlled substances were stored in the closet with the controlled substances. *Id.*

The DI further testified that while at the Elk Grove clinic, he and his partner took a physical inventory of the controlled substances on hand, which they then compared to the daily medication log maintained by Respondent and which provided a running inventory. *Id.* at 222. Ms. Garcia provided the DIs with the ''inventory sheet'' for the close of business on May 21, which was the last day the Elk Grove clinic had been open. *Id.* The DIs counted the drugs on hand, with Ms. Garcia witnessing the count, and determined that the numbers ''were not at all close'' to those on the inventory sheets. *Id.* at 223. However, having reviewed the data, the counts for two of the drugs were off by only four dosage units each, one was off by nine dosage units, one was off by thirteen dosage units, and the remaining three were off by twenty-four, thirty-four and thirty-five dosage units respectively.[12] GX 10, at 3–5.

On May 31, the DIs went to the Roseville clinic and counted the controlled substances on hand. GX 10. Upon comparing the counts with Respondent's daily inventory record, four of the six drugs had discrepancies of seven dosage units or less; the remaining two drugs had discrepancies of twenty-seven and thirty-three dosage units. *Id.* at 6–7.

While at the Roseville clinic, the DIs also found a box labeled ''Gold River,'' which contained more controlled substances and were told that the drugs had been moved to the Roseville clinic because the Gold River clinic had ''recently . . . closed for business.'' Tr. 229. There was, however, no documentation for the transfer. *Id.* at 229–30. Upon counting these drugs and comparing them with the daily inventory for the last day that the Gold River clinic had been open for business, the DIs determined that there were substantial shortages of three drugs: 3,000 dosage units of phentermine 37.5mg; 1,011 dosage units of phentermine 30mg; and 1,021 dosage units of phendimetrazine 35mg.[13] *See* Tr. 229, GX 10, at 1–2.

Subsequently, the DIs decided to perform an audit of Respondent's controlled substance activities at the Elk Grove, Roseville and Gold River clinics. The DIs issued a subpoena for two years of Respondent's records, obtained his daily inventory logs, his dispensing logs, and his receipts from distributors. Tr. 390, 392–93. Using Respondent's daily inventory logs for various dates in late November 2010,[14] a DI added the controlled substances Respondent had received from his distributor to arrive at the total amount Respondent was accountable for of each drug by dosage unit strength at each of his registered locations; using the closing inventory figures, the DI added the amounts of each drug which Respondent had either dispensed or transfered to calculate the total amount he could account for. Tr. 391–94. The DI then compared the total amounts for each drug Respondent was accountable for, with the totals for which he could account, and prepared a chart for each of the three clinics. *Id.* at 387. In addition, a senior DI then reviewed the DI's audit. *Id.* at 391.

According to the DI, at Elk Grove, Respondent had shortages of 8,410 dosage units of phentermine 37.5mg;

[11] The DI testified that there was also a small amount of Bontril, which is a branded form of phendimetrazine. *Id.* at 219.

[12] The actual count for phentermine 37.5mg (3194) was off by only nine dosage units. See GX 10, at 3, 5.

[13] Two other drugs found in the Gold River box had discrepancies of seven and sixteen dosage units; the remaining drug had no discrepancy. *See* GX 10, at 1–2.

[14] The opening and closing dates of the audits were November 20, 2010 and May 26, 2011 for the Elk Grove clinic; November 22, 2010 and May 31, 2010 for the Roseville clinic; and November 23, 2010 and May 31, 2011 for the Gold River clinic. *See* GX 11.

2,316 dosage units of phentermine 30mg; 6,637 dosage units of phendimetrazine 35mg; 252 dosage units of phendimetrazine 105mg; and 906 dosage units of diethylpropion 25mg. GX 11, at 1.[15] At Gold River, Respondent was short 3,915 dosage units of phentermine 37.5mg; 1,046 dosage units of phentermine 30mg; 313 dosage units of phendimetrazine, and 390 tablets of phendimetrazine 105mg.[16] GX 11, at 1. And at Roseville, Respondent was short 10,740 tablets of phentermine 37.5mg; 3,535 tablets of phentermine 30mg; 5,361 tablets of phendimetrazine 35mg; 812 tablets of phendimetrazine 105mg, and 595 tablets of diethylpropion 25mg.[17] Respondent thus had shortages totaling more than 40,000 dosage units.

In his testimony, Respondent challenged the accuracy of the DEA audit and offered two charts into evidence.[18] *See* RXs 14 & 15. The first chart (RX 14), which is labeled ''Dispensing/Inventory Log,'' purports to list for each clinic, Respondent's monthly dispensings of each drug (by strength), the shipments received (presumably during the audit period), and closing inventory.[19] The second of these exhibits (RX 15), lists on a monthly basis for the years 2010 and 2011, the quantities for each drug (and strength) that he received from his distributor, but does not break down the quantities distributed to each clinic. As for the list of Respondent's receipts (RX 15), which only lists the month, drug, and quantity, and not the actual date of receipt; with respect to several of the drugs (phentermine 37.5, phentermine 30, and phendimetrazine 35), the DI's figures actually charged him with receiving smaller quantities than are listed on this document.[20]

In his testimony, Respondent disputed the accuracy of the Government's figures for the amounts of the various drugs he dispensed. Tr. 808–09. Regarding the Elk Grove clinic, Respondent maintained that he had dispensed 11,207 dosage units of phentermine 37.5, and that this was based on his dispensing records. *Id.* at 809. By contrast, the Government's audit found that he had dispensed only 2,754 dosage units. GX 11, at 1. Regarding the discrepancy, Respondent testified:

> I mean, how could in six months in such a busy office only 2,754 pills be dispensed? That's only two bags of medication in six months while I in that same office handed over 11,207 pills. Not only are [sic] patient charts and logs show that, also the expense log in the patient's chart where the patient paid for it, and it matches with that, our revenue matched with that. So we did sell that many pills.

Tr. 842. Indeed, for many of the drugs, Respondent's figures for the amounts dispensed (which are listed on his ''Dispensing/Inventory Log'') were three to five times greater (and sometimes more) than the Government's.[21] *Compare* GX 11 *with* RX 14.

Moreover, on the Dispensing/Inventory log, Respondent listed the shipments he had received during the audit period for each of the drugs, including the total he had received for all three clinics.[22] With respect phentermine 37.5, Respondent listed his total receipts as 5547 dosage units. RX 14. Yet even subtracting out all of the 5,995 dosage units Respondent received in November 2010, RX 15 still lists shipments totaling 36,826 dosage units. *See* RX 15. As for phentermine 30, Respondent listed his total receipts as 1,852 dosage units. *See* RX 14. Yet, according to RX 15, Respondent received a total of 13,997 dosage units during the audit period. RX 15.

With respect to phendimetrazine 35, on the Dispensing/Inventory log, Respondent listed his total receipts as 664 dosage units. *See* RX 14. Here again, even subtracting out all of the 3,996 dosage units Respondent received in November 2010, he still received a total of 13,000 dosage units during the audit period. RX 15. And as for phendimetrazine 105, Respondent listed his total receipts as 390 dosage units. *See* RX 14. Yet, according to RX 15, Respondent received a total of 3,000 dosage units during the audit period. *See* RX 15.

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[15] At Elk Grove, Respondent had small overages of thirty-five dosage units of diethylpropion 75mg and four dosage units of Bontril 105mg. GX 11, at 1.

[16] At Gold River, Respondent also had a shortage of fourteen dosage units of diethylpropion 25mg, and seven dosage units of dielthylpropion 75mg. GX 11, at 2.

[17] At Roseville, Respondent had a small overage of seven dosage units of Bontril 105mg. GX 11, at 3.

[18] At the hearing, Government counsel objected to the introduction of the charts because they were not disclosed prior to the hearing, and thus he had ''no effective way of cross-examining'' Respondent on them. Tr. 771. When Respondent's counsel subsequently sought to enter the exhibits, Government counsel renewed his objection. *Id.* at 851. The ALJ overruled the Government's objection, reasoning that because the Government opened the door, it could not claim prejudice. *Id.*

I conclude that the ALJ properly overruled the Government's objection. A review of the record shows that in response to Respondent's testimony that he believed the DEA audit had ''tremendous inaccuracies,'' Government counsel asked if he had a chart and if he had brought it to the hearing. *Id.* at 760. Respondent answered affirmatively, and after the exhibits (RX 14 and 15) were marked, Government counsel proceeded to ask Respondent several questions regarding the charts, including how his figures compared with those on two DEA forms, a receipt for seized items (RX 11), and the closing inventory form (GX 10), before moving on. Tr. 768–70. Having proceeded to question Respondent regarding these exhibits, the Government opened the door to their admission and the ALJ properly denied the objection.

[19] While the closing inventories were taken after Dr. Fisher took over Respondent's Roseville clinic, Respondent testified that after his suspension became effective, medication was no longer being dispensed at the clinic. *See* Tr. 569 (''The period where [the DI] audited the clinic is to the point that the medication was basically last day dispensed, which is prior to my suspension at the end of May of 2011. From the time of my suspension thereon to this date, they do not carry medication in the office. They issue prescription pad to the patient and the patient goes to the pharmacy.'').

Notably, Respondent makes no claim that Dr. Fisher diverted any of the drugs at the Roseville clinic and the counts taken during the closing inventory were typically off only by a small number of tablets from the figures listed in this clinic's Daily Inventory.

[20] More specifically, the Government's audit found that Respondent received 39,941 dosage units of phentermine 37.5, *see* GX 11, while the shipments listed in Respondent's chart for November 2010 through May 2011, total 42, 821 dosage units. *See* RX 15. The discrepancy may be explained by the fact that according to Respondent's chart, 5,995 dosage units of this drug were received in November 2010. RX 15, at 2–3. However, Respondent's chart does not set forth what quantities may have been received prior to the starting date (November 21, 2010) of the Government's audit. *See* RX 15.

With respect to phendimetrazine 35, the shipments listed on RX 15 for November 2010 through May 2011 total 16,996 dosage units, of which 3,996 dosage units were received during the month of November. RX 15. By contrast, the Government found that Respondent received 10,118 dosage units during the audit period.

With respect to phentermine 30, Respondent's chart lists no shipments as having been received in November 2010 and the shipments received between December 2010 and May 2011 total 13,997 dosage units. RX 15. By contrast, the Government's audit found that Respondent received 11,997 dosage units. *See* GX 11.

With respect to phendimetrazine 105 and diethylpropion 25, the Government's figures match the shipments listed on RX 15.

[21] As other examples, Respondent asserted that at his Elk Grove clinic, he dispensed 3,990 dosage units of phentermine 30 and 4,872 dosage units of phendimetrazine 35; the DI found that he dispensed only 850 dosage units of phentermine 30 and 213 dosage units of phendimetrazine 35. *Compare* GX 11, at 1, *with* RX 14. At the Roseville clinic, Respondent asserted that he dispensed 17,500 dosage units of phentermine 37.5; 4,956 dosage units of phentermine 30; and 5,397 dosage units of phendimetrazine 35 mg . RX 14. By contrast, the Government's audit found that he dispensed only 4,965 dosage units of phentermine 37.5; 909 dosage units of phentermine 30 mg; and 377 dosage units of phendimetrazine 35mg. GX 11.

At Gold River, Respondent assert that he dispensed 7,630 dosage units of phentermine 37.5; 2,590 dosage units of phentermine 30; and 3,339 dosage units of phendimetrazine 35. RX 14. By contrast, the Government's audit found that he dispensed only 2,103 dosage units of phentermine 37.5; 822 dosage units of phentermine 30mg; and 355 dosage units of phendimetrazine. GX 11.

[22] Respondent testified that the ''[s]hipment in'' lines on RX 14 reflects ''the amount of shipment they [Calvin Scott, his distributor] made to the office,'' and that these figures were ''based on'' RX 15. Tr. 805.

While, on cross-examination, Respondent admitted that he had never previously conducted an audit, he nonetheless maintained that ''my math is good.'' Tr. 807. However, the disparities between the total of quantities of the monthly shipments listed on RX 15 and the quantities Respondent listed on the Dispensing/Inventory log (RX 14) as his incoming shipments suggest the opposite. Indeed, the inconsistencies between these figures are of such a magnitude as to call into question the reliability of any of the data contained in Respondent's Dispensing/Inventory logs. RX 14. I therefore decline to give any weight to the dispensing data offered by Respondent and adopt the findings of the audit performed by the DI.

As found above, upon the suspension of his medical license, Respondent initially hired Dr. Stephen Fisher to cover his practice. However, according to Respondent, following the MBC's adoption of the Stipulated Settlement and Disciplinary Order, the MBC Probation Monitor (Ms. VG) met with him to discuss the ''dos and don'ts'' while his medical license was suspended. Tr. 552. For whatever reason, Ms. VG only allowed Dr. Fisher to work at the clinic for ''three days . . . from [the] beginning of [Respondent's] suspension'' after which Respondent was required to find ''a bona fide locum tenens company.'' Tr. 553.[23] Respondent then contracted with a company known as Staff Care to provide a locum tenens physician for the remainder of his suspension. *Id.*

On June 22, 2011, after the suspension of his state license ended, Respondent resumed practicing medicine. *Id.* at 576. On that day, Respondent ''saw almost [thirty-six] patient[s].'' *Id.* at 577. Having surrendered his DEA registrations, Respondent could not lawfully either dispense or prescribe controlled substances to his patients. GX 1, at 1.

The Government introduced into evidence copies of thirteen phentermine prescriptions for Respondent's patients which were called in to pharmacies on that day. *See* GX 12; Tr. 373, 385. Each of the prescriptions listed Dr. Fisher as the prescriber. *See* GX 12. All but two of the prescriptions, however, listed the name of one of Respondent's employees as the person who had called in the prescription; each prescription also listed the phone number of one of Respondent's clinics.[24] *See id.*; *see also* Tr. 413–14.

The next day, the DI received a phone call from Dr. Fisher. *Id.* at 364. After reporting that his prescription pad had been stolen, Dr. Fisher explained that Respondent had seen the patients and that prescriptions had been called in under his (Dr. Fisher's) DEA registration; Fisher then ''asked if this was legal.'' *Id.* The DI told him to ''stop immediately.'' *Id.*

The DI further testified that he had received a phone call that same morning from Ms. VG, who was then also Respondent's probation monitor.[25] *Id.* at 366. VG told the DI that ''she had also gotten a call from Dr. Fisher stating that [Respondent] had used his . . . DEA registration'' without his authorization. *Id.*

In her testimony, Ms. VG corroborated that she had received a phone call from Dr. Fisher ''the day after [Respondent's] suspension was lifted.'' *Id.* at 457. VG further testified that Fisher told her that Respondent ''had come into his office with some drug logs of patients, that he had used Dr. Fisher's DEA . . . number to prescribe for them, and he asked me if that was okay.'' *Id.* VG then ''asked Dr. Fisher if she had seen those patients that day''; Fisher ''said no'' and that he had been at the 420 clinic ''that whole day.'' *Id.* at 458. Moreover, Fisher told VG ''that the first he had . . . heard of it was when'' Respondent apparently brought the drug logs to Fisher's office and ''told him he'' had ''used his number.'' *Id.* When asked how she interpreted Fisher's statement, VG testified that ''[i]t seemed he was unaware.'' *Id.; see also id.* at 463 (''I feel that he [Fisher] was unaware. I would testify to that.'').

Later that morning, Respondent showed up at the DEA office. *Id.* at 360. According to the DI, while initially Respondent asked whether the DIs ''could expedite his DEA registration,'' he then told the DIs that the day before, ''he had seen patients at his Roseville clinic and that Dr. Fisher had called in the prescriptions under Dr. Fisher's DEA number.'' *Id.; see also id.* at 398. However, later in the conversation, Respondent stated that the prescriptions were called in by both his medical assistants and Dr. Fisher. *Id.* at 361.

During the meeting, Respondent mentioned that physician assistants and nurse practitioners can ''see patients on behalf of a doctor and write prescriptions.'' Tr. 403. The DI testified that while physician assistants and nurse practitioners can do this, ''they have to be an agent of the practitioner,'' as well as have their own DEA registration and be ''authorized to handle controlled substances.'' *Id.* The DI then maintained that Respondent could not act in this manner as he was not registered and because he owned the clinics, ''he was not an agent of Dr. Fisher.'' *Id.* at 405.

The DIs then went to interview Dr. Fisher, who was working at an entity (Sacramento 420 Evaluations), which provided medical marijuana evaluations. *Id.* at 408. Upon their arrival, Fisher told the DIs that he had just spoke with Respondent, and that Respondent had told him that he had talked to the DIs and ''that it was okay to continue using his DEA number.'' According to the DI, when they initially ''asked Dr. Fisher if he had personally called in all the prescriptions,'' Fisher denied having called in any of them and said that Respondent's medical assistant did so. *Id.* at 366–67. Fisher further told the DIs that while he may have previously treated some of the patients, the day before he was working at the 420 clinic and not at Respondent's Roseville clinic. *Id.* at 367. However, the DI did not determine whether Dr. Fisher had ever actually seen these patients. *Id.* at 420–21.

The DI testified, however, that subsequently, Dr. Fisher's story as to whether he had authorized the prescriptions changed ''back and forth.'' *Id.* at 368; *see also id.* at 415 (testimony of DI that Fisher changed his story ''multiple times'').[26] Moreover, during the interview, VG called and was placed on the speaker phone. *Id.* at 368–69. However, Fisher then stated that ''he did authorize'' the prescriptions the day before, ''but from that point on, they were no longer authorized.'' *Id.* at 369. The DI—in response to the Government's question—then acknowledged that Fisher had changed his story. *Id.* Moreover, when asked by the Government whether Fisher appeared coherent, the DI replied ''No'' and explained that when Fisher was asked about the prescriptions, he could

[23] There was testimony suggesting that Dr. Fisher was on probation at the time of Respondent's suspension, and that because a probationer cannot supervise another probationer, the former could not work for Respondent, who remained the owner of the clinic. Tr. 365, 370. However, according to Ms. VG, she ''advised Dr. Fisher that a non[-]licensed physician cannot pay, cannot hire a licensed physician, and during the time of [Respondent's] suspension, Dr. Fisher could not work for him hourly.'' *Id.* at 458.

[24] The DI subsequently testified that to his knowledge, Respondent did not ''call in any prescriptions himself.'' Tr. 415.

[25] The DI testified that he received the phone call on June 22, before he received a visit from Respondent. Tr. 366. However, all of the prescriptions were dated June 22. GX 12.

[26] Regarding the interview, the DI further testified that ''it was pretty obvious that he was being deceptive, as in he was trying to change [his story] based on whatever we wanted to hear or whatever wouldn't get him in trouble. Just being honest, it seemed like he was making up a story.'' Tr. 416.

not recall whether this incident had occurred the day before or several days earlier. *Id.* The DI also testified that there were ''other things that happened . . . that had given us the impression that he [Fisher] wasn't completely aware of what was going on.'' *Id.*

Regarding this allegation, Respondent testified that upon arriving at his clinic on the morning of June 22, he called Dr. Fisher and asked him if he could come in and cover the clinic. Tr. 576. However, Dr. Fisher told Respondent that he could only cover the clinic until 11 a.m. because his shift at the 420 clinic started at 11:30. *Id.* After Fisher suggested that Respondent cover the clinic himself, Respondent stated that that would not work. *Id.* Respondent then proposed that he would see the patients, and that while he could not ''prescribe appetite suppressants to them,'' Fisher had ''seen some of'' them; Respondent would then report the patients' conditions to Fisher, and if the latter agreed, ''then [Fisher would] authorize [Respondent's clinic] to call [a prescription] in for [Fisher] or [Fisher could] call it in'' himself. *Id.* at 576–77.

According to Respondent, Dr. Fisher ''agreed'' to the arrangement. *Id.* at 577. Respondent told Fisher that when he was ''done seeing these patient[s],'' he would call Fisher and report the patient's condition and ''have the staff run the vital sign of the patient with you, and then you authorize them to call it in for you.'' *Id.* Respondent testified that when they were done with the patients, he called Fisher and ''informed [him] of these patients'' and Fisher then spoke with Genevieve, one of the medical assistants, and told her that because he was ''on probation, a log of these patients must be made'' and ''must be done on the board probationary unit forms.'' *Id.* Respondent then testified that his medical assistants ''reported the patients to'' Fisher, *id.* at 578, that Fisher ''recalled some of them,'' *id.*. at 577, and Fisher ''authorized them to call in the'' prescriptions. *Id.* at 578. Respondent also testified that his staff created a log of the prescriptions on probation unit forms and gave them to VG the following day. *Id.* at 579.

When asked whether he was trying to circumvent his lack of a DEA registration, Respondent testified that he ''deeply'' regretted his actions and that it ''was a big mistake done that day by me.'' *Id.* He added that ''[i]t should not have ever have happened, and it is not going to happen.'' *Id.*

Additional Testimony of Respondent

Regarding the MBC Investigations, Respondent acknowledged that prior to the December 10, 2009 visit, sometimes he was not onsite when medication were dispensed. Tr. 535. He further stated that after that visit, he changed that practice so that at ''lunchtime the clinic's completely closed . . . and nobody would see any patients because the doctor . . . would not be in the premises.'' *Id.* at 536. Regarding his recordkeeping, Respondent testified ''that we should have had the daily inventory of what is in and what [was] going out,'' and that ''we were in error or it was not complete enough.'' *Id.* Respondent further stated that he began to implement this change ''immediately after'' the inspection and that he kept the logs ''in the office'' where ''the staff did not have access to it [sic] because I was afraid [of] any tampering or loss of logs.'' *Id.* at 536–37.

Respondent testified that when the MBC Inspector returned on January 28, 2010, the staff did not have the logs ''because I had them with me.'' *Id.* at 537. However, he then testified that implementing everything ''was work in progress.'' *Id.* Subsequently, Respondent testified that the inventory sheets were ''sitting on top of the cabinet in the med room'' and that ''it's easy for anybody who wants to inspect [to] walk in there and see those inventory sheets.'' *Id.* at 845.

Later in his testimony, Respondent denied that he bore responsibility for the MBC's finding that on January 28, 2010, his logs did not indicate the different drug strengths. *Id.* at 824; GX 8, at 17. Respondent asserted that ''[w]homever covers the shift that day is responsible, and by that time Dr. Mericle was covering the shift for almost a week.'' Tr. 824–25.

Respondent also asserted that upon returning to practice, he ''reimplemented the strict inventory control [of] scheduled substances shipped to us, logging it side by side with the medication dispensed, and keep [sic] track of daily inventory to make sure we are balanced and in compliance.'' *Id.* at 544. He also apologized for having medications, which were labeled for clinics other than the clinic where they were to be dispensed, explaining that when they ''were short in one office . . . we brought medication from another office.'' *Id.* Respondent further testified that while he complied with the Inspector's labeling recommendation, he ''still had existing medications with the label from another clinic.'' *Id.* at 545. While Respondent testified that the Inspector told him to print new labels and place them on the bottles, he then acknowledged that this ''probably'' did not happen until ''after [he] resume[d] working'' and ''the bottles were dispensed.'' *Id.* at 546–47. Respondent explained that he ''noticed that that's what they're doing, but as long as it was labeled, I didn't see anything wrong with that.'' *Id.* at 547. And when asked whether, ''[i]n hindsight, [he saw] anything wrong with that,'' Respondent answered:

> I think . . . if the inspection is taking place, anybody coming to inspect the med room and look at those drugs and don't have label on it, it may relay impression that we still have this big mess going on, you know? Should not have been there. They should be properly labeled and in there.

Id.

More generally regarding his compliance issues, Respondent testified that he had ''learned quite a bit'' and that ''this is a very humbling experience.'' *Id.* at 584–85. He further stated that ''I definitely ask question first and then commit to an action, and until I don't have a clear answer, I don't have clear path that is in accords with the laws of the land . . . I would not commit to it.'' *Id.* at 585. Respondent added that he was ''still learning and I'm going to commit myself to a better process.'' *Id.*

When asked if he had trouble understanding the statutes, and what he would do to aid in himself in this regard, Respondent bemoaned that ''[i]t is very difficult'' and that ''legal language or all these quotes are not easy to understand[]'' and ''need[ed] little further elaboration and explanation.'' *Id.* He then stated that this was ''not the excuse,'' and that if he did not ''understand,'' he would ''have to refer to sources that . . . do know it.'' *Id.* at 585–86. When asked what other changes he would make, Respondent testified that he ''will not be doing weight management anymore'' and ''will not have local pharmacy,'' meaning that he would not have ''scheduled drug[s] in the office'' because there is ''too much paperwork'' and ''too much responsibility.'' *Id.* at 586. Respondent then stated that he only wanted authority to write prescriptions. *Id.* at 587.

Respondent further testified that he was ''uninformed'' about the rules, but that it was his own ''fault.'' *Id.* at 592. He then asserted that he will ''take every measure to make sure I'm in compliance with'' the MBC and DEA's rules, and that ''there is a time that one has to admit to his guilt and move on, you know?'' *Id.*

On cross-examination, Respondent admitted that in 2006, his then-probation monitor had discussed with him his use of unlicensed personnel to dispense controlled substances. *Id.* at

716–17. He further admitted that he told the first probation monitor that he would change his clinics' days and hours of operation to ensure that the clinics were open only when a physician was present and that he would no longer allow his staff to dispense medications. *Id.* at 718. Later, he answered ''yes'' when asked whether he had assured his first probation monitor that he would supervise the dispensing of medications. *Id.* at 782. However, he subsequently testified that while he understood the probation monitor's advice to mean that he must be physically ''present in the office,'' this did not mean the same as ''direct supervision'' of the medical assistant. *Id.* at 815–16. Respondent then maintained that the probation monitor had never told him that he needed to be in the same room or watch his assistants as they dispensed medications. *Id.* at 816. Respondent asserted that he ''made sure that [he was] in the office,'' but that in 2009, there were, in the words of his counsel, ''a couple of occasions that slipped through in Gold River.'' *Id.* at 817. Respondent also denied telling his first probation monitor that he had the only key to the drug room. *Id.* at 719.

As for the allegations that gave rise to the second MBC investigation (that Respondent was allowing his unlicensed staff to dispense medication when he was not present), Respondent only ''partially'' agreed with them. *Id.* at 720. More specifically, he asserted that the unlicensed staff was not free to dispense medication and that he had pre-dispensed the medication by placing it a manila envelope which was sealed, and that there was a notation written on the back. *Id.* He also disputed the testimony of the MBC Investigator that he was not present when medication was dispensed to Investigator II on December 10, 2009 visit, testifying that he was in the clinic when she received the medication. *Id.* at 721–22. According to Respondent, the allegation was exaggerated, *id.* at 723, and that he directed his receptionist to ask the patient to count the medications and had ''video to show'' this.[27] *Id.* at 780. While Respondent eventually, but reluctantly, admitted that his clinics were dispensing drugs when he was not present, *id.* at 727, he continued to deny that he was not present when the MBC Investigator obtained controlled substances on December 10, 2009. *Id.* at 780.

Respondent also disputed the MBC's findings that he failed to properly secure controlled substances. *Id.* at 735. Indeed, Respondent asserted that MBC Investigator had ''opened the [drug] cabinet, photographed it . . . and later she presented to the board that this is how she found it.'' *Id.* at 736. Respondent then asserted that ''the door to the hallway is always closed,'' and that ''[w]e never leave the door to the med room wide open, the cabinet wide open.'' *Id.*

Respondent also denied that at the time of the May 2011 inspection, he was still violating regulations that required him to store his controlled substances in a substantially constructed and securely locked cabinet. *Id.* And when asked by the Government whether he was familiar with the Code of Federal Regulations, Respondent answered ''[n]o.'' *Id.* at 737.

Regarding whether he had discussed with the MBC Investigator the use of the mail boxes and her having told him that it was a bad idea, Respondent testified that he did not recall the conversation. Tr. 752. Moreover, he did not recall whether he told anyone about the boxes. *Id.* at 753. Regarding the January 28, 2010 incident, in which a patient entered the drug room unescorted and retrieved medication from one of the boxes, Respondent initially testified that the patient ''was never left alone,'' and that to his knowledge the boxes were not being used when he was not present. *Id.* at 756. However, he then acknowledged that he had set up the practice and that it was still in place when he was shot. *Id.* And still later, Respondent testified that he ''knew from the staff . . . that the patient went to the boxes and there was nothing there because those things need to be replenished after each visit.'' *Id.* at 833.

While Respondent admitted that he failed to maintain accurate drug inventories as alleged in the 2010 MBC Accusation, he denied that the problem was still ongoing at the time of the May 2011 DEA inspections. *Id.* at 759. Moreover, even though he was not physically present when the DEA Investigator took a physical inventory, which was witnessed by one of his employees, Respondent asserted that the DEA counts were inaccurate, *id.* at 762, and that ''my inventory is much more accurate than what [the DI] did.'' *Id.* at 787. However, he then admitted that one of his employees had verified the DEA counts. *Id.* at 762.

Respondent further denied that he had ever told the MBC Inspector that maintaining inventories was difficult, inconvenient and time consuming. *Id.* at 773–74. When confronted with his having stipulated to the truth of the allegation in the MBC Order, Respondent stated that agreed to sign the Order because as part of a ''package offer'' and that this ''was minor compared to the big picture.'' *Id.* at 774. However, Respondent then acknowledged that inventories must be done ''accurately,'' that he ''made a mistake'' and asserted that he was ''willing to take any action'' to ''remedy . . . the oversight.'' *Id.* at 775.

Respondent testified that he had not taken any courses on the proper handling of controlled substances, stating that ''[i]t was not required.'' *Id.* at 796–97. He also stated that he had never inquired as to whether there were any such courses available. *Id.* at 797.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that ''[t]he Attorney General may deny an application for [a practitioner's] registration . . . if [he] determines that the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA directs that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are . . . considered in the disjunctive.'' *Robert A. Leslie*, 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to deny an application for a registration. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Where the Government has met its *prima facie* burden of showing that issuing a new registration to the applicant would be inconsistent with the public interest, the burden then shifts to the applicant to ''present sufficient mitigating evidence'' to show why he can be entrusted with a new registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))).

[27] Respondent did not, however, produce any such video. Tr. 780.

''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Cuong Tron Tran,* 63 FR 64280, 64283 (1998); *Prince George Daniels,* 60 FR 62884, 62887 (1995). Because of the authority conveyed by a registration and the extraordinary potential for harm caused by those who misuse their registrations, DEA places significant weight on an applicant/registrant's candor in the proceeding. *See Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination).

Having considered all of the factors, I hold that the Government has met is *prima facie* burden of showing that Respondent has committed acts which render his registration ''inconsistent with the public interest.'' 21 U.S.C. 823(f). I further hold that Respondent has not rebutted the Government's *prima facie* case and reject the ALJ's recommendation that I grant Respondent a restricted registration. Accordingly, Respondent's applications will be denied.

Factor One—The Recommendation of the State Licensing Authority

While not specifically citing this factor, the Government argues that it ''has established a basis for the denial of Respondent's pending applications . . . under [21 U.S.C.] 824(a) based upon . . . the previous suspension of his state medical license.'' Gov. Post-Hrng. Br. 28. The Government is mistaken, because to exercise the authority granted under section 824(a)(3), the Agency must find not only that a registrant or applicant ''has had his State license or registration suspended, revoked, or denied by competent State authority,'' but also that the registrant/applicant ''is no longer authorized by State law to engage in the . . . distribution[] or dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). As the Government subsequently acknowledges, Respondent's state license has been reinstated, and while he is subject to various probationary terms, none of those terms either prohibit or limit his authority to dispense controlled substances in the course of professional practice. Gov. Post-Hrng. Br. 28. Respondent therefore meets the CSA's prerequisite for obtaining a practitioner's registration. *See* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners . . . to dispense . . . controlled substances . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f).

However, while Respondent now satisfies the condition that he hold authority under state law to dispense controlled substances, this conclusion '''is not dispositive of the public interest inquiry.''' *George Mathew,* 75 FR 66138, 66145 (2010), *pet. for rev. denied Mathew* v. *DEA,* No. 10–73480, slip op. at 5 (9th Cir., Mar. 16, 2012); *see also Patrick W. Stodola,* 74 FR 20727, 20730 n.16 (2009). As the Agency has long held, ''the Controlled Substances Act requires that the Administrator . . . make an independent determination [from that made by state officials] as to whether the granting of controlled substance privileges would be in the public interest.'' *Mortimer Levin,* 57 FR 8680, 8681 (1992). Accordingly, this factor is not dispositive either for, or against, the granting of Respondent's applications. *Paul Weir Battershell,* 76 FR 44359, 44366 (2011) (citing *Edmund Chein,* 72 FR 6580, 6590 (2007), *pet. for rev. denied Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008)).[28]

Factors Two and Four—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Relating to Controlled Substances

In support of its contention that Respondent's registration would be inconsistent with the public interest, the Government points to the multitude of violations found during both the MBC and DEA investigations. With respect to the state violations, the Government cites to the testimony and findings of the MBC that: (1) Respondent failed to offer written prescriptions to the undercover officers; (2) allowed his unlicensed staff to dispense medications to his patients; (3) failed to properly label the controlled substances; (4) failed to provide proper security for his controlled substances; and (5) failed to maintain accurate drug inventories. Gov. Post-Hrng. Br. 29–31 (citations omitted). With respect to the federal violations, the Government points to the testimony of the DI regarding the May and June 2011 investigation, which found that Respondent was still failing to properly secure controlled substances, that he was still not properly documenting the receipt and transfer of controlled substances, and that he failed to maintain accurate drug inventories. *Id.* at 30–31. The Government also argues that the results of the DEA audit ''weigh[] against'' granting Respondent's application. *Id.* Finally, the Government argues that Respondent engaged in the unauthorized use of Dr. Fisher's registration, when he ''caused controlled substance prescriptions to issue'' under the latter's registration and that these prescriptions violated 21 CFR 1306.04 because Dr. Fisher never saw any of the patients that day. *Id.* at 32.

With respect to the state violations, each of these is established by the MBC's 2011 disciplinary order, in which Respondent admitted the truth of each and every allegation contained in the accusation filed by the Board. *See* GX 8, at 3; *id.* at 11–19. Respondent's admissions to the Board's allegations constitute substantial evidence that he committed the respective violations. That being said, this does not mean that each of the underlying violations established by the MBC's order is properly considered under these factors.

As originally enacted, the Controlled Substances Act did not authorize the denial of an application for a practitioner's registration (nor revocation of an existing practitioner's registration) on public interest grounds, but was limited to those instances in which a practitioner had materially falsified an application, had been convicted of a state or federal felony relating to controlled substances, or did not possess state authority to dispense controlled substances. *See* Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513, §§ 303(f), 304(a), 84 Stat. 1254 (1970). Over time, Congress came to recognize that the ''[i]mproper diversion of controlled substances by practitioners is one of the most serious aspects of the drug abuse problem. However, effective Federal action against practitioners ha[d] been severely inhibited by the limited authority in [the then] current law to deny or revoke practitioner registrations.'' H.R. Rep. No. 98–1030, at 266 (1984), *reprinted in* 1984

[28] As for factor three, there is no evidence that Respondent has been convicted of an offense ''relating to the manufacture, distribution or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, there are a number of reasons why even a person who has engaged in misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay,* 75 FR 49956, 49973 (2010), *pet. for rev. denied MacKay* v. *DEA,* 664 F.3d 808 (10th Cir. 2011). The Agency has therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

U.S.C.C.A.N. 3182, 3448. Continuing, the House Report explained that:

> The current limited grounds for revoking or denying a practitioner's registration have been cited as contributing to the problem of diversion of dangerous drugs. In addition, because of a variety of legal, organizational, and resource problems, many States are unable to take effective or prompt action against violating registrants. Since State revocation of a practitioner's license or registration is a primary basis on which Federal registration may be revoked or denied, problems at the State regulatory level have had a severe adverse impact on Federal anti-diversion efforts. The criteria of prior felony drug conviction for denial or revocation of registration has proven too limited in certain cases as well, for many violations involving controlled substances which are prescription drugs are not punishable as felonies under State law. Moreover, delays in obtaining conviction allow practitioners to continue to dispense drugs with a high abuse potential even where there is strong evidence that they have significantly abused their authority to dispense controlled substances.
>
> Clearly, the overly limited bases in current law for denial or revocation of a practitioner's registration do not operate in the public interest.

Id.

Accordingly, Congress amended section 823(f) ''to expand the authority of the Attorney General to deny a practitioner's registration application.'' *Id.* Thus, ''[u]nder 21 U.S.C. [823](f), as amended, . . . the Attorney General would be required to register a practitioner authorized under State law to dispense or conduct research with controlled substances unless he made a specific find[ing] that registration would be 'inconsistent with the public interest.' '' *Id.* After noting the five public interest factors, the House Report then explained that while ''[t]he amendment . . . will continue to allow the Attorney General to routinely register most practitioner applicants, . . . in those case in which registration is clearly contrary to the public interest, the amendment would allow a swift and sure response to the danger posed to the public health and safety by the registration of the practitioner in question.'' *Id.* at 267, 1984 U.S.C.C.A.N. at 3449.

The House Report thus makes clear that Congress's primary purpose in authorizing the denial of an application based on the public interest was to provide an additional means for the Attorney General to *address diversion by practitioners.* However, the mere fact that a violation of a state rule occurs in the context of the dispensing of controlled substances does not necessarily mean that the violation has a sufficient nexus to the CSA's core purpose of preventing the diversion and abuse of controlled substances.

As noted above, the Government contends that Respondent's violations of Cal. Bus. & Prof. Code § 4170(a)(6) & (7) are properly considered in assessing his experience in dispensing controlled substances or his compliance with applicable laws related to controlled substances. *See* Gov. Post-Hrng. Br. 29. Notably, these provisions apply to all prescription drugs (and not just controlled substances) which a prescriber dispenses to his patients. *See* Cal. Bus. & Prof. Code §§ 4022, 4170(a). As the MBC Investigator testified, these provisions require that: (1) A prescriber, who dispenses drugs in his practice, offer to his patient the option of obtaining a written prescription ''that the patient may elect to have filled by the prescriber or by any pharmacy,'' and (2) provide a ''written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.'' Cal. Bus. & Prof. Code § 4170(a)(6) & (7). In short, these provisions are not directed at preventing diversion, but rather at protecting consumers. As such, Respondent's violations of them have little to no probative value in assessing his experience in dispensing controlled substances and compliance with applicable laws related to controlled substances.

Next, the Government points to Respondent's practice of allowing his office staff, who were unlicensed, to dispense controlled substances without being directly supervised by him. Gov. Post-Hrng. Br. 30. The MBC found that Respondent's conduct constituted the aiding and abetting of the unlicensed practice of medicine. GX 8, at 19 (citing Cal. Bus. & Prof. Code § 2238, 2264, and 4170(a)). While these provisions apply to the practice of medicine generally and are not restricted to the dispensing of controlled substances,[29] there is a sufficient nexus between the CSA's purpose of preventing diversion to consider this conduct under factor two.

More specifically, the unsupervised dispensing of controlled substances by unlicensed individuals creates a heightened risk that those individuals will divert the drugs. *See Margy Temponeras,* 77 FR 45675, 45677–78 (2012) (considering physician's practice of allowing unlicensed individuals to dispense controlled substances in violation of state law under factor two). So too, allowing unlicensed persons, who likely have no training in identifying persons engaged in drug abuse or diversion, to dispense controlled substances without supervision, increases the opportunity for those persons who are self-abusing or engaged in diversion to obtain controlled substances. *Cf. Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)) (''the [CSA's] prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse).

Most disturbingly, Respondent admitted that following the 2006 incidents, his probation monitor had observed his practice of allowing unlicensed personnel to dispense controlled substances. Tr. 511–12. While according to Respondent, the monitor stated that he would have to consult the MBC's attorney, after the monitor consulted the attorney, he told Respondent to stop this practice. *Id.* at 512. Yet, during the 2009 investigation, Respondent was still allowing his unlicensed medical assistants to dispense controlled substance without being supervised by him.[30] And as further evidence that Respondent had failed to discontinue the practice, Investigator I testified that when she called one of Respondent's clinics and discussed his weight loss program with the clinic's receptionist, she was told that after the initial consultation, she would be able to get medication without ''hav[ing] to see the doctor again [31]'' and

[29] *See* Bus. & Prof. Code § 2264 (''The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any other mode of treating the sick or afflicted which requires a license to practice constitutes unprofessional conduct.''); *id.* § 4170(a)(1) (''No prescriber shall dispense drugs . . . to patients in his . . . office or place of practice unless all of the following conditions are met: . . . The dangerous drugs . . . are dispensed to the prescriber's own patient, and the drugs . . . are not furnished by a nurse or physician's attendant.'').

By contrast, section 4170(a) (8) provides, *inter alia,* that ''a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1 or protocol,'' and ''a physician assistant who functions pursuant to Section 3502.1 . . . may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer . . . or a pharmacist.''

[30] While there is evidence that during the MBC's December 10, 2009 undercover visit, Respondent arrived at the clinic while the Investigator was paying for the medication, the drugs had already been furnished to the Investigator and Respondent did not discuss the medication with the Investigator. GX 8, at 18.

[31] Indeed, the receptionist's statement was corroborated by the MBC's December 10, 2009 undercover visit, where Investigator II saw a medical assistant, who after asking her about her

that no appointments were needed. GX 6, at 6.

Respondent also admitted that he failed to properly label the controlled substances that he dispensed. GX 8, at 3 & 15–16. The evidence shows that some of the medication vials did not list Respondent's name as the dispenser, did not have the correct clinic address, did not provide adequate directions for taking the medication, and were missing other essential items of information such as the manufacturer's name, as well as the color, shape and identification code of the medication. *Id.;* Tr. 46–47. *See* Cal. Bus. & Prof. Code § 4076 (setting forth labeling requirements for prescriptions); *id.* § 4170(a)(4) (requiring a prescriber who dispenses drugs to ''fulfill[] all of the labeling requirements imposed upon pharmacists by Section 4076''). Here again, while the state's labeling requirements apply to the dispensing of all prescription drugs and not just controlled substances, providing accurate directions for taking a controlled substance has a clear nexus to the CSA's purpose of preventing drug abuse and diversion.[32] *Cf.* 21 CFR 1306.24(a) (''The pharmacist filling a prescription for a controlled substance listed in Schedule III, IV, or V shall affix to the package a label showing the pharmacy name and address, the serial number and date of initial filling, the name of the patient, the name of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescription as required by law.'').[33]

Here again, the evidence shows that while Respondent was fully advised as to the State's labeling requirements, and assured the MBC Investigator that he had come into compliance, during the January 28, 2010 re-inspection, the Investigator found that Respondent still had numerous vials of medication which bore the older, non-compliant labels. Tr. 88–89. Indeed, one of Respondent's employees told the Investigator that Respondent ''was using up the vials with the old labels.'' [34] GX 6, at 12.

The MBC also found that Respondent failed to properly secure his controlled substances, noting that during the December 10, 2009 inspection at the Roseville clinic, the Investigator found that the drug room was unlocked and that the drug cabinet was unlocked and wide open. GX 8, at 16. The Investigator further found that Respondent's staff unlocked the drug room at the beginning of the day and that the room was kept unlocked until the clinic closed for the day. *Id.* Moreover, the MBC found that during the January 28, 2010 re-inspection, a patient was allowed to enter the drug room unaccompanied and retrieve medication from one of the post-office boxes. *Id.* While Respondent was then in the hospital, and the clinic was being overseen by Dr. Mericle, a *locum tenens* physician, Respondent testified that Dr. Mericle had ''refused to refill those boxes'' even after the clinic's staff had told him that the boxes were empty and needed to be refilled. Tr. 757. Moreover, Respondent admitted that the MBC Investigator had told him the boxes were a really bad idea. The evidence thus supports a finding that Respondent disregarded the MBI Investigator's advice and commenced using the boxes.

Under California law, ''[a] prescriber who dispenses drugs pursuant to Section 4170 shall store all drugs to be dispensed in an area that is secure.'' Cal. Bus. & Prof. Code § 4172. By regulation, the MBC has defined ''the phrase 'area which is secure' [to] mean[] a locked storage area within a physician's office. The area shall be secure at all times. The keys to the *locked* storage areas shall be available only to staff authorized by the physician to have access thereto.'' Cal. Code Regs. Tit.16, § 1356.3. The MBC thus found that Respondent violated Cal. Bus. & Prof. Code §§ 2238 and 4172, as well as the afore-cited regulation. GX 8, at 3, 16.

Finally, the MBC found that Respondent violated California law by failing to maintain accurate drug inventories. *See id.* at 17 (citing Cal. Bus. & Prof. Code §§ 2238 and 4081). More specifically, the Board found that Respondent did not record the drugs that he transferred from one clinic to another of his clinics, as well as the incoming shipments, and that he only kept a log of what he dispensed each day. *Id.* Moreover, during the 2009 inspection, Respondent admitted that in 2006, his probation monitor had instructed him as to how to do proper inventories. *Id.* Respondent then admitted that he had stopped maintaining proper inventories because he found doing so to be ''too difficult, inconvenient, and time consuming.'' *Id.*[35] Also, Respondent was not creating a separate log for each medication by its strength, but rather, he was recording all of the dispensings on a single piece of paper.

Here again, while the MBC Investigator instructed Respondent that he had to maintain a separate log for each strength of each medication and record the shipments, GX 5, at 23–25; during the January 2010 re-inspection, she found that notwithstanding his assurance that ''he had got[ten] everything squared away,'' he was still not accounting for the incoming shipments in his inventory logs and still recording all of the dispensings in a single log, rather than creating a separate log for each strength of a medication. GX 6, at 12; Tr. 143.

The evidence does show that at the time of the May 2011 DEA inspection, Respondent was maintaining a daily inventory log which listed each drug by its strength. *See* GX 10, at 2, 5, 7. As found above, the DEA Investigators took an inventory of the controlled substances on hand at the three clinics and compared their counts with Respondent's daily inventory logs. While the discrepancies between the counts and the daily inventory logs for the Elk Grove and Roseville clinics were relatively small, the DIs found substantial discrepancies when they counted the drugs which had been transferred from the Gold River clinic (and which were counted separately) and compared the counts with the daily inventory sheet for the last day that clinic had been open. More specifically, Respondent was short 3,000 dosage units of phentermine 37.5mg; 1,011 dosage units of phentermine 30mg; and 1,021 dosage units of phendimetrazine 35mg.[36] *See* GX 10, at 1–2; Tr. 229.

week and weighing her, told her to meet her at the front desk, and then provided a vial containing seven tablets of phentermine 30mg to the Investigator. GX 6, at 7. I thus conclude that Respondent had resumed his practice of allowing his unlicensed employees to dispense controlled substances.

[32] So too, the requirement that the label contain the dispenser's name and address provides information that can be used to determine the source of the drugs and whether the drugs were lawfully dispensed or have been diverted.

[33] Pursuant to the Food, Drug, and Cosmetic Act, ''[a]ny drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of section 352 of this title [the misbranding provisions], except paragraphs (a), (i)(2) and (3) . . . if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription.'' 21 U.S.C. 353(b)(2).

[34] The ALJ found that ''when informed about the labeling violations, the Respondent took prompt action to remedy the problem.'' R.D. at 23. The ALJ's finding ignores that during the re-inspection, the Investigator found that Respondent had continued to dispense his older and improperly labeled stock of controlled substances.

[35] While in his testimony, Respondent disputed that he ever made this admission, Tr. 773–74, he had previously stipulated to the MBC's finding that he did. GX 8, at 17.

[36] Based on this evidence, the Government argues that ''Respondent's failure to maintain an accurate drug inventory'' was a violation of both state and

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Also, Respondent had no documentation for the transfer of the controlled substances from the recently closed Gold River clinic to his Roseville clinic. Tr. 229–30. This was also a violation of federal law, which requires that ''every registrant . . . maintain, on a current basis, a complete and accurate record of each such substance . . . received, sold, delivered, or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3). Moreover, pursuant to DEA regulations, ''[s]eparate records shall be maintained by a registrant for each registered location.'' 21 CFR 1304.21(b). Thus, I also conclude that Respondent violated Federal law by failing to document the transfer of controlled substances between his various clinics.[37]

As found above, the DI performed an audit of Respondent's handling of controlled substances at the three clinics for the period beginning on November 20, 2010 through May 26, 2011 for the Elk Grove clinic; November 22, 2010 through May 31, 2011 for the Roseville clinic; and November 23, 2010 through May 31, 2011 for the Gold River clinic. At Elk Grove, Respondent had shortages of 8,410 dosage units of phentermine 37.5mg; 2,316 dosage units of phentermine 30mg; 6,637 dosage units of phendimetrazine 35mg; 252 dosage units of phendimetrazine 105mg; and 906 dosage units of diethylpropion 25mg. GX 11, at 1. At Gold River, Respondent was short 3,915 dosage units of phentermine 37.5mg; 1,046 dosage units of phentermine 30mg; 313 dosage units of phendimetrazine 35mg, and 390 tablets of phendimetrazine 105mg. *Id.* at 2. And at Roseville, Respondent was short 10,740 tablets of phentermine 37.5mg; 3,535 tablets of phentermine 30mg; 5,361 tablets of phendimetrazine 35mg; 812 tablets of phendimetrazine 105mg, and 595 tablets of diethylpropion 25mg. *Id.* at 3. Thus, between the three clinics, Respondent had shortages totaling more than 40,000 dosage units.

These are material shortages and at a minimum, they support the conclusion that Respondent violated federal law by failing to maintain ''complete and accurate record[s]'' of the controlled substances he handled. 21 U.S.C. 827(a)(1)–(3). As the ALJ correctly noted, Respondent's ''inability to account for this significant number of dosage units creates a grave risk of diversion.'' R.D. at 21. Indeed, even were there no other proven violations, the audit results alone are sufficient to satisfy the Government's *prima facie* burden of establishing that Respondent's registrations would be ''inconsistent with the public interest.'' 21 U.S.C. 823(f). *See Medicine Shoppe—Jonesborough,* 73 FR 364, 386 (2008).

The Government also argues that Respondent violated federal law because, upon the restoration of his state license, he impermissibly used Dr. Fisher's DEA registration to issue controlled substance prescriptions. Gov. Post-Hrng. Br. 32. It further argues that these prescriptions were unlawful because Dr. Fisher was working at a different clinic the day the prescriptions were issued and never saw the patients. *Id.* (citing 21 CFR 1306.04(a)).

As for the contention that Respondent impermissibly used Dr. Fisher's DEA number, the Government's proof rested entirely on the testimony of a Diversion Investigator and an MBC Probation Monitor regarding the hearsay statements of Dr. Fisher. While hearsay statements are admissible in administrative proceedings, and can even constitute substantial evidence under certain circumstances, to do so the statements must bear sufficient indicia of reliability. *See Hoska* v. *United States Dep't of the Army,* 677 F.2d 131, 138 (D.C. Cir. 1982); *Calhoun* v. *Bailar,* 626 F.2d 145 (9th Cir. 1980). The factors to be considered include the independence or possible bias of the declarant, whether the statements are signed and sworn or oral and unsworn, whether the statements are consistent, whether they are contradicted by direct testimony, whether the declarant is available to testify, and whether the statements are corroborated. *See Hoska,* 677 F.3d at 139; *Calhoun,* 626 F.2d at149.

Here, in an order denying Respondent's motion to exclude the proposed testimony regarding Dr. Fisher's hearsay statements, the ALJ explained that the admissibility of the evidence would be assessed based on various judicially-created standards, including the Ninth Circuit's *Calhoun* decision. *See* Order Denying In Part Respondent's Motion to Exclude a Portion of the Government's Proposed Testimony and Exhibits, at 6–7. Nonetheless, the Government produced no evidence to demonstrate that Dr. Fisher's statements are sufficiently reliable to constitute substantial evidence of the material fact for which they were offered—namely, that Respondent used Fisher's registration to call in prescriptions without Fisher's permission. To the contrary, through the DI's testimony, the Government made clear that Fisher's statements are inherently unreliable.

More specifically, the DI testified that when he and his supervisor interviewed Fisher, the latter's story as to whether he had authorized the prescriptions changed ''back and forth'' and ''multiple times.'' Tr. 368, 415. Later during the interview (with the MBC's Probation Monitor having called-in and been placed on the speaker phone), Fisher stated that ''he did authorize'' the prescriptions the day before, but henceforth, ''they were no longer authorized.'' *Id.* at 369. The DI further testified that ''it was pretty obvious that [Dr. Fisher] was being deceptive'' and ''trying to his change [his story] based on whatever we wanted to hear or whatever wouldn't get him in trouble.'' *Id.* at 416. And earlier in his testimony, the DI explained that Fisher did not appear to be coherent and gave ''the impression that he wasn't completely aware of what was going on.'' *Id.* at 369.

When evaluated under the applicable factors, Fisher's statement implicating Respondent in the unauthorized use of

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federal law. Gov. Post-Hrng. Br. 31 (citing Cal. Bus. & Prof. Code §§ 2238 and 4081; 21 CFR 1304.11). However, federal law explicitly provides that a registrant is not required to maintain ''a perpetual inventory.'' 21 U.S.C. 827(a)(3). Accordingly, I note this evidence only to show Respondent's continuing failure to comply with the State's requirements.

Federal law does, however, require that a registrant maintain ''a complete and accurate record of all stocks . . . on hand'' upon a registrant's ''first engag[ing] in the . . . dispensing of controlled substances, and every second year thereafter.'' 21 U.S.C. 827(a)(1). As for whether the inventory logs that were used for the opening dates of the audits were ''complete and accurate,'' short of having actually counted the drugs on those days, there is no way of knowing. The Government is not, however, required to establish which of the specific records (initial/biennial inventories, receipts, dispensing/disposals) were incomplete or inaccurate. Rather, it suffices to show that upon auditing all of the required records, Respondent could not account for a material portion of the controlled substances he handled during the audit period.

As for the ALJ's reasoning that Respondent's failure ''to maintain an accurate drug inventory . . . made it impossible for the DEA . . . to conduct a meaningful drug audit,'' R.D. at 21, as explained above, short of performing an actual count of the drugs on the opening date of the audit period, there is no way of determining whether the data provided in the daily inventory logs for the opening date of the audits were inaccurate, and the evidence showed that the DI used the figures obtained during the actual counts at each clinic for the closing inventories. In any event, the fact that a registrant fails to maintain accurate records does not render it ''impossible'' to do a ''meaningful'' audit, whatever that means. Indeed, it is not uncommon that DEA Investigators will find that a particular registrant is entirely missing required records.

[37] The Government also maintains that during the June 2011 DEA inspection of Respondent's Roseville clinic, he was failing to properly secure the controlled substances. Gov. Post-Hrng. Br. at 30. The evidence cited by the Government as support for this contention actually involved the Elk Grove clinic, where Respondent was storing the controlled substances in a locked closet, rather than a substantially constructed cabinet as required by 21 CFR 1301.75(b). *See id.* at 17 (citing Tr. 218–19). While I find this to also be a violation, I give it only nominal weight given the absence of evidence that the closet was not secure.

his registration is clearly unreliable. Fisher, whose statements were oral and unsworn, clearly admitted that he had authorized the prescriptions, only to change his story and tell the DIs whatever he thought they wanted to hear to keep himself out of trouble. Thus, to the extent Fisher was even aware of what was going, he was in no way an unbiased observer, but rather a clearly interested participant, and one who provided contradictory statements. In short, Fisher's statement implicating Respondent is so inherently unreliable that the allegation must be rejected.

As for the Government's further contention that these prescriptions violated 21 CFR 1306.04(a)[38] because Dr. Fisher did not see the patients that day, in neither the Show Cause Order nor either of its pre-hearing statements did the Government provide notice that it intended to litigate the issue. *See* ALJ Ex. 1 (Show Cause Order); Gov. Pre-Hrng. Statement, at 5–6 (discussing DI's proposed testimony), Gov. Supp. Pre-Hrng. Statement, at 6 (discussing DI's proposed testimony). Indeed, the Government did not even raise the contention that the prescriptions lacked a legitimate medical purpose and were issued outside of the usual course of professional practice until its post-hearing brief. *See* Gov. Post-Hrng. Br. 32. Thus, even if Respondent could have been be charged with violating this regulation under a conspiracy theory, raising the issue for the first time in a post-hearing brief is simply too late to provide fair notice.[39] *See Margy Temponeras,* 77 FR 45675, 45677 (2012) (discussing cases). I therefore reject the contention.

However, as explained above, the audit results, which establish that Respondent failed to maintain complete and accurate records, are, by themselves, sufficient to satisfy the Government's *prima facie* burden of showing that Respondent's registrations would be inconsistent with the public interest. This conclusion is buttressed by the numerous other violations proven on the record, including the state violations of allowing his unlicensed staff to dispense medications to his patients; failing to properly label the controlled substances; failing to provide proper security for his controlled substances; and failing to maintain accurate drug inventories, as well as the federal violations of failing to document the transfers of controlled substances between his clinics.

Sanction

Under Agency precedent, where, as here, ''the Government has proved that [an applicant] has committed acts inconsistent with the public interest, [the applicant] must ' ''present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.'' ' '' *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where [an applicant] has committed acts inconsistent with the public interest, the [applicant] must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR 387; *see also Jackson,* 72 FR 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination). So too, in making the public interest determination, ''this Agency places great weight on an [applicant's] candor, both during an investigation and in [a] subsequent proceeding.'' *Robert F. Hunt,* 75 FR 49995, 50004 (2010) (citing *The Lawsons, Inc., t/a The Medicine Shoppe Pharmacy,* 72 FR 74334, 74338 (2007) quoting *Hoxie,* 419 F.3d at 483 (''Candor during DEA investigations properly is considered by the DEA to be an important factor when assessing whether a . . . registration is consistent with the public interest.'')).

While an applicant must accept responsibility and demonstrate that he will not engage in future misconduct in order to establish that his/her continued registration is consistent with the public interest, DEA has repeatedly held these are not the only factors that are relevant in determining the appropriate sanction. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007). Obviously, the egregiousness and extent of an applicant's misconduct are significant factors in determining the appropriate sanction. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009).

Moreover, as I have noted in several cases, '' '[n]either *Jackson,* nor any other agency decision, holds . . . that the Agency cannot consider the deterrent value of a sanction in deciding whether a registration should be revoked' '' or an application should be denied. *Gaudio,* 74 FR 10094 (quoting *Southwood,* 72 FR 36504 (2007)); *see also Robert Raymond Reppy,* 76 FR 61154, 61158 (2011); *Michael S. Moore,* 76 FR 45867, 45868 (2011). This is so, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR 10095 (quoting *Southwood,* 71 FR at 36504). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoptions of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').[40]

[38] Pursuant to 21 CFR 1306.04(a), ''[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual acting in the usual course of his professional practice.''

[39] Even had I concluded otherwise on the issue of notice, and assuming that Respondent and Fisher entered into an agreement, the Government produced no evidence establishing that Fisher had never seen, or established a valid doctor-patient relationship with, the patients whose prescriptions were entered into evidence. Nor did it produce any evidence that it was outside the scope of professional practice for Fisher to issue prescriptions to the patients.

[40] Thus, in *Gaudio,* ''I explained that 'even when a proceeding serves a remedial purpose, an administrative agency can properly consider the need to deter others from engaging in similar acts.' '' 74 FR 10094 (quoting *Southwood,* 72 FR 36504) (citing *Butz* v. *Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187–88 (1973)); *cf. McCarthy,* 406 F.3d at 189 (''Although general deterrence is not, by itself, sufficient justification for expulsion or suspension, we recognize that it may be considered as part of the overall remedial inquiry.''); *Paz Securities, Inc., et al.* v. *SEC,* 494 F.3d 1059, 1066 (D.C. Cir. 2007) (agreeing with *McCarthy*). In *Gaudio,* I further noted that the ''[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest, *see* 21 U.S.C. 801, and the broad grant of authority conveyed in the statutory text, which authorizes the [suspension or] revocation of a registration when a registrant 'has committed such acts as would render [his] registration . . . inconsistent with the public interest,' *id.* § 824(a)(4), and [which] specifically directs the Attorney General to consider ['such other conduct which may threaten public health and safety,' *id.* § 823(f)].'' 74 FR 10094 (quoting *Southwood,* 72 FR 36504).

Unlike factors two (''[t]he applicant's experience in dispensing'') and three (''[t]he applicant's conviction record''), neither factor four (''Compliance with applicable laws related to controlled substances'') nor factor five (''Such other conduct which may threaten public health and safety'') contain the limiting words of ''[t]he applicant.'' As the Supreme Court has held, ''[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Russello* v. *United States,* 464 U.S. 16, 23 (1983). Thus, the text

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The ALJ found that ''respondent took prompt action to remedy'' the labeling violations, that he ''implemented new security procedures'' and that ''he also began a procedure whereby he kept a daily running inventory log of his controlled substances on hand.'' R.D. at 23. She also found that ''Respondent credibly expressed his remorse for his past misconduct.'' *Id.*

Yet the ALJ also found that ''the record demonstrates that he was never able to dispense controlled substances and remain in compliance with the Board's and the DEA's regulations.'' *Id.* Remarkably, the ALJ then concluded that ''Respondent has sustained his burden to accept responsibility for his past misconduct and has successfully demonstrated that he will not engage in future misconduct related to his handling of controlled substances.'' *Id.* at 24. While characterizing Respondent's various violations as ''mistakes in his dispensing of controlled substances,'' which she nonetheless deemed to be sufficiently ''egregious'' to warrant placing restrictions on his registration, the ALJ concluded ''that the outright denial of his application is too severe a resolution.'' *Id.* She therefore recommended that I grant Respondent a restricted registration, pursuant to which he would be authorized only to prescribe controlled substances. *Id.*

I reject the ALJ's recommended sanction, because even assuming, without deciding, that Respondent has credibly accepted responsibility for his misconduct, this is a case where actions speak louder than words. Indeed, as the ALJ herself noted, ''the record demonstrates that [Respondent] *was never able to dispense controlled substances and remain in compliance with the Board's and [this Agency's] regulations.*'' R.D. at 23 (emphasis added). As the Seventh Circuit has noted, ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d at 452, and the evidence here shows that even when Respondent was provided information—on the proverbial silver platter—as to how to comply with various state requirements (*i.e.,* by not allowing unlicensed employees to dispense, by correcting all improperly labeled controlled-substance vials, by properly securing controlled substances, and by maintaining a daily inventory log which listed the drugs by their strengths), he still frequently failed to comply. Moreover, even when he did eventually start maintaining a daily inventory log which listed each drug by its strength, the DI found major discrepancies between the amounts which the logs stated as his inventories and the actual amounts Respondent had on hand.

Most significantly, the DI's audit found that Respondent had shortages of 40,000 dosage units over a six-month period. While there is no evidence in the record that the controlled substances were being diverted, as the ALJ also noted, Respondent's ''inability to account for this significant number of dosage units creates a grave risk of diversion.'' R.D. at 21. And even if the shortages are only attributable to Respondent's poor recordkeeping, '' '[r]ecordkeeping is one of the CSA's central features; a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.' '' *Ideal Pharmacy Care, Inc., d/b/a Esplanade Pharmacy,* 76 FR 51415, 51416 (2011) (quoting *Paul H. Volkman,* 73 FR 30630, 30644 (2008)).

These shortages are substantial and reflect a massive failure on Respondent's part to comply with the CSA's requirements that he maintain complete and accurate records of the controlled substances he received and dispensed in his practice. *See* 21 U.S.C. 827(a). And while Respondent maintained that ''it is very difficult'' for him to understand the various statutes, the CSA's recordkeeping provisions clearly provided Respondent with fair notice that he was required to maintain complete and accurate records of the controlled substances he handled. *See id.* Indeed, no court has ever held that the CSA's recordkeeping provisions fail to provide clear notice as to what records must be maintained and that those records must be complete and accurate.

Thus, while Respondent testified that this proceeding had been ''a very humbling experience'' and promised he was ''going to commit myself to a better process,'' that he was ''uninformed'' about the rules but that he was at fault, and that he would ''take every measure to make sure [he is] in compliance'' with the MBC's and DEA's rules, this is a refrain which he previously sung for the MBC's Investigators. *See* Tr. 584–85, 592; *see also* GX 3, at 4 & 6 (agreeing to comply with the terms of the MBC's 2003 Order, including that he ''obey all federal, state and local laws, [and] all rules governing the practice of medicine in California''); GX 8, at 6 & 10 (May 2011 order).[41] And when asked if he had taken any courses on the proper handling of controlled substances, Respondent answered that he had not because ''it was not required.'' Tr. 796–97.

Accordingly, notwithstanding his expressions of remorse, I conclude that Respondent's record of substantial non-compliance with both State and Federal laws and regulations related to the dispensing of controlled substances, (along with his failure to take any courses on the handling of controlled substances) leaves me with no confidence that he will responsibly handle controlled substances in the future. *See ALRA Labs,* 54 F.3d at 452. As for the ALJ's recommended sanction that I grant Respondent a registration which restricts his activities to prescribing, while there is no evidence establishing that Respondent issued prescriptions which violated 21 CFR 1306.04(a), his conduct is sufficiently egregious as to warrant the outright denial of his applications. Moreover, the ALJ's recommendation fails to consider the Agency's need to deter similar misconduct on the part of other registrants. Accordingly, I reject the ALJ's recommended sanction and will deny Respondent's applications.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the applications of Fred Samimi, M.D., for DEA Certificates of Registration as a practitioner be, and they hereby are, denied. This Order is effective immediately.

Dated: March 25, 2014.

Michele M. Leonhart,

Administrator.

[FR Doc. 2014–07440 Filed 4–2–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 13–14]

Mark P. Koch, D.O.; Decision and Order

On July 18, 2013, Administrative Law Judge Gail A. Randall issued the attached Recommended Decision (R.D.). Therein, the ALJ found that while Respondent had previously abused

of factors four and five suggest that these factors are not limited to assessing the applicant's compliance with applicable laws and whether he has engaged in ''such other conduct,'' but rather authorizes the Agency to also consider the effect of a sanction on inducing compliance with federal law by other practitioners.

[41] While the MBC did not adopt the Stipulated Settlement and Disciplinary Order until April 8, 2011, notably, Respondent agreed to the Order's terms and conditions on December 10, 2010. GX 8, at 1 & 10. Yet as found during the May 2011 DEA Inspection, Respondent was still failing to comply with the State's recordkeeping rules.

cocaine, he had successfully demonstrated his sobriety since 2005. R.D. at 60, 62. However, the ALJ also found that Respondent had been convicted of conspiring to dispense, and possess with intent to distribute and dispense, testosterone and primobolan depot, which are schedule III controlled substances, in violation of 21 U.S.C. 846, *id.* at 29–30, and that his conviction ''strongly supports a finding that continuing his registration and granting his renewal applications would be inconsistent with the public interest.'' *Id.* at 57.

The ALJ further found that Respondent ''failed to testify credibly about his handling of anabolic steroids,'' that he ''blamed his ex-wife for [the] conduct to which he pled guilty, thereby undermining the circumstances where he had had actually accepted responsibility for his actions,'' as well as ''demonstrate[d] a lack of candor.'' *Id.* at 62. The ALJ also found that while ''Respondent has been granted numerous opportunities to act as a responsible DEA registrant [he] has failed each time'' and that he ''has not shown that he has learned from his past mistakes in a way that will prevent future misconduct.'' *Id.* at 64. The ALJ thus concluded that Respondent's registration is inconsistent with the public interest and recommended that I revoke his existing registrations and deny his renewal application. *Id.* at 65.

Respondent filed exceptions to the Recommended Decision. Having reviewed the record in its entirety, I reject the ALJ's conclusion that Respondent violated federal law because he was not registered at his principal place of professional practice in Minnesota as unsupported by substantial evidence. *See* R.D. at 53. While I also reject the ALJ's legal conclusion that a registrant is not required to notify the Agency if he changes the address of his principal place of professional practice, I find that there is insufficient evidence to prove a violation. *See id.* at 52. I also find several of Respondent's exceptions to be well taken. However, I nonetheless conclude that the ALJ's ultimate finding that Respondent's registration is inconsistent with the public interest is supported by substantial evidence.

Accordingly, I will adopt the ALJ's recommended order. Before proceeding to discuss Respondent's exceptions, I will address the ALJ's conclusions regarding Respondent's Minnesota registration.

On cross-examination of Respondent, the Government raised for the first time the issue of whether he violated DEA regulations because he was not practicing at the address which was his registered location in Minnesota.[1] Tr. 187. According to Respondent, the address he listed was a location of the company he worked for as a *locum tenens* practitioner, but he was not practicing at this address. *Id.* When asked whether any mail that was sent to this address would be given to him, Respondent initially answered ''yes'' but then added that his mailing address for this registration was in Alabama. *Id.* Moreover, when questioned by the ALJ as to whether the Minnesota Board had placed any restrictions on his medical license, Respondent testified that he had listed his ''practice address with'' the Board and that ''the lion share of [his] work'' was at an emergency room in Thief Rivers Fall, Minnesota. Tr. 200.

In its rebuttal case, and over the objection of Respondent who claimed inadequate foundation but not a lack of notice, the Government, through the testimony of a DI, was allowed to admit into evidence an envelope which was mailed to him from the DEA Office of Chief Counsel and addressed to Respondent at his Minnesota registered location. *See* GX 44. The mailing was returned unclaimed and marked: ''UNDELIVERABLE AS ADDRESSED FORWARDING ORDER EXPIRED'' and ''RETURN TO SENDER UNABLE TO FORWARD.'' *Id.*[2] Subsequently, the ALJ found that ''Respondent was not registered at his principal place of business while working in a *locum tenens* capacity in Minnesota, in violation of 21 CFR 1301.12.'' R.D. at 53.

Under 21 U.S.C. 822(e), ''[a] separate registration [is] required at each principal place of business or professional practice *where the applicant . . . dispenses controlled substances.*'' (emphasis added). But while it may seem obvious that an emergency room physician would have dispensed controlled substances in the course of his employment, the Government never asked Respondent if he dispensed controlled substances at any of the emergency rooms he worked at in Minnesota, nor produced any other evidence to show that he did.[3] Because there is no evidence in the record that Respondent dispensed controlled substances in Minnesota, and the registration requirement only applies to a ''principal place of . . . professional practice where the applicant . . . dispenses controlled substances,'' I reject the ALJ's finding as unsupported by substantial evidence.

In her discussion of the registration requirements, the ALJ also rejected the Government's contention that ''Respondent violated a duty to notify DEA of a change in his registered address[,]'' reasoning that ''no such duty exits under the statute or regulations.'' *Id.* While I agree that the Government did not establish a violation, I reject the ALJ's reasoning that there is no such duty under federal law.

In reaching her conclusion, the ALJ relied entirely on 21 CFR 1301.51 and reasoned that the Agency's ''regulations do not explicitly define a registrant's duty to notify the DEA of a change in address.'' R.D. at 52. This regulation provides that ''[a]ny registrant may apply to modify his/her registration . . . or change his/her name or address, by submitting a letter of request to the'' Agency. 21 CFR 1301.51. Reasoning that if the Agency ''wanted to create a responsibility to notify the agency of a change in address, it could have used 'shall' instead of 'may' in the regulation,'' the ALJ concluded that the regulation does not create ''an affirmative responsibility . . . to provide such notice.'' R.D. at 52.

The ALJ did not, however, acknowledge 21 U.S.C. 827(g), which provides that ''[e]very registrant under this subchapter *shall be required to report any change of professional or business address* in such manner as the Attorney General shall by regulation require.'' (emphasis added). Thus, the CSA itself imposes a mandatory duty on the part of a registrant to report to DEA that he has changed his registered address.

Moreover, in *Anthony E. Wicks,* 78 FR 62676 (2013), the Agency held that ''[b]ecause section 827(g) clearly creates a substantive obligation on the part of a registrant to notify the Agency if he changes his professional address, the regulation's use of the words 'may apply to modify' cannot alter (and cannot reasonably be read as altering) the binding nature of a registrant's

[1] The Government did not allege a violation of the registration provisions in the Show Cause Order, nor raised the issue in either of its pre-hearing statements. Indeed, it did not even raise the issue in its case in chief and Respondent did not open the door during his testimony on direct examination. I need not decide, however, whether the issue was litigated by consent because I find that the Government failed to prove an element of the violation.

[2] While I conclude that the Government did not lay an adequate foundation to admit the document, I conclude that the error was not prejudicial because Respondent's testimony established that he was not practicing at his registered location in Minnesota.

[3] While the director of the emergency room at one of the Minnesota hospitals where Respondent worked testified that he and the nursing staff had not had any problems with Respondent's prescriptions, the Government did not clarify whether his prescriptions included controlled substances. Tr. 115.

obligation to notify the Agency.'' *Id.* at 62678; *cf. Chevron, U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 842–43 & n.9 (1984); *United States* v. *Rodgers,* 461 U.S. 677, 706 (1983) (while ''[t]he word 'may' . . . usually implies some degree of discretion,'' this meaning ''can be defeated by indications of legislative intent to the contrary or by obvious inferences from the structure and purpose of the statute'') (other citations omitted); *see also United States* v. *Marte,* 356 F.3d 1336, 1341 (11th Cir. 2004) (''When a regulation implements a statute, the regulation must be construed in light of the statute[.]'') (citation omitted).

In *Wicks,* the Agency also noted that the regulation further provides that a modification is ''handled in the same manner as an application for registration,'' 78 FR at 62678, and under another DEA regulation, a registrant may ''not engage in any activity for which registration is required until the application . . . is granted and a . . .[r]egistration is issued.'' 21 CFR 1301.13(a). Thus, in *Wicks,* the Agency held that notwithstanding its use of the words ''may apply to modify his/her registration,'' the regulation is properly construed as imposing on a registrant who changes his professional address, the binding obligation to both: (1) notify the Agency of an address change, and (2) refrain from dispensing activities at his new address until his request is approved.[4] *Id.*

To make clear to the regulated community, I reject the ALJ's reasoning that a registrant has no duty ''under the statute or regulations'' to notify the Agency that he has changed his registered address. Rather, that duty is imposed by 21 U.S.C. 827(g). However, because there is no evidence that Respondent dispensed any controlled substance while working in Minnesota, I do not find a violation proved on this record.

Respondent's Exceptions

Exception 1

Respondent argues that the ALJ's reference to count II of the indictment filed against him should not have been given any weight in the Recommended Decision because the count was dismissed. Exceptions, at 2–3. I reject the exception because while, in her factual findings, the ALJ discussed both counts of the indictment, she also acknowledged that count II was dismissed, and in her discussion of the public interest factors, the ALJ relied only on the count to which he pled guilty. Thus, the ALJ did not give any weight to the dismissed count in concluding that Respondent's registration is inconsistent with the public interest. I therefore reject the exception.

Exception 2

Next, Respondent argues that the ALJ allowed the Government ''to relitigate [his] guilty plea while [he] was not allowed to provide an accounting of the circumstances related to it and the actions leading to said plea, which would have been favorable toward'' him. Exceptions, at 3 (citing Tr. 176–78). This exception is frivolous, as the record clearly shows that Respondent, on direct examination by his counsel, was allowed to testify extensively regarding the circumstances surrounding his guilty plea:

> Resp. Counsel: Did you enter a guilty plea in the Lower District of Alabama to one count of conspiracy to possess and intent to distribute anabolic steroids?
>
> Resp: Yes.
>
> Resp. Counsel: Tell the Court what your involvement was as far as any purchase that was made.
>
> Resp: My wife was going up to north Alabama to purchase steroids for herself and apparently for two other people. And my involvement was to buy some Viagra and Cialis.
>
> Resp. Counsel: Were you aware that she was purchasing steroids in north Alabama?
>
> Resp: Yes, I was aware of it.
>
> Resp. Counsel: Where is your wife originally—excuse me, your former wife originally from?
>
> Resp: From north Alabama.
>
> Resp. Counsel: Do you have knowledge whether—personal knowledge yourself as to whether or not your wife—how she knew these individuals?
>
> Resp: It was actually a friend of my wife's.

Tr. 126–27.[5]

Still later in his testimony, Respondent was allowed to provide an even more extensive explanation of the events which led to the indictment and his conviction. *See id.* at 194–97.[6] This concluded with Respondent providing the following testimony:

> I definitely used poor judgment and I accept responsibility for that and that's why I pled guilty. But as far as using them [steroids] or soliciting them, I did not do that. But I am guilty of giving her [his estranged wife] money to buy Cialis and did know about it.

Id. at 197.

Thus, contrary to Respondent's contention, he was allowed ''to provide an accounting of the circumstances related to'' his guilty plea. However, for reasons more fully below, I agree with the ALJ's finding that that Respondent's testimony regarding his role in the conspiracy was disingenuous, *see* R.D. at 62, and that he ''has not taken full responsibility for his mistakes and genuinely expressed remorse.'' *Id.* at 65. Indeed, Respondent's testimony suggests that he is only remorseful for having been caught.

Exceptions 3 & 4

Next, Respondent takes exception to the ALJ's finding that he lacked candor when he testified that ''he had never missed a random drug screening.'' Exceptions, at 4 (citing R.D. at 11 (citing Tr.122 & 138)). More specifically, the ALJ found: ''He testified that he had never missed a random drug screening. This testimony, however, was squarely refuted by Respondent's drug-testing results, which showed he missed twelve drug tests from July 2002 to February 2005.'' R.D. at 11 (citing Tr. 122 & 138; GX 17, at 53–55).

Respondent contends that the ALJ took his testimony out of context because he was questioned only about his participation in the Alabama Physicians Health Program, which he entered on May 12, 2005 after undergoing inpatient treatment at Talbot Recovery Center. Exceptions, at 4. Respondent further challenges the ALJ's findings as to the number of drug tests he missed, arguing that ''[a] closer look at the documentary evidence . . . shows that while he missed some 'check-in' calls with the Pennsylvania PHP, *he only missed six scheduled screenings, all of which were set during his stay at Talbot.*'' *Id.* (citing GX 17, at 46, 52–56).

As for the latter contention, the evidence showed that Respondent was treated at Talbot from February 1, 2005

[4] *Wicks* did not, however, raise the question of whether a practitioner could prescribe at his new address if he was otherwise registered in the same State. *See* 78 FR at 62676–78; *see also* 21 CFR 1301.12(a)(3).

[5] As for Respondent's assertion that ''testimony was taken regarding the plea, at length, from Government witnesses,'' Exceptions, at 3 (citing Tr. 82–84); the cited testimony was provided by a Diversion Investigator who simply explained that after receiving notification from the Alabama State Board of Medical Examiners that it had suspended Respondent's medical license, he determined that Respondent ''had pled guilty to a criminal case involving anabolic steroids and had been sentenced . . . to five years probation and a $10,000 fine,'' that the plea had been ''to conspiracy to obtain and distribute anabolic steroids,'' and that Respondent ''was supposed to be self-using the anabolic steroids.'' Tr. 82–84.

[6] During this portion of his testimony, Respondent claimed that: (1) His ''wife had been on steroids for the past six years'' because she is ''a fitness buff''; (2) that he had never actually spoken with any of the three indicted co-conspirators (whether the person who sold the steroids to him or the two persons he was selling them to); (3) that he gave his ex-wife money to buy only Viagra and Cialis; and (4) that because he ''knew what [his estranged wife] was doing,'' his lawyer advised him that ''he thought that I was guilty.'' Tr. 194–96.

through approximately May 10, 2005. Tr. 121–22. While it is true that the evidence does not support the ALJ's finding as to the number of missed drugs tests, the evidence nonetheless shows that Respondent missed scheduled tests on January 1, 2003 and August 13, 2004, well before he entered Talbot. In addition, the evidence shows that Respondent missed eleven calls before he entered Talbot, as well as eight calls after May 10, 2005, including six calls after he entered the Alabama Physicians Health Program. *See* GX 17.

However, a review of the record supports Respondent's contention that when he denied missing tests, he was being questioned only about his participation in the Alabama Physicians Health Program. *See* Tr. 122–23; 136–38. Accordingly, I reject the ALJ's finding that Respondent lacked candor when he testified that he had never missed a random drug screening.

Respondent also takes exception to the ALJ's finding that ''Respondent failed to show genuine remorse for'' his abuse of both cocaine and alcohol, that this could ''have had very devastating personal and professional consequences,'' and that ''his conduct and lack of remorse weighs against [his] maintenance of a DEA registration.'' [7] Exceptions, at 6 (quoting R.D. at 60). Respondent then contends that ''[h]is 'history' of drug use prior to the summer of 2005 was held against him while little, if any, credit was given for his eight years of total sobriety.'' *Id.*

I need not decide whether Respondent's more recent period of sobriety outweighs his years of substance abuse, nor whether to adopt the ALJ's finding that Respondent lacked remorse with respect to his substance abuse, because I reject Respondent's exceptions to the ALJ's findings regarding his conviction on the conspiracy charge. I further hold that this conviction provides reason alone to revoke his registration given the recentness of his misconduct and Respondent's utterly disingenuous attempt to blame his wife for it.

In his exceptions, Respondent contends that ''*every fact entered into evidence supports*'' his statement ''that the criminal charge against him never would have occurred if not for his estranged wife.'' Exceptions, at 6. He then sets forth a litany of assertions to the effect that he was set up by his ex-wife and that the FBI's investigation was inadequate because it failed to drug test his estranged wife to determine if she was the one who was actually using the steroids.[8] *Id.* at 7.

The evidence showed that Respondent pled guilty to count one of the indictment, which alleged that he conspired with at least two other persons, to dispense and possess with intent to distribute and dispense, testosterone and primobolan depot, which are schedule III controlled substances and anabolic steroids. GX 23, at 1; *see also* GX 26, at 1 (Judgment). Moreover, count one alleged that the conspiracy began ''on or about August 2005 and continu[ed] through on or about July 8, 2011.'' GX 23, at 1. Also, in the factual resume, which was incorporated into the plea agreement, *see* GX 25, at 3, Respondent admitted to the allegations of count one, as well as that he that he ''purchased, consumed,[9] and trafficked anabolic steroids.'' *Id.* at 14. He also admitted that ''[o]n or about June 24, 2011, a recording showed him ''discussing the pending purchase of anabolic steroids from'' a co-defendant by a cooperating source; that ''[o]n or about June 28, 2011, the cooperating individual traveled'' to the co-defendant and purchased various ''forms of anabolic steroids''; and that ''the cooperating individual paid [the codefendant] approximately $2000 which was given to'' the cooperating individual by Respondent and two other co-defendants ''to purchase the steroids.'' *Id.* at 15.

As for the contention that ''that the criminal charge against him never would have occurred if not for his estranged wife,'' it may be true that absent his estranged wife's involvement, Respondent's criminal conduct would not have come to the attention of the FBI. However, Respondent cannot claim entrapment given that he pled guilty to participating in a conspiracy to possess with intent to distribute and to distribute anabolic steroids, which, at the time of his arrest, had been ongoing for six years. *See Jacobson* v. *United States,* 503 U.S. 540, 548–49 (1992).

Moreover, the record also includes the sworn affidavit of the FBI Special Agent who conducted the investigation which led to Respondent's indictment and conviction. Therein, the Agent stated that recordings (which were done on June 24, 2011) of Respondent showed him ''discuss[ing] the pending purchase of anabolic steroids from'' a supplier in North Alabama, as well as ''the amounts of money [two of the co-conspirators] owe him for their steroids.'' GX 22, at 2. The Agent further stated that a June 24, 2011 consensual video recording ''showed [Respondent] opening a portable safe and removing a vial of liquid which resembled vials of the anabolic steroids, which were subsequently sold to him by a co-conspirator four days later, and that Respondent ''injected the anabolic steroids into his person.'' *Id.* at 3. While in his testimony Respondent asserted that his ''involvement'' was limited to buying Viagra and Cialis, I find the Agent's statements to be sufficiently reliable to constitute substantial evidence.[10] *See, e.g., J.A.M. Builders* v. *Herman,* 233 F.3d 1350, 1354 (11th Cir. 2000); *Hoska* v. *United States Dep't of the Army,* 677 F.2d 131, 138–39 (D.C. Cir. 1982).

Accordingly, consistent with his guilty plea, I conclude that Respondent's involvement in the conspiracy included purchasing anabolic steroids and distributing them to others. As did the ALJ, I also find incredible Respondent's testimony that his involvement in the conspiracy was limited to buying the aforesaid non-

[7] Prior to stating her finding that Respondent failed to show genuine remorse, the ALJ explained that:

Here, Respondent credibly testified that he struggled with his addiction from 1985 to 2005. Respondent openly admitted that he abused both drugs and alcohol, during this time period. Respondent said he used cocaine several times a year while on vacation in the Caribbean. He also used to drink alcohol three times a week, consuming up to eight to ten cans of beers each episode.

R.D. at 60.

[8] There is no support in the record for this assertion, and in any event, Respondent's admissions in the factual resume establish that the assertion is frivolous.

[9] The ALJ found that while there was ''some evidence that Respondent consumed anabolic steroids,'' the Government did not prove his ''consumption was *unlawful''* because the indictment did not mention his ''unlawful consumption'' and did not cite ''a specific statute that Respondent had violated by such consumption.'' R.D. at 51. The ALJ's reasoning ignores that Respondent's admission was part of the ''offense conduct'' described in the factual resume. *See* GX 25, at 14. In addition, while consuming a controlled substance is not itself an offense under the CSA, the simple knowing possession of a controlled substance is an offense even in the absence of intent to distribute, *see* 21 U.S.C. 844(a), and generally, one cannot consume a controlled substance without first possessing it.

Furthermore, Respondent offered no evidence that he obtained the steroids either ''directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice,'' or in a manner ''otherwise authorized by'' the CSA (*i.e.,* by purchasing them from a registered distributor for dispensing in the course of his professional practice). *Id.; see also* 21 U.S.C. 885 (providing that the Government is not required ''to negative any exemption or exceptions set forth in [the CSA] in any . . . pleading or in any . . . hearing, or other proceeding under'' the CSA).

[10] In concluding that the FBI Agent's statements are reliable notwithstanding that they are hearsay, I note that the statements were sworn and disclosed to Respondent in advance of the hearing, that the Agent was available to testify (in fact, he was even called as a witness), and that they were corroborated to some degree by Respondent's admissions as set forth in the factual resume which was incorporated into the plea agreement.

controlled drugs and conclude that he does not accept responsibility for his misconduct.[11] I therefore reject Respondent's exception that the ALJ failed to properly weigh the evidence.

Exception 5

Respondent also takes exception to the ALJ's finding that he violated the terms of the 2003 Memorandum of Agreement (MOA) he entered into with DEA, pursuant to which he was granted a new registration. Exceptions, at 10. According to Respondent, the ALJ erred in finding that he failed to comply with the MOA when she observed that he ''credibly testified that he failed to meet the restrictions concerning the purchasing of controlled substances and the prescribing, dispensing, and administering of controlled substances to family members.'' *Id.* (quoting R.D. at 48–49).

It is true (as Respondent argues) that there is no evidence that he violated the MOA provision that he ''not prescribe, dispense, or administer controlled substances to any relative.'' GX 9, at 2. However, the MOA also required that he ''obey all federal and state laws concerning controlled substances,'' as well as that he ''not possess any controlled substances not prescribed for him for a legitimate medical condition by a physician or other health care professional other'' than himself. *Id.* at 1. Moreover, the evidence also showed (and it is undisputed) that on December 21, 2004, Respondent was subjected to a drug test and tested positive for cocaine.[12] GX 13, at 1; GX 17, at 53. Thus, while the ALJ erred in referring to the MOA's provision which prohibited him from dispensing to his relatives, her finding that Respondent tested positive for cocaine when the MOA was in effect, *see* R.D. at 49, establishes that he violated the MOA, as well as the CSA,[13] and the order of the Pennsylvania Board. Thus, the ALJ's error was not prejudicial.

Exception 6

Next, Respondent argues that the ALJ erred because he was not ''allowed to discuss and/or explain his understanding of the plea agreement regarding steroid use and [sic] his testimony regarding steroid use.'' Exceptions, at 11. Respondent asserts that while he ''understood that there was a statement in his written plea agreement that he had use steroids, but since his steroid use was prior to his treatment at Talbot Recovery in 2005, and the plea he entered was only to Count I,'' the other count being dismissed, he entered the plea. *Id.* Respondent also asserts that the ALJ improperly allowed the FBI Agent to testify that he (Respondent) ''was supposed to be self-using the anabolic steroids.'' *Id.* (citing Tr. 84).[14] Respondent argues that this was a violation of the ALJ's pre-hearing ruling that the factual circumstances surrounding his guilty plea were not subject to relitigation in this proceeding and that the plea and plea agreement ''speak for themselves.'' *Id.* Finally, Respondent asserts that ''[t]here is nothing to show that Respondent used steroids since his treatment in 2005.'' *Id.*

As for Respondent's understanding of the plea agreement, Respondent signed the factual resume in which he ''admit[ted] in open court and under oath'' that the statement that he ''purchased, consumed, and trafficked anabolic steroids'' was ''true and correct and constitute[d] evidence in the case.'' GX 25, at 14. Moreover, in the plea agreement, Respondent acknowledged that he had ''discussed the facts of the case with his attorney, and [that] his attorney has explained to [him] the essential legal elements of the . . . charges which ha[d] been brought against him.'' *Id.* at 2.

Moreover, upon signing the plea agreement, Respondent ''stipulate[d] that the Factual Resume, incorporated herein, is true and accurate in every respect, and that had the matter proceeded to trial, the United States could have proved the same beyond a reasonable doubt.'' *Id.* at 13. He also stated that he understood the agreement and he had ''voluntarily agree[d] to it.'' *Id.* Finally, the plea agreement provided that it ''is the complete statement of the agreement between the defendant and the United States and may not be altered unless done so in writing and signed by all the parties.'' *Id.* at 12. Accordingly, the ALJ properly ruled that the plea agreement spoke for itself and that Respondent could not testify as to his understanding of it. However, as explained previously, Respondent was allowed to testify regarding the events which led to his arrest, the indictment, and conviction.

As for Respondent's contention that the ALJ improperly allowed the testimony that he ''was supposed to be self-using the anabolic steroids,'' Respondent's counsel did not object to the testimony. Tr. 84. Accordingly, I hold that Respondent has waived his objection.

Finally, Respondent contends that there is no evidence to show that he has used steroids since he completed inpatient treatment in 2005. Indeed, at the hearing, he repeatedly denied that he had purchased, consumed and trafficked in anabolic steroids. Tr. 178. However, Respondent admitted to the contrary when he ''stipulate[d] that the Factual Resume . . . is true and accurate in every respect'' and that Government ''could have proved the same beyond a reasonable doubt'' had he gone to trial. GX 25, at 13. By itself, Respondent's admission in the plea agreement provides sufficient evidence to find his denial of having used steroids incredible. Moreover, as explained previously, as ultimate factfinder, I find that the FBI Agent's affidavit is sufficiently reliable to constitute substantial evidence which further supports a finding that Respondent engaged in all three actions as set forth in the factual resume. Thus, I also reject Respondent's contention that there is no evidence that he has ''used steroids since his treatment in 2005.'' Exceptions, at 11.

Exception 7

Next, Respondent takes exception to the ALJ finding, *sua sponte,* ''that Respondent should have notified the DEA when he decided in 2004 that he no longer had any intention of practicing medicine in Alabama.'' R.D. at 55 (quoted in Exceptions, at 11–12). As support for her finding, the ALJ

[11] As noted in his Exceptions, Respondent asserts that he accepted responsibility for his criminal conduct when testified that ''I used very poor judgment and I accepted responsibility—I knew my wife was doing something illegal and I should not have gotten involved with it.'' Exceptions, at 6–7 (quoting Tr. 140). However, given that Respondent pled guilty to participating in a criminal conspiracy that went on for six years, and that the reliable evidence shows that he was engaged in the distribution of anabolic steroids, his testimony suggests that what he regrets is not his criminal conduct but having gotten caught.

[12] While cocaine has recognized medical uses, Respondent does not maintain that he used cocaine in the course of receiving medical treatment. Moreover, in his testimony, he admitted that he did not ''stay away from illegal drugs'' and failed to abide by the MOA. Tr. 161.

[13] While the ALJ found that Respondent's use of cocaine violated Alabama law, it is unclear where he was located when he used the cocaine that gave rise to the positive drug test in December 2004. Nor, given that this use of cocaine violated the CSA, is it necessary to determine what State he was in when he used cocaine.

[14] Notably, the testimony cited by Respondent was given by a DEA Investigator who merely discussed the scope of the investigation he conducted upon being notified that the Alabama Board of Medical Examiners had suspended his medical license. *See* Tr. 82–86. While the FBI Agent also testified for the Government, he was not asked a single question about the steroid investigation, his testimony being limited to an allegation that Respondent had traded controlled substance prescriptions for sex or cash and was apparently doing so at the time he was arrested. *Id.* at 100, 104–05. Upon the objection of Respondent's counsel, the ALJ barred this testimony because the Agent did not personally observe the alleged acts and because it was ''uncharged misconduct.'' *Id.* at 105.

relied on Respondent's testimony that ''in 2004 he notified both his attorney and the Alabama [Board] that he would not pursue'' the reinstatement of his medical license, and the Board then ''rescinded its offer to reinstate his'' license. *Id.* The ALJ thus found that because Respondent ''expressed a clear intent to cease professional practice,'' under DEA's regulations, he had ''the duty to notify'' the Agency of this. *Id.* (citing 21 CFR 1301.52(a)).

Respondent contends, however, that at the time he informed the Alabama Board that he did not intend to pursue reinstatement, he was not then registered in Alabama. Exceptions, at 12. On this issue, the evidence is limited to a Certification of Registration History, which was submitted by the Chief of DEA's Registration and Program Support Section, and which sets forth, *inter alia,* the date Respondent was assigned a DEA registration, as well as the dates and addresses for various changes of his registered location. *See* GX 33.

Relevant here, the Certification lists an address change on January 27, 1994 from one location to another in Russellville, Alabama and an address change on November 16, 2005 from a location in Erie, Pennsylvania [15] to a location in Jacobus, Pennsylvania. *Id.* at 1. Notably, the Certification contains no information as to when Respondent changed his registered location from Russellville, Alabama to Erie, Pennsylvania. *See id.* Moreover, Respondent testified that he switched his registration back to Pennsylvania in either 1997 or 2000, *see* Tr. 155–56, and the 2003 Memorandum of Agreement was issued by the DEA Pittsburgh Office and was addressed to Respondent at an address in Erie, thus suggesting that he was then registered in Pennsylvania. There being no evidence that Respondent changed his registered location to a place in Alabama between the time he entered the Memorandum of Agreement and the 2005 address change, I find Respondent's exception well taken.

Thus, I reject the ALJ's finding that Respondent had a duty to notify DEA when, in 2004, he decided not to pursue the reinstatement of his Alabama medical license. However, given the evidence of Respondent's criminal conduct and his failure to accept responsibility for it, I conclude that the ALJ's error was not prejudicial.

[15] While the certification does not list the State that Erie is located in, using the Web site of the U.S. Postal Service, I have taken official notice that the listed zip code of 16504 is for Erie, Pennsylvania.

Exception 8

Finally, Respondent takes exception to the ALJ's conclusions that ''Respondent has been granted numerous opportunities to act as a responsible DEA registrant and has failed each time'' and that there are no ''conditions that could be placed on [his] registration . . . that would ensure that [he] would be a responsible DEA registrant.'' Exceptions, at 12. While ''Respondent acknowledges [having] made several personal and professional mistakes,'' he asserts that ''since his recovery from drug and alcohol addiction . . . [he] has made every effort to remain a responsible DEA registrant.'' *Id.* He further argues that ''[d]espite his felony conviction, the State Licensing Boards of Minnesota and Alabama both agree that Respondent should be allowed to remain medically licensed in their state.'' *Id.*

I reject the exception. Even acknowledging Respondent's successful efforts to address his abuse of cocaine, the record fully supports the ALJ's conclusion that Respondent's registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(f) & 824(a)(4). Contrary to Respondent's understanding of his obligations as the holder of a DEA registration, a ''responsible DEA registrant'' does not engage in criminal activity, let alone a six-year long conspiracy to distribute controlled substances. Nor does a ''responsible DEA registrant'' proceed to lie under oath in either an administrative or judicial proceeding.[16]

Here, even assuming that Respondent told the same disingenuous story regarding his involvement in the criminal conspiracy to the medical boards of Alabama and Minnesota as he told in this proceeding, their decisions to allow him to practice medicine do not persuade me that he should be allowed to retain his DEA registration. *Cf. David A. Ruben,* 78 FR 38363, 38387 n.54 (2013) (holding that while a State can adopt a policy which favors improving the performance of a physician over preventing him from practicing, Congress has directed the Agency to protect the public interest and is not bound by a State's policy). Indeed, DEA has repeatedly held that while the possession of authority to dispense controlled substances under the laws of the State in which a physician practices is a prerequisite for obtaining and maintaining a registration, ''it 'is not dispositive of the public interest inquiry.' '' *Id.* at 38379 n.35 (quoting *George Mathew,* 75 FR 66138, 66145 (2010), *pet for rev. denied, Mathew* v. *DEA,* No. 10–73480, slip. op. at 5 (9th Cir., Mar. 16, 2012) (internal quotations and other citations omitted)). Rather, the Controlled Substances Act requires the Agency to make an independent determination from that made by state officials as to whether the granting or continuation of controlled substance dispensing authority is consistent with the public interest. *Id.* at n.35; *see also Mortimer Levin,* 57 FR 8680, 8681 (1992).

Here, notwithstanding Respondent's previous issues with controlled substances, he entered into a conspiracy to violate the Controlled Substances Act and further violated the CSA by unlawfully possessing and distributing anabolic steroids. Because Congress did not limit the Agency's authority to protect the public interest to those instances in which a DEA registrant has used his registration to commit criminal acts, it is of no consequence that Respondent did not need to use his registration to acquire and distribute the steroids. *See Michael S. Moore,* 76 FR 45867, 45868 (2011) (suspending registration based on physician's manufacturing of marijuana); *Tony T. Bui,* 75 FR 49979, 49989 (2010) (revoking registration based, in part, on physician's abuse of cocaine); *David E. Trawick,* 53 FR 5326 (1988) (revoking registration based on conviction for cocaine possession; ''[a]lthough [physician's] unlawful activities relating to controlled substances occurred outside of his professional practice, the Administrator finds that such activities are of a sufficient magnitude to warrant the revocation of his'' registration).

Respondent's criminal conduct went on for six years and constitutes a felony offense. Moreover, at the hearing, he offered the disingenuous claims that he was entrapped or set up by his estranged wife and that his involvement was limited to purchasing non-controlled drugs. Accordingly, I find the ALJ's conclusion that Respondent does not accept responsibility for his criminal conduct to be supported by substantial evidence. I therefore reject Respondent's exception.

Summary

Notwithstanding my conclusion that several of Respondents' exceptions are

[16] Were it the case that Respondent told the truth in this proceeding regarding his involvement in the conspiracy—which, of course, is totally contrary to the reliable evidence—I would then have to conclude that he provided a false statement in the criminal proceeding when he ''stipulate[d] that the Factual Resume . . . is true and accurate in every respect.'' GX 25, at13. In either case, it is clear that a DEA registration cannot be entrusted to a person who views his obligation to tell the truth with such disregard.

well taken, I adopt the ALJ's findings that Respondent participated in a six-year long conspiracy to violate the CSA by purchasing and distributing anabolic steroids, that he lacked candor, and that he has not accepted responsibility for his misconduct. I further adopt the ALJ's ultimate finding that Respondent's registration is ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Because Respondent's misconduct is egregious and he has failed to fully acknowledge his misconduct, I conclude that the issuance of a registration with conditions would not adequately protect the public interest. Accordingly, I will adopt the ALJ's recommended order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(2) & (4), as well as 28 CFR 0.100(b), I order that DEA Certificates of Registration BK1391729 and FK1953327 issued to Mark P. Koch, D.O., be, and they hereby are, revoked. I further order that any application of Mark P. Koch, D.O., to renew or modify either of the above registrations, be, and it hereby is, denied. This Order is effective May 5, 2014.

Dated: March 25, 2014.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government.

Elizabeth McAdory Borg, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Introduction

Gail A. Randall, Administrative Law Judge. This proceeding is an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* to determine whether the Drug Enforcement Administration (''DEA'' or ''Government'') should revoke a physician's DEA Certificates of Registration and deny any pending applications to renew or modify such registrations, pursuant to 21 U.S.C. 823(f) and 824(a)(2), (a)(4) (2011). Without his registrations, the physician, Mark P. Koch, D.O. (''Respondent'' or ''Dr. Koch''), would be unable to lawfully prescribe, dispense or otherwise handle controlled substances in the course of his medical practice.

II. Procedural Background

The Deputy Assistant Administrator of the DEA, issued an Order to Show Cause (''Order'') dated January 16, 2013, proposing to revoke two DEA Certificates of Registration (''COR''), pursuant to 21 U.S.C. 824(a)(2) and 824(a)(4), and deny any pending renewal or modification applications, pursuant to 21 U.S.C. 823(f), because the Respondent's continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1, at 1].[17] The Order stated that the Respondent was registered as a practitioner in Schedules II through V, pursuant to his DEA COR No. BK1391729,[18] in Monroeville, Alabama. This registration expires by its own terms on December 31, 2014. The Respondent is also registered as a practitioner in Schedules II through V, pursuant to his DEA COR No. FK1953327,[19] in Virginia, Minnesota. This registration expired by its own terms on December 31, 2012, but the Respondent submitted a timely request to renew the registration. [*Id.* at 1].

The Order outlined the past disciplinary actions taken by the Alabama, Pennsylvania, and Minnesota medical boards, which resulted from Respondent's long history of substance abuse involving cocaine and alcohol. [*Id.* at 2]. Additionally, the Order described Respondent's Memorandum of Agreement (''MOA'') with the DEA, which he entered into on July 15, 2003. [*Id.*]. Most importantly, the Order asserted that Respondent failed to comply with federal law relating to controlled substances, as evidenced by his recent drug-related felony conviction in 2012. [*Id.*].[20]

In summary, the Deputy Assistant Administrator alleged that Respondent's conduct from September 1997 to February 2012 violated multiple state and federal laws. [*Id.*]. As a result, Respondent was given the opportunity to show cause as to why his renewal application should not be denied and why his existing registration should not be revoked on the basis of such allegations. [*Id.*]. Respondent was personally served with the Order to Show Cause on January 18, 2013. [ALJ Exh. 2].

On February 5, 2013, Respondent, through counsel, timely filed a request for a hearing in the above-captioned matter. [ALJ Exh. 3].

On May 14, 2013 through May 15, 2013, the hearing was held at the U.S. Bankruptcy Court in Montgomery, Alabama, with the Government and Respondent each represented by counsel. [ALJ Exh. 3–4, 6–7]. At the hearing, counsel for the Government called five witnesses[21] to testify and introduced documentary evidence. [Transcript (''Tr.'') 3]. Counsel for the Respondent called eight witnesses to testify, including the Respondent, and introduced documentary evidence. [Tr. 3, 216].

At the beginning of the hearing, I allowed Mr. Jim Hoover[22] (''Mr. Hoover'') to present his arguments on the Motion to Quash Subpoena Duces Tecum, which his colleague filed on behalf of Fay McDonnell, the Government's first witness, and the APHP. [Tr. 9]. Mr. Hoover argued that under Alabama Code §§ 34–24–404 and 540–X–13–.06, APHP must hold physician participation in the program ''absolutely confidential'' since it is protected by ''a privilege.'' [Tr. 11]. Thus, without a participating physician's consent to release the information, APHP ''is prohibited from disclosing'' the physician's records. [*Id.*]. Government counsel argued that federal law, specifically HIPAA, applies to the physician's records. [Tr. 16]. Government counsel explained that, under HIPAA, there is a law enforcement exception that would allow for disclosure of the protected records. [*Id.*]. Mr. Hoover responded by explaining that before you can consider the exceptions to HIPAA, it is necessary to consider the relevant rules under preemption. [Tr. 18]. Mr. Hoover explained that HIPAA sets a minimum floor of health information privacy

[17] Administrative Law Judge (''ALJ'') Exhibits 1–6 were admitted into the record, not for the truth of the factual matters asserted therein, but to the extent that they represent the procedural history of this case. [Tr. 5–7]. ALJ Exhibits 7 and 8 were similarly admitted into the record following the testimony of Ms. McDonnell. [Tr. 54–55].

[18] A copy of Respondent's DEA COR No. BK1391729 was admitted into evidence without objection through the testimony of Diversion Investigator, Martin Craig Riley. [Tr. 92; Gov't Ex. 33].

[19] A copy of Respondent's DEA COR No. FK1953327 was admitted into evidence without objection through the testimony of Diversion Investigator, Martin Craig Riley. [Tr. 93–94; Gov't Ex. 34].

[20] In his plea agreement, Respondent admitted that for six years, from on or about August 2005 through on or about July 8, 2011, he willfully, knowingly, and unlawfully conspired with others to dispense testosterone and Primobolan Depot (methenolone), both of which are Schedule III controlled substances, in violation of 21 U.S.C. 841 (a)(1) and 846. [ALJ Exh. 1, at 2]. Pursuant to a plea agreement, the Respondent was found guilty in the District Court for the Southern District of Alabama, of one count of conspiring to dispense and possession with intent to distribute anabolic steroids. [*Id.* at 1–2].

[21] At the outset of the hearing, Respondent requested sequestration of all of the witnesses. [Tr. 7–8]. I granted the request and ordered sequestration of the witnesses, with the exception of Mr. Martin Craig Riley and the Respondent. [*Id.*]

[22] Mr. Hoover is associated with the law firm of Burr & Forman. [Tr. 9]. He appeared on behalf of Cheairs Porter, who serves as legal counsel to the Alabama Physician Health Program. [*Id.*].

protections, but defaults to state laws that are more restrictive than the federal law. [Tr. 18–19]. Mr. Hoover added that the Alabama law can be analogized to a privilege, which can be waived with a physician's consent. [Tr. 19–20]. Mr. Hoover then produced a written consent form that was signed by Respondent and accompanied by a cover letter. [Tr. 25–26; ALJ Exh. 8]. The letter granted consent for the release of all drug test results. [Tr. 28–29].

Ultimately, I ruled on the subpoena, finding that: (1) Alabama Administrative Code establishes a privilege concerning ''[a]ll information, interviews, reports, statements, memoranda or other documents furnished to or produced by the Alabama Physician Wellness Committee. . . .''; (2) the privileged information may only be disclosed ''when its release is authorized in writing by the physician''; and (3) testimony and documents from APHP ''will be considered within the scope of the release only.'' [Tr. 29–31].

On May 17, 2013, a Protective Order was issued to protect testimony and documentary evidence concerning Respondent's participation in APHP and his corresponding drug results. [ALJ Exh. 9; *see* Tr. 27].

After the hearing, the Government and the Respondent submitted Proposed Findings of Fact, Conclusions of Law and Argument (''Gov't Brief'' and ''Resp't Brief'').

III. Issue

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke DEA COR Nos. BK1391729 and FK1953327, of Mark P. Koch, D.O., as practitioner, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications to renew or modify these registrations, pursuant to 21 U.S.C. 823(f), because to continue Dr. Koch's registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f). [ALJ Exh. 4; Tr. 5].

IV. Findings of Fact

A. Stipulated Facts

The parties have stipulated to the following facts:

1. The Respondent is registered with the DEA as a practitioner in Schedules II through V pursuant to DEA registration number BK1391729 at 336 Barnes Road, Monroeville, AL 36460. DEA registration number BK1391729 expires by its terms on December 31, 2014.

2. The Respondent is registered with the DEA as a practitioner in Schedules II through V pursuant to DEA registration number FK1953327 at 815 12th Street North, Virginia, MN 55792. DEA registration number FK1953327 expired by its terms on December 31, 2012. On or about November 21, 2012, Dr. Koch submitted a timely request to renew the registration, the registration continues in effect until final action is taken by the DEA on the renewal application.

3. On or about February 24, 2012, the Respondent pled guilty to one felony count of conspiracy to dispense and possess with intent to distribute anabolic steroids. Government exhibits 22 through 26 refer to this criminal case, that is, *United States* v. *Mark Peter Koch,* United States District Court for the Southern District of Alabama, criminal case number 11–00191–001–WS.

4. On or about July 7, 2011, a federal arrest warrant was executed for the Respondent at 336 Barnes Road, Monroeville, Alabama.

5. The parties stipulate to the prior disciplinary history of Respondent in the states of Alabama, Minnesota and Pennsylvania as submitted in written form to the ALJ without testimony by any third party not involved in those actions, to include:

Government Exhibits 1 through 8; 10 through 12; 14 through 21; 27 through 30; 35 and 43.

[ALJ Exh. 6; Tr. 6].

B. Respondent's Licensure and Employment

Dr. Koch holds an active, conditional license [23] as a doctor of osteopathy in the state of Alabama, as well as a state certificate of registration to handle controlled substances in Schedules II through V. [Gov't Ex. 31, at 1]. Respondent has maintained DEA COR No. BK1391729 with a registered address of 336 Barnes Road, Monroeville, Alabama 36460.[24] [Tr. 184–85].

Respondent also holds an active license [25] as a physician and surgeon in Minnesota. [Gov't Ex. 32, at 1]. Respondent has maintained DEA COR No. FK1953327 with a registered address of 815 12th Street North, Virginia, Minnesota 55792. [Tr. 186–87]. On January 31, 2013, Respondent was not available at his registered address to accept mail.[26] During his testimony, Respondent explained that he uses Monroeville, Alabama as a mailing address for both of his DEA CORs because it remains his permanent address. [*Id.*].

Dr. Koch is currently employed by Wapiti Medical Center (''WMC''). [Tr. 120]. Although WMC is based in South Dakota, Respondent physically works in Minnesota, taking shifts in the emergency room. [*Id.*]. Respondent has previously worked in several emergency rooms in Minnesota, as well as emergency rooms located in Thomasville, Camden, Brooke, and Luverne Hospital in Alabama. [Tr. 127–28]. After Respondent's Alabama medical license was temporarily reinstated in 2010, he became responsible for the emergency room and for an outpatient clinic. [Tr. 128]. He was also the director of a nursing home. [*Id.*]. However, in January 2013, the hospital that owned the clinic went bankrupt. [*Id.*]. Since the end of February 2013, Respondent has primarily worked as a ''locum tenens'' in Minnesota. [*Id.*].

C. Respondent's History of Drug Abuse

Dr. Koch testified that he has had ''a long history of substance abuse.'' [Tr. 120]. He estimated that this addiction lasted from 1985 to 2005. [Tr. 120]. Dr. Koch admitted on cross-examination that the primary drugs he abused were cocaine and alcohol. [Tr. 144]. Specifically, he testified that he used cocaine four or five times a year when he was out of the country in the Caribbean. [Tr. 144]. He admitted to

[23] The details of Respondent's Alabama medical license and state registration to handle controlled substances were admitted into the record without objection. [Tr. 95; Gov't Ex. 31].

[24] After Respondent's divorce, this address became a location where he would see patients a few days a week. [Tr. 184]. Respondent explained he has since returned to using this address as his permanent residence. [Tr. 185].

[25] The details of Respondent's Minnesota medical license and state registration to handle controlled substances were admitted into the record without objection. [Tr. 95–96; Gov't Ex. 32].

[26] DI Riley was called back to testify about an envelope, which DEA sent to Respondent's registered address, but which was returned as ''undeliverable as addressed, forwarding order expired'' on January 31, 2013. [Tr. 269]. On cross-examination, DI Riley admitted he first saw the envelope one day earlier when Government counsel gave it to him. [Tr. 270]. DI Riley also acknowledged that the physical address and mailing address for a registration can be different. [*Id.*]. DI Riley clarified that the significance of the ''undeliverable'' stamp is that there should be someone at the physical address, who recognizes Respondent and can deliver the mail. [Tr. 271]. DI Riley agreed with Respondent's counsel, however, that the purpose of a mailing address is to identify where mail should be sent. [Tr. 272]. On the other hand, DI Riley asserted that it is the duty of a DEA registrant to be located at a registered address. [Tr. 273]. No legal basis was offered in support of this duty. [*See* Gov't Brief, at 7]. Respondent's counsel objected to admission of the envelope into evidence. [Tr. 275]. The envelope was ultimately admitted into the record over Respondent's objection and labeled as Government Exhibit 44. [Tr. 276; Gov't Ex. 44].

consuming a few grams of cocaine on each occasion. [Tr. 145]. He also used to drink alcohol approximately three times a week, drinking up to eight or ten cans of beer during each episode. [*Id.*].

D. Respondent's Participation in Drug Monitoring Programs

Respondent has participated in mandatory and voluntary drug monitoring programs for several years in two different states. Respondent specifically testified that he was continuously monitored for drug use in Pennsylvania from 1997 to 2005.[27] [Tr. 186]. He has also been monitored in Alabama from 2005 [28] to the present. [*Id.*]. In 2007, when Respondent's Alabama license to practice medicine was restored, Respondent testified that he was required to participate in the Alabama Physician Health Program (''APHP'') until the medical board's order expired in July 2010. [Tr. 121]. After the order expired, Dr. Koch said he voluntarily remained in APHP. [*Id.*]. Respondent recalled that from 2010 to 2012, he voluntarily participated in drug screening by urine analysis. [Tr. 123–24].

Under the APHP monitoring program, Respondent explained that he could not select the type of testing conducted, since this decision was made by the supervising physician, Dr. Skipper. [Tr. 168]. Respondent added that he similarly lacked control over when the testing occurred because the date on which he had to submit urine samples was randomly generated by a computer. [Tr. 125, 137]. In the past, the Respondent said he had to ''make arrangements'' while working a shift in order to ensure that his urine sample made it to the clinic for testing by the deadline of four o'clock in the afternoon. [Tr. 138]. He testified that he had never missed a random drug screening. [Tr. 122, 138]. This testimony, however, was squarely refuted by Respondent's drug-testing results, which showed he missed twelve drug tests from July 2002 to February 2005. [Gov't Ex. 17, at 53–55]. Respondent also testified that he had submitted all of the quarterly reports required by worksite monitors. [Tr. 137]. No documentary evidence in the record refutes this claim. During his testimony, Respondent added that he generally did not know the results of each test, but explained that he would have been notified by APHP, if the results of the test were positive. [Tr. 124].

Fay Donnell (''Ms. McDonnell'') [29] confirmed that Respondent participated in APHP drug-testing both voluntarily and in response to the conditions of state licensing board orders. Ms. McDonnell specifically testified that Respondent came under agreement with APHP to participate in random drug-testing in 2005. [Tr. 39]. Records associated with Respondent's participation in APHP have been maintained by the program coordinator.[30] [Tr. 34]. The APHP records include the results of any positive or negative drug tests, as well as any missed drug tests or ''no-show[s].'' [Tr. 38]. However, Ms. McDonnell explained that APHP only has complete records from 2008 to the present. [Tr. 39]. The records presently available to APHP from 2005 to 2008 are only positive test results due to a change in the drug-testing contract. [Tr. 40]. According to the records, Respondent does not have any positive results in his file for this time period. [*Id.*].

Ms. McDonnell recalled that Respondent consented to the release of records from 2005 to the present. [Tr. 44].[31] Ms. McDonnell testified that the date entered into the computer to fulfill the subpoena request was 1994, but the first record that appeared in Respondent's file was January 25, 2008. [*Id.*]. Ms. McDonnell credibly testified that in anticipation of this hearing, she made two certifications of documents from Respondent's APHP file. The first certification [32] occurred on June 1, 2012 and the second certification [33] occurred on May 1, 2013. [Tr. 41]. The second certification corrected a previous error where Ms. McDonnell had incorrectly stated that Respondent's first anabolic steroid test [34] on July 18, 2011 [35] test was a hair test, not a urine analysis. [Tr. 46; *see also* Resp't Ex. 1(A), at 3]. The error was brought to Ms. McDonnell's attention by Government counsel. [Tr. 46]. Ms. McDonnell testified that she did not decide what type of test should be ordered for each physician. [Tr. 47–48]. She explained, however, that she could determine what test had been administered from the documentation in the case file. [Tr. 48]. When commenting specifically on Respondent's test for steroids, which she initially mischaracterized as a hair sample, Ms. McDonnell explained that Respondent had not been able to provide a sufficient hair sample for the anabolic steroid test, so it was reordered [36] as a urine analysis. [Tr. 49–50; *see also* Resp't Ex. 1(B), at 3, 7].[37] Ms. McDonnell's testimony was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

[27] For purposes of clarification, documentary evidence of Respondent's drug-testing through PHM in Pennsylvania actually indicate the results of drug tests as late as June 2006. [Gov't Ex. 17, at 56].

[28] When Respondent consented to the release of all drug-testing records at APHP, Respondent said he consented to all results from 2005 to 2011, since it was his impression that these were the only test results APHP has on him. Government counsel tried to show that Respondent did not consent to release of *all* of the records [*see* ALJ Exh. 8], however, Respondent credibly testified that he did not participate in APHP prior to 2005. [Tr. 189]. Respondent clarified that he has continuously participated in APHP from 2005 to the present, sometimes voluntarily. [Tr. 190].

[29] As the program coordinator of APHP, Ms. McDonnell maintained physician records, scanned documents for case files, took phone calls, and coordinated the physicians' schedules around their drug-testing requirements. [Tr. 34–35].

[30] Fay McDonnell is the former program coordinator of APHP. [Tr. 34]. She served in this role from March 2007 to January 2013. [Tr. 36]. She retrieved Respondent's record in response to the subpoena duces tecum. Ms. McDonnell currently works as a case manager of individual physicians in APHP. [Tr. 35].

[31] The release requested ''all drug screens that [the Respondent] has passed since voluntarily enrolling into the program.'' [ALJ Exh. 8]. However, the record demonstrates that the Respondent had a positive drug test in December of 2004. [Gov't Ex. 17, at 48]. Also, positive test results from 2001 to 2005 and missed urine tests were documented. [*Id.* at 49–56].

[32] The original certification was admitted into evidence without objection. [Tr. 51; Resp't Ex. 1(A)]. Respondent's Exhibit 1(A) is the original copy of Respondent's records from APHP that Ms. McDonnell certified. Ms. McDonnell admitted during her testimony that this was the certification the Alabama Commission relied on in 2012 when hearing Respondent's case. [Tr. 47]. I will deny the Government's motion to exclude this exhibit from evidence, since I find Ms. McDonnell's testimony on the document, her error, and the correction credible. [Gov't Brief, at 36, 38].

[33] The revised certification was admitted into evidence without objection. [Tr. 51; Resp't Ex. 1(B)]. Respondent's Exhibit 1(B) is the updated copy of Respondent's records from APHP that Ms. McDonnell certified. Ms. McDonnell testified that she certified the second set of documents, even though she no longer served as the program coordinator, since she made the error on the first certification. [Tr. 42–43]. I will deny the Government's motion to exclude this exhibit from evidence, since I find Ms. McDonnell's testimony on the document, her error, and the correction credible. [Gov't Brief, at 36, 38].

[34] From the record and Ms. McDonnell's testimony, July 18, 2011 appears to be the first date that Respondent was tested for anabolic steroids. [Tr. 52; *see also* Resp't Ex. 1(B), at 7]. This occurred just over a week after Respondent was arrested on drug-related felony charges.

[35] Respondent incorrectly recalled that he was first tested for steroids through a hair sample in January or February of 2013 by APHP. [Tr. 123–24].

[36] Respondent incorrectly testified that he provided a hair sample on two occasions for the steroid test, explaining that the first test resulted in an insufficient sample and the second test to his knowledge was negative. [Tr. 124].

[37] Respondent clarified on recross-examination that in January of 2012, while he was under voluntary contract with the physician monitoring program, he was asked to give a hair sample. [Tr. 202]. Respondent maintains that he had shaved his whole body since at least 1998, but as long ago as the 1980's. [Tr. 204]. Furthermore, there was not a lab nearby that would do the fingernail testing as an alternative. [Tr. 202–03]. Respondent says he has since grown chest hair in order to comply with the January 2012 Alabama Board Order. [Tr. 203].

E. Federal Investigations of Respondent

1. Drug Enforcement Administration (DEA)

In February 2000, Kurt Dittmer (''Supervisor Dittmer'') [38] investigated Respondent's renewal application for his Pennsylvania registration, since Respondent had checked ''yes'' to whether the applicant had previous ''liability issues'' with licensing organizations or law enforcement. [Tr. 58]. Dr. Koch's positive response to the liability question on his application concerned his use of cocaine while on vacation in the Caribbean. [Tr. 59]. During a phone conversation, Respondent told Supervisor Dittmer that he had tested positive for his cocaine use through a urine analysis. [Tr. 60]. Respondent told Supervisor Dittmer that his state of Pennsylvania medical license was subsequently put under active suspension. [*Id.*] [39] Once Respondent indicated he was represented by an attorney, Supervisor Dittmer said he contacted the attorney, Grant Palmer, for further questioning. [Tr. 60–61].

Supervisor Dittmer credibly testified that at the time of the investigation, Respondent had a valid medical license in Pennsylvania, but explained that the license was subject to probationary conditions. [Tr. 61].[40] At this point in the investigation, Supervisor Dittmer said that he memorialized his findings in a report and renewed Respondent's registration. [Tr. 64]. DEA was satisfied that the probationary conditions, which involved monitoring through drug-testing, were sufficient protections to support renewal of Respondent's registration. [Tr. 65]. Supervisor Dittmer's testimony was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

In 2003, Frank Younker (''Supervisor Younker'') [41] came into contact with Respondent when he was asked by the Philadelphia office to investigate an application filed by the Respondent for renewal of his Pennsylvania registration. [Tr. 68]. Similar to Supervisor Dittmer's testimony, Younker's investigation began when Respondent checked ''yes'' to the liability question on the application. [*Id.*]. Respondent indicated on the application that he had a history of drug abuse and was currently participating in a monitoring agreement with the board of medicine in Pennsylvania. [*Id.*].

As part of the investigation, Supervisor Younker contacted the Pennsylvania State Board of Osteopathic Medicine (''SBOM''). [Tr. 69]. The SBOM indicated that they were ''acting on behalf of something that was done in Alabama.'' [Tr. 70]. Specifically, Younker added that it concerned Respondent's cocaine and alcohol abuse. [*Id.*]. Since Supervisor Younker was aware of Supervisor Dittmer's prior investigation, Younker testified that he decided to offer Respondent the opportunity to enter into a memorandum of agreement (''MOA'') [42] with the DEA concerning his application. [*Id.*].

Supervisor Younker explained that his decision to draft an MOA was prompted by Respondent's past history of drug use and non-compliance. [*See* Tr. 70–71]. In drafting the MOA, Younker credibly testified that he took into account Dr. Koch's past history of drug use, non-compliance with monitoring, adverse actions by state medical boards, and current employment status. [Tr. 72]. Supervisor Younker said of the MOA, ''[i]t's not like a cookie cutter document.'' [*Id.*].

Under the MOA, Respondent was not only required to abide by all federal and state laws, he was also required to abide by monitoring and treatment programs in Pennsylvania and maintain logs of all controlled substances he prescribed for two years, which would allow DEA to identify any unusual prescribing habits.[43] [Tr. 72, 77–78]. Additionally, Respondent was prohibited under the MOA from possessing any controlled substances, unless he had a legitimate medical prescription. [Tr. 73]. He was also prohibited from prescribing, dispensing or administering controlled substances to a family member and prohibited from purchasing or prescribing controlled substances for himself. [*Id.*].

While the MOA was in effect, from July 15, 2003 through July 15, 2005, Supervisor Younker was not aware of any violations committed by Respondent when Younker left the office in November 2004. [Tr. 75, 78; Gov't Ex. 9, at 2]. However, during his testimony, Respondent was shown the MOA written by Supervisor Younker in 2003. [Gov't Ex. 9; Tr. 161]. Respondent admitted that he, prior to 2005, failed to comply with the conditions of the MOA that prohibited him from possessing or purchasing controlled substances for personal or office use and that also prohibited him from prescribing, dispensing, or administering controlled substances to relatives. [Gov't Ex. 9, at 1–2; Tr. 161]. Supervisor Younker's testimony was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

In April 2012, Martin Craig Riley (''DI Riley'') [44] began an investigation of Respondent on the basis of a notice he received from the Alabama State Board of Medical Examiners, Medical Licensure Commission (''SBME''), which indicated that Respondent's Alabama medical license [45] had been temporarily suspended. [Tr. 82.]. The suspension was in response to Respondent having pled guilty to a ''conspiracy to distribute and possess with intent to distribute anabolic steroids'' [46] DI Riley confirmed this information from public records on the board of medical examiner's Web site

[38] Supervisor Dittmer has been employed by the DEA for 18 years. [Tr. 56]. He was initially trained as a Diversion Investigator for the DEA, but returned to Quantico, Virginia in 2005 to train as a Group Supervisor. [Tr. 57]. Supervisor Dittmer is responsible for overseeing 20,000 registrants in 27 counties of western Pennsylvania. [*Id.*]. The registrants include methadone clinics, physicians, dentists, and pharmacies. [*Id.*].

[39] Respondent's attorney at the time of the investigation helped confirm that Respondent did not write any prescriptions for controlled substances while his medical license was under suspension. [Tr. 64].

[40] Supervisor Dittmer testified that he told Respondent's attorney during the investigation that while Respondent's medical license had been suspended, Respondent should have surrendered his registration. [Tr. 62]. Supervisor Dittmer did not provide the legal basis for such testimony. I find it noteworthy that neither the statutes, nor DEA regulations define such a responsibility, as described by Supervisor Dittmer, which requires a registrant to surrender their registration in the event that their medical license is suspended.

[41] Supervisor Younker has been employed with DEA for 28 years. [Tr. 67]. He has worked as a Senior Investigator and Group Supervisor out of the Cincinnati Resident Office. [*Id.*]. His responsibilities include attending training sessions at Quantico, Virginia, conducting investigations, and interviewing registrants. [Tr. 68].

[42] Government Exhibit 9 was identified by Supervisor Younker during his testimony as the Memorandum of Agreement. [Tr. 71]. The MOA was signed by Dr. Koch on June 30, 2003 and signed by Diversion Program Manager for the Philadelphia Field Division, Ann L. Carter, on July 15, 2003. [Gov't Ex. 9; Tr. 74, 77]. Government Exhibit 9 was admitted into evidence without objection. [Tr. 76].

[43] Supervisor Younker testified that he would not actively seek out information concerning Respondent's unusual prescribing habits. [Tr. 79]. He would only rely on information that was provided to him by Respondent, the required log, or the prescription monitoring program (''PMP''). [Tr. 80].

[44] DI Riley has spent 25 years as a Diversion Investigator with DEA. [Tr. 81–82]. His responsibilities include conducting regulatory, civil and criminal investigations arising out of individuals and corporations who are registered with the DEA. [Tr. 82].

[45] Government Exhibit 31 contains the details of Respondent's Alabama medical license. [Tr. 94]. This exhibit was identified by DI Riley and admitted into evidence. [Tr. 94–95].

[46] [Gov't Ex. 25, at 1]. Government Exhibits 22–26 are stipulated to and admitted into evidence. [Tr. 90].

and from its investigator, William Perkins. [Tr. 83].

During the investigation, DI Riley testified that he also discovered Respondent held DEA registrations in Alabama and Minnesota.[47] [Tr. 84]. DI Riley clarified that Respondent no longer had a DEA registration in Pennsylvania, even though he maintained an active medical license in Pennsylvania. [Tr. 84, 96]. Additionally, DI Riley explained that he had obtained orders from the Pennsylvania Medical Board [48] concerning Respondent's cocaine use, orders from the Alabama Medical Board [49] concerning Respondent's cocaine and alcohol abuse, and an order from the Minnesota Medical Board [50] concerning Respondent's felony conviction involving anabolic steroids.[51] Attached to one of the orders in Pennsylvania was a letter [52] from Dr. Koch to Kevin Knight, program director, at the Bureau of Professional and Occupational Affairs in Pennsylvania. [Tr. 87]. In the letter, Respondent admitted to a positive drug screen in December 2004. [Gov't Ex. 13; Tr. 87]. DI Riley credibily testified that the monitoring required by the state medical board orders involved random drug-testing, and the Alabama Order required testing through hair samples. [Tr. 85]. DI Riley's testimony was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

2. Federal Bureau of Investigation (FBI)

Jeffrey Young (''Agent Young'') [53] credibly testified that he was involved in Dr. Koch's arrest for drug-related felony charges. On July 7, 2011, Agent Young was at the Mobile, Alabama headquarters communicating with both management and the arrest team by telephone when Respondent was arrested for felony charges related to anabolic steroids. [Tr. 101].[54] Agent Young's testimony was sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision.

F. Respondent's State Disciplinary Actions

1. Alabama State Board of Medical Examiners; Licensure Commission

In 1997, Respondent voluntarily agreed to abstain from alcohol and drugs, as well as participate in a drug-testing program that complied with the aftercare requirements of Talbot Recovery Campus (''Talbot''). [Gov't Ex. 1, at 1–2]. The Alabama State Board of Medical Examiners (''SBME'') maintained the discretion to remove these restrictions from Respondent's license, if he demonstrated compliance. [*Id.* at 1]. However, in the following years, he failed to do so. [Tr. 146].

On January 25, 2000, the SBME filed an administrative complaint [55] against Dr. Koch in response to disciplinary actions taken against him in Pennsylvania and evidence indicating Respondent had violated the voluntary restrictions placed against his medical license in Alabama. [Gov't Ex. 5, at 1]. In the complaint, the SBME requested revocation of Respondent's medical license. [*Id.* at 4].

In June of 2000, the SBME made factual findings and legal conclusions, which supported the revocation of Respondent's medical license.[56] [Gov't Ex. 6, at 3; Tr. 155]. As a result, Respondent lost his license to practice medicine in the state of Alabama.

Then, in March 2004, the Alabama SBME issued the Respondent an Order to Show Cause,[57] which asked Respondent to ''show cause, if any he has, why [his] request for reinstatement [of his medical license] should not be denied.'' [Gov't Ex. 10; Tr. 162]. Respondent testified that at the time of this Order and corresponding hearing, his DEA COR was in Pennsylvania and he had no intention of maintaining an Alabama medical license for purposes of a DEA COR registered in Alabama. [Tr. 162–63].[58]

Later, in May 2004, the Alabama SBME ordered [59] reinstatement of his medical license. However, conditions were ordered, to include that the Respondent is to participate in APHP, which included drug-testing for controlled substances and alcohol using hair samples. [Gov't Ex. 11, at 1]. Respondent explained that he did not comply with this Order since he decided not to pursue an Alabama medical license. [Tr. 164]. Respondent also explained that he never filled out the paperwork in order to obtain a license in Alabama. [*Id.*]. He alleged that he told both his attorney and the Alabama SBME that he was not going to pursue a license at that time. [Tr. 165]. Consequently, Respondent's privilege to have an Alabama license was withdrawn [60] as a result of Respondent's failure to comply with the May 2004 Order. [Gov't Ex. 12; Tr. 165].

When testifying on this issue, Respondent admitted that prior to 2005 he was in a ''power struggle with the Alabama Physician Recovery Network and the Board of Medicine'' because he was not cooperative and not willing to acknowledge he had a drug problem. [Gov't Ex. 8, at 5 ¶ 13; Tr. 158]. During this time, the Alabama SBME remarked that Respondent did not see his ''use of

[47] Dr. Koch had explained to DI Riley he wanted to obtain a DEA registration in Minnesota so that he could work as a locum tenens physician in Minnesota. [Tr. 86].

[48] Government Exhibits 2–4, 7–8, 17, 20, 30 are Pennsylvania Medical Board orders that were stipulated to by the parties and admitted into evidence. [Tr. 89].

[49] Government Exhibits 1, 5, 6, 12, 14–16, 18–19, 21, 27–29 are Alabama Medical Board orders that were stipulated to by the parties and admitted into evidence. [Tr. 89]. Similarly, Government Exhibits 10 and 11 are additional orders stipulated to and admitted into evidence. [Tr. 91–92].

[50] Government Exhibit 43 is a Minnesota Medical Board order stipulated to by the parties and admitted into evidence. [Tr. 89]. A professional profile of Respondent is available on the Minnesota Board of Medical Practice's Web site, which includes the status of his license. This information was proposed Government Exhibit 32. [Tr. 95–96]. It was identified by DI Riley through his testimony and admitted into evidence without objection. [*Id.;* Gov't Ex. 32].

[51] DI Riley indicated that part of the charge, which Respondent pled guilty to, was ''self-using the anabolic steroids.'' [Tr. 84]. Even though Count I of the indictment makes no mention of consumption of anabolic steroids [Gov't Ex. 23, at 1], such conduct is included in the factual resume of the indictment [Gov't Ex. 25, at 14]. ''Mark Peter Koch, a physician practicing in Camden, Alabama and Monroeville, Alabama, purchased, consumed, and trafficked anabolic steroids.'' [Gov't Ex. 25, at 14]. The factual resume also reveals that Respondent: (1) discussed pending purchases of anabolic steroids with co-defendants; (2) contributed money to purchases of steroids; (3) acquired drugs that appeared to be manufactured in ''underground labs''; and (4) acquired drugs that exceeded 300 grams. [*Id.*].

[52] During his testimony, DI Riley identified Government Exhibit 13 as a letter sent by Dr. Koch. [Tr. 87]. This exhibit was admitted into evidence, without objection. [*Id.;* Gov't Ex. 13].

[53] Agent Young has worked for the Federal Bureau of Investigation (FBI) for over nine years as a special agent. [Tr. 98]. His responsibilities include investigating crimes involving white collar, violent crime, and crimes with national security issues. [Tr. 99].

[54] I ruled that any testimony concerning the uncharged misconduct at the time of the arrest is inadmissible because the witness has no personal knowledge of the conduct. [Tr. 102–03, 105].

[55] This Administrative Complaint was admitted into the record without objection. [Tr. 89; Gov't Ex. 5].

[56] Government counsel asked Respondent whether he notified DEA that he no longer had state authority to handle controlled substances in Alabama. [Tr. 155]. Respondent said he had not, because his DEA registration was in Pennsylvania at the time. [*Id.*]. Respondent believes he switched his DEA registration to Alabama most recently in 2000. [*Id.*]. Again, Government has not provided the legal basis for a registrant's responsibility to notify the DEA of his loss of state authority to prescribe controlled substances.

[57] The Order to Show Cause was admitted into the record without objection. [Tr. 92; Gov't Ex. 10].

[58] Respondent added that his DEA registration was in Pennsylvania from 1997 until 2007. [Tr. 163]. However, in previous testimony, he said he had reassigned his DEA registration to Alabama as recent as 2000. [Tr. 155]. I have noted the inconsistency in Respondent's testimony, but I do not find that it affects his credibility.

[59] This Order was admitted into the record without objection. [Tr. 92; Gov't Ex. 11].

[60] This Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 12].

illegal drugs and other mood altering substances as inappropriate.'' [Gov't Ex. 8, at 9]. Respondent credibly admitted in his testimony that he was told multiple times to stop using illegal drugs prior to 2005, but he failed to comply. [Tr. 160].

When Respondent was released from a rehabilitation program in 2005, he sought reinstatement of his medical license in Alabama. [Gov't Ex. 14; Tr. 167]. The state of Alabama again issued an Order to Show Cause [61] on May 26, 2005 for Respondent to appear and explain why his reinstatement should not be denied. [Gov't Ex. 14, at 1; Tr. 167]. Respondent attended the administrative hearing, which took place on September 28, 2005. [Gov't Ex. 15; Tr. 167]. In an order [62] issued October 4, 2005, the Alabama SBME concluded that Dr. Koch had ''failed to present sufficient evidence to warrant the reinstatement of his license.'' [Gov't Ex. 15, at 1].

Nonetheless, on October 2, 2006, an order [63] reinstated Respondent's medical license on the condition that Respondent maintain an indefinite contract with APHP. [Gov't Ex. 16; Tr. 168]. According to the October 2006 Order, Respondent was to provide hair samples, although Respondent testified that in reality the method of drug-testing was up to Dr. Skipper at APHP. [Gov't Ex. 16, at 1; Tr. 168, 200].[64]

On June 28, 2007, the Alabama SBME issued an order [65] indicating that an administrative hearing took place and Respondent had been in attendance. [Gov't Ex. 18, at 1]. Furthermore, the SBME found that Respondent's request for amendment of his license ''is due to be granted.'' [*Id.*]. Respondent was conditionally permitted to practice medicine in Frisco City, Alabama for Tri County Medical Center. [*Id.*].

On July 30, 2008, all restrictions were removed from Respondent's Alabama medical license through an order.[66] [Gov't Ex. 19]. However, the order clarified that Respondent was nonetheless required to maintain a contract with APHP. [*Id.*]. The order also required random drug-testing through the use of hair samples. [*Id.*].

On July 13, 2010, the Alabama SBME issued an order [67] that lifted all restrictions from Respondent's license. [Gov't Ex. 21; Tr. 175]. Most noteworthy was the condition to participate in APHP indefinitely, which was removed so that Respondent held a ''full unrestricted licenses to practice medicine in Alabama.'' [Gov't Ex. 21; Tr. 175].

However, on April 18, 2012, the Alabama SBME ''immediately suspended'' [68] Dr. Koch's license to practice medicine and osteopathy as a result of his felony conviction. [Gov't Ex. 27, at 1; Tr. 179–80]. The Alabama SBME subsequently placed Respondent on ''indefinite probation,'' which required Respondent to once again ''maintain, indefinitely, a contract with the Alabama Physicians Health Program.'' [Gov't Ex. 29, at 4; Tr. 180–81]. The order [69] specified that ''[i]f, at any time, Dr. Koch shall have insufficient hair and/or nails to perform a valid test, he will, in such event, be considered to have had a positive test and he will be referred to the Medical Licensure Commission for appropriate action.'' [Gov't Ex. 29, at 4]. After the Respondent's arrest on July 7, 2011, he voluntarily called the APHP and requested a drug test for steroids. [Tr. 190–91]. This test was negative. [Resp't Ex. 1(B), at 3; Tr. 124].

Before returning to the practice of medicine, the April 2012 Order also required Respondent to seek ''prior approval'' for ''a detailed plan of practice'' from the Alabama SBME. [*Id.*]. Respondent testified that he submitted such plan and it was approved. [Tr. 181–82]. Respondent indicated that the plan involved him practicing family and emergency medicine in Mobile, Alabama and practicing as a locum tenens for emergency rooms in Minnesota. [*Id.*].

2. Pennsylvania State Board of Osteopathic Medicine

In 1998, the Pennsylvania State Board of Osteopathic Medicine (''SBOM'') issued a consent agreement and order [70] acknowledging the voluntary restrictions Respondent had agreed to in Alabama as a result of his cocaine use. [Gov't Ex. 2, at 2]. Even though Respondent's license could have been suspended for three years because of disciplinary actions against his license in Alabama, the SBOM of Pennsylvania ruled that the suspension would be ''stayed in favor of probation.'' [*Id.*].

However, in 1999, the stay was ''VACATED'' and the probationary period ''TERMINATED'' in an order [71] concerning Dr. Koch's medical license in Pennsylvania.[72] [Tr. 148–49; Gov't Ex. 3]. Respondent was ordered to ''immediately cease practicing the profession'' for a duration of three years. [Gov't Ex. 3, at 1]. When asked about the order during his testimony, Respondent did not recall the details of the suspension, explaining that he was never even informed of the details regarding the positive drug test that he believes triggered the suspension. [Gov't Ex. 3, at 6; Tr. 150]. Respondent said he thought the positive drug was caused by an injection of pain medication [73] into his back during a visit to the emergency room. [Tr. 149]. Respondent's confusion is easily resolved by the factual findings in a subsequent Consent Agreement and Order,[74] which indicated that Respondent tested positive for cocaine on September 29, 1999 in violation of the SBOM's 1998 Order. [Gov't Ex. 3, at 6; Gov't Ex. 4, at 3; Tr. 150]. The Consent Agreement and Order also indicated that Respondent was required to enroll in the Talbot for a minimum of 96 hours of assessment. [Gov't Ex. 4, at 3–4]. Also, he was again ordered to stop using controlled substances. [Gov't Ex. 4, at 10]. Respondent credibly admitted during his testimony that he failed to comply. [Tr. 153–54]. The

[61] The Order to Show Cause was admitted into the record without objection. [Tr. 89; Gov't Ex. 14].

[62] The Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 15].

[63] The Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 16].

[64] During this part of the testimony, Government counsel tried to prove Respondent's non-compliance with the Board Order since he did not provide hair samples for drug-testing. [*See* Tr. 168–70]. However, I find this line of inquiry carries little weight since Respondent provided urine samples in accordance with the requirements of Dr. Skipper's program at APHP and the Alabama SBME mandated Respondent's participation in APHP. [Gov't Ex. 16, at 1; Tr. 168, 200].

[65] The Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 18].

[66] The Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 19].

[67] This Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 21].

[68] The Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 27]. Respondent testified that he did not report the suspension to the DEA. [Tr. 180]. Respondent's initial hearing date of June 20, 2012 was extended to July 25, 2012, through an Order of Continuance, which was admitted into the record. [Tr. 89; Gov't Ex. 28].

[69] This Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 29]. Under this Order Respondent was fined $10,000.00 and required to pay the administrative fees associated with the hearing. [Gov't Ex. 29, at 4].

[70] This Order was admitted into evidence without objection. [Tr. 89; Gov't Ex. 2].

[71] This Order was admitted into evidence without objection. [Tr. 89; Gov't Ex. 3].

[72] Government counsel asked Respondent whether he notified DEA of the suspension. [Tr. 149]. Respondent replied in the negative. [*Id.*]. Government has not provided the legal basis for a registrant's responsibility to notify the DEA of a suspended medical license. Thus, the relevance of this question is unclear.

[73] The Order indicates that the ''completely synthetic drugs,'' which Respondent said were injected into his back for pain, ''would not register as cocaine metabolites on a urine screen test.'' [Gov't Ex. 3, at 7].

[74] This Order was admitted into evidence without objection. [Tr. 89; Gov't Ex. 7].

Respondent did not report this suspension to the DEA. [Tr. 148–49].

On July 3, 2001, an adjudication [75] and order [76] by the Pennsylvania SBOM suspended Respondent's medical license indefinitely, with the possibility of it being restored should Respondent comply with the terms and conditions of the Consent Agreement and Order. [Gov't Ex. 7, at 8; Gov't Ex. 4; Tr. 156]. Respondent explained during his testimony that his attorney at the time had negotiated with the Pennsylvania SBOM and it was his understanding that his stay at Talbot was a sufficient program to satisfy the probationary terms. [Tr. 156–57]. In other words, he did not believe he had to participate in further drug-monitoring after his assessment at Talbot, even though it was described in detail throughout the terms of the Consent Agreement and Order. [*See* Gov't Ex. 4, at 6].

As a result, in December 2001, after Respondent failed to comply with the extent of the probationary terms outlined in the Consent Agreement and Order,[77] the Pennsylvania SBOM ordered [78] that Respondent's ''license to practice osteopathic medicine and surgery'' be ''indefinitely suspended,'' but indicated that ''[s]uch suspension is to be immediately stayed in favor of not less than five years probation. . . .'' [Gov't Ex. 8, at 11]. The terms of the probation required Respondent to: (1) abide by state and federal laws; (2) cooperate with professional organizations; (3) submit truthful information to the SBOM; (4) avoid leaving the Commonwealth of Pennsylvania for more than 20 days at a time; (5) enroll in a new monitoring program or notify the local medical board if Respondent moves jurisdictions; (6) notify the PHMP of criminal charges against him; and (7) notify the PHMP of changes to his address or contact information. [*Id.* at 11–13]. The Order indicated that upon successful completion of the probationary term, Respondent could petition the SBOM to obtain an unrestricted license to practice medicine in Pennsylvania. [Gov't Ex. 8, at 23].

Several years later, Dr. Koch wrote a letter dated May 19, 2005 to the Pennsylvania Bureau of Professional and Occupational Affairs, of the PHMP Unit II. [Gov't Ex. 13; Tr. 166]. In the letter Dr. Koch admitted to a ''long standing problem with substance abuse (alcohol and cocaine)'' and explained that for years he had ''been in denial of this problem.'' [Gov't Ex. 13, at 1]. Respondent further indicated that he ''recently realized'' the problem and that he ''need[s] professional help.'' [*Id.*]. Respondent associated this turning point with a positive drug screen in December 2004.[79] [*Id.*]. Based on the advice of an APHP physician, Respondent said he entered Talbot Recovery Campus in Atlanta, Georgia on February 1, 2005, and completed treatment on May 7, 2005. [*Id.*].

In November 2006, the Pennsylvania SBOM issued a Consent Agreement and Order.[80] [Gov't Ex. 17; Tr. 171]. The Order indicated that Respondent failed to submit to six [81] drug screens. [Gov't Ex. 17, at 2]. While Respondent testified that the missed drug tests occurred while he was in rehabilitation at Talbot in 2005, the drug-testing results indicate that there were twelve missed calls before he entered the rehabilitation program on February 1, 2005 and eight missed calls after he left Talbot on approximately May 10, 2005. [Gov't Ex. 17, at 2, 53–55; Tr. 171].[82] Government counsel also called Respondent's attention to a condition of the Consent Agreement and Order, which prohibited Respondent from using controlled substances. [Gov't Ex. 17, at 9; Tr. 172]. Respondent credibly responded ''I've actually complied with'' this order.[83] [Tr. 172]. Yet, the Respondent was not randomly drug-tested for steroids while in the Pennsylvania monitoring program. [Tr. 174].

On February 4, 2010, Respondent's medical license was reinstated as unrestricted in Pennsylvania through an order [84] issued by the SBOM. [Gov't Ex. 20, at 1; Tr. 175]. However, there is currently an unresolved action against Respondent's license concerning Respondent's felony conviction in 2012. [Tr. 175]. Thus, Pennsylvania is in the process of reacting [85] to Respondent's recent drug-related felony conviction. As of the time of the hearing in this case, the Respondent had not had a hearing before the Pennsylvania SBOM. [Gov't Ex. 30, at 1; Tr. 182–83].

3. Minnesota Board of Medical Practice

Since Respondent is employed in Minnesota, the Minnesota Board of Medical Practice (''BMP'') has also investigated Respondent's case and plan to ''mirror'' Alabama's action. [Gov't Ex. 43; Tr. 183, 199]. An Order [86] from August 30, 2012 indicates that when Alabama releases Respondent from probation, Minnesota intends to grant Respondent an ''unconditional license.'' [Gov't Ex. 43, at 4; *see* Tr. 183, 199–200]. The Order also served as a formal reprimand. [Gov't Ex. 43, at 3].

G. Respondent's Felony Conviction

On July 7, 2011,[87] Respondent was arrested for felony charges related to anabolic steroids. [Gov't Ex. 22]. The arrest was made at Respondent's home, which he had access to on certain days of the week as a result of his divorce proceedings. [Tr. 141]. Respondent testified that Jim Hewette, an investigator for the Alabama SBME, said he was permitted to see patients in his home so long as his address was registered with the Board. [Tr. 142]. On the day of the arrest, Respondent was locked out of his house, with six patients waiting in the driveway. [*Id.*].

The basis for the charges [88] against Respondent was a violation of 21 U.S.C.

[75] An administrative hearing was held on April 4, 2001. [Gov't Ex. 7, at 2].

[76] Government counsel asked Respondent if he had notified DEA of the indefinite suspension of his medical license, to which the Respondent said he did not recall providing the notification. [Tr. 157]. Again, the basis for such a responsibility is unclear.

[77] [Gov't Ex. 4].

[78] This was contained in an adjudication and order, which was admitted into the record without objection. [Tr. 89; Gov't Ex. 8].

[79] During his testimony, Respondent could not remember if he had a positive drug screen in December 2004. He responded, however, ''[i]t's possible.'' [Tr. 166]. According to Government's documentary evidence, the positive drug screen occurred December 21, 2004. [Gov't Ex. 17, at 53].

[80] This Order was admitted to the record without objection. [Tr. 89; Gov't Ex. 17].

[81] Documentary evidence contained in Government Exhibit 17 indicates that Respondent actually missed eight drug tests after he was discharged from Talbot in 2005. [Gov't Ex. 17, at 55]. The dates of the missed drug tests are 5/11/2005, 5/12/2005, 5/13/2005, 5/16/2005, 5/17/2005, 5/18/2005, 5/19/2005, and 5/20/2005.

[82] On redirect examination, Respondent testified that he submitted a few drug tests every week at Talbot and assumed that Pennsylvania had access to these drug results. [Tr. 198]. Furthermore, Respondent added that he signed releases for Pennsylvania and Alabama to receive his records from Talbot. [Tr. 199].

[83] As previously mentioned, Government counsel tried again to show Respondent's non-compliance with a Board Order by having Respondent admit he never provided hair samples. [*See* Tr. 174–75]. However, I find this testimony similarly insignificant since Respondent provided the type of sample requested by the physician coordinator the PHP monitoring. Therefore, I will disregard similar questioning by the Government attorney concerning Government Exhibits 18 and 19. [*Id.*].

[84] The ''Final Order Reinstating Respondent's License'' was admitted into the record without objection. [Tr. 89; Gov't Ex. 20].

[85] An Order to Show Cause filed on November 14, 2012 was admitted into the record without objection. [Tr. 89; Gov't Ex. 30]. Respondent was asked to respond to ''why the State Board of Osteopathic Medicine . . . should not suspend, revoke, or otherwise restrict Respondent's license, impose a civil penalty, or impose the costs of investigation.'' [Gov't Ex. 30, at 2].

[86] This Order was admitted into the record without objection. [Tr. 89; Gov't Ex. 43].

[87] Respondent had been asked to provide a urine sample earlier that day for drug-testing. [Tr. 126]. Respondent believes the results were negative. [Tr. 126].

[88] The criminal complaint filed against Respondent was admitted into the record without objection. [Tr. 91; Gov't Ex. 22].

841(a)(1), which prohibits ''possession with [the] intent to distribute anabolic steroids,'' as well as 21 U.S.C. 846, which prohibits a ''conspiracy'' to distribute anabolic steroids. [Gov't Ex. 22].

During his testimony, Respondent explained that his wife had purchased steroids for herself and two other people from someone in northern Alabama. [Tr. 126, 195–96]. He had requested that his wife buy him some Viagra and Cialis. [Tr. 126, 129–30, 196]. Respondent admits that he was aware of his wife's drug purchases. [Tr. 127, 196]. Respondent testified that he just wanted to ''get some cheap Viagra and Cialis and wound up getting drug (sic) into a steroid charge.'' [Tr. 129–30].

On his applications to renew his DEA registration, Respondent described the situation that gave rise to the charges:

> Going thru a contentious divorce and my wife set me up and entrapped me in a scheme to purchase and distribute steriods (sic). On advice of my attorney I plead guilty to a felony of conspiracy to possess and distribute steriods (sic) in order to minimize the consequences. This had nothing to do with my medical practice. I have and continue to maintain compliance with the Alabama Physicians Health Program for 6 ½ years. [Gov't Ex. 33, at 2].

Respondent wrote a similar description of the events on the renewal application for his Minnesota DEA COR. [*See* Gov't Ex. 34, at 1–2]. While Respondent failed to accept responsibility and repeatedly blamed his ex-wife for the felony charges, he also repeatedly testified that he too ''us[ed] poor judgment.'' [Tr. 140, 196, 197, 199.][89] Respondent reflected on the conviction saying, ''I mean I used very poor judgment and I accepted responsibility—I knew my wife was doing something illegal and I should not have gotten involved with it.'' [Tr. 140].[90]

On July 28, 2011, Respondent was indicted[91] on Count I: ''willfully, knowingly, and unlawfully'' conspiring with co-defendants to ''dispense and possess with the intent to distribute and dispense testosterone[92] and primobolan depot[93] from about August 2005[94] to approximately July 8, 2011; and Count II: ''knowingly and intentionally unlawfully dispens[ing] and possess[ing] with intent to distribute and dispense testosterone and primobolan depot'' on or about June 28, 2011. [Gov't Ex. 23, at 1–2; *see also* Gov't Ex. 24]. Respondent testified that he pled guilty to Count I concerning the conspiracy. [Tr. 177].

On September 20, 2011, in the Southern District Court of Alabama, Respondent entered into a plea agreement[95] and pled guilty to the first count of the indictment, which ''charg[ed] a violation of Title 21, United States Code, Section 846—conspiracy to distribute and possess with intent to distribute anabolic steroids.'' [Gov't Ex. 25, at 1; Tr. 126, 178].[96] When Respondent signed the plea agreement, he agreed to the statements contained therein, including: ''[t]he plea of guilty is freely and voluntarily made and is not the result of force, threats, promises, or representations, apart from those representations set forth in the Plea Agreement. . . . [and] [t]he defendant is pleading guilty because he is guilty.'' [Gov't Ex. 25, at 3 ¶ 10].

On November 15, 2011, a magistrate made findings[97] regarding Respondent's compliance with his order of release while he was awaiting sentencing for his felony charges. [Resp't Ex. 2]. The magistrate wrote in an order, which denied the Government's motion to revoke his order of release, that ''[w]ithout question, the defendant has violated the Court's release order by contacting his wife by phone, te[x]t messaging, and at least one personal visit.'' [*Id.* at 12]. However, the magistrate found that the violations were ''an insufficient reason to revoke and detain the defendant.'' [*Id.* at 13].[98]

On February 24, 2012, Respondent was sentenced[99] to five years of probation, which he is currently still serving. [Gov't Ex. 26, at 2; Tr. 132, 178–79]. As a result of his guilty plea, Respondent must also serve two hundred hours[100] of community service and pay a $10,000 fine. [Tr. 132]. The second count, on which Respondent had been indicted, was dismissed. [Gov't Ex. 26, at 1]. The Respondent denied ever purchasing, consuming, or trafficking anabolic steroids. [Tr. 178; Gov't Ex. 25, at 14]. The Respondent did not take responsibility for these acts as presented in the Factual Resume provided to the Court. [Gov't Ex. 25].

H. Respondent's Reputation

Jawad Khan (''Dr. Khan'')[101] testified about Respondent's reputation, in addition to offering a signed and notarized affidavit.[102] [Tr. 113]. Dr. Khan admitted during his testimony that Respondent ''had some problems in Alabama'' and ''has a conditional license both in Alabama and in

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[89] Respondent also offered evidence of his acceptance of responsibility through an Order Denying Motion to Revoke Conditions of Release. The order was admitted in to the record as Respondent Exhibit 2, over Government's objection. [Resp't Ex. 2, at 11; Tr. 209–10]. I deny Government's motion to exclude this exhibit, since it is relevant and material evidence relating to Respondent's willingness and unwillingness to comply with court orders. [Gov't Brief, at 36, 38].

[90] Respondent's statements during his sentencing hearing, a transcript of which was admitted into evidence as Respondent Exhibit 3, indicate that he accepted responsibility for the drug-related conviction. [Resp't Ex. 3]. Respondent said, ''I'd just like to apologize to the Court. I made a mistake. I used poor judgment. I accept full responsibility for my behavior. And I wish that you would have leniency on me so I can continue to serve my patients and the community.'' [*Id.* at 6–7]. I note that a similar apology was not offered by the Respondent to this Court.

[91] A copy of the indictment was admitted into the record without objection. [Tr. 91; Gov't Ex. 23]. A copy of a document styled as a ''Penalty Page'' was similarly admitted into evidence. [Tr. 91; Gov't Ex. 24].

[92] Testosterone is a steroid regulated under Schedule III of the Controlled Substances Act. 21 U.S.C. 812; 21 CFR 1308.13; *see also* 21 CFR 1300.01 (b)(60).

[93] Primobolan Depot is an injectable steroid that is generically known as, methenolone. It is regulated under Schedule III of the Controlled Substances Act. 21 U.S.C. 812; 21 CFR 1308.13.

[94] Government counsel brought to Respondent's attention that the criminal conduct began just one month after Respondent's MOA with the DEA ended in July 2005. [Tr. 177].

[95] Respondent's plea agreement was admitted into the record without objection. [Tr. 90; Gov't Ex. 25].

[96] Even when Respondent testified about this issue on direct examination, he maintained that he did not consume and traffic anabolic steroids, but his ex-wife had. [Tr. 178].

[97] After I deferred ruling on its admissibility, an order dated November 15, 2011 regarding Respondent's violation of a previous release order was admitted into evidence. [Tr. 264–65]. Government's objection to admission of the exhibit will go to the weight I afford to the document. [Tr. 265; Resp't Ex. 2].

[98] In arriving at this conclusion, the magistrate found that Respondent has ''appeared at all times when his presence was required, and admitted his guilt without a guarantee that the district judge would agree to his continued release.'' [Resp't Ex. 2, at 11]. This statement about Respondent's admission of guilt was made pursuant to a determination of flight risk and not a determination of guilt or innocence. Thus, I weigh the statement accordingly.

[99] Respondent's Exhibit 3, the transcript of Respondent's sentencing hearing, was admitted into the record. [Resp't Ex. 3; Tr. 130, 133, 264]. The court's judgment concerning Respondent's plea was admitted into the record. [Tr. 91; Gov't Ex. 26]. I deny Government's motion to exclude this exhibit from the record, since the exhibit contains relevant and material evidence concerning Respondent's sentencing for pleading guilty to a drug-related felony. [Gov't Brief, at 36, 38].

[100] Dr. Koch testified that he has already paid the fine and served 256 hours of community service. [Tr. 132]. Respondent identified proposed Respondent Exhibit 6 as containing information about the two places he conducted community service: Habitat for Humanity and Elba Hospital. [Tr. 133–34; *see also* Resp't Ex. 6, at 1–2]. Respondent's Exhibit 6 was admitted into the record without objection. [Tr. 134].

[101] Dr. Khan is the Director of the Emergency Room at Sanford Health in Thief River Falls, Minnesota. [Tr. 111].

[102] Dr. Jawad Khan's affidavit, which was identified as Respondent's Exhibit 9, was admitted into the record over Government's objection. [Tr. 118; Resp't Ex. 9]. His affidavit was signed and notarized. [Resp't Ex. 9, at 1–2].

Minnesota.'' [Tr. 114]. Prior to hiring Respondent, Dr. Khan testified that he conducted an internal investigation. [*Id.*]. Dr. Khan mentioned he was aware Respondent had ''at one time pled guilty to some drug related offense.'' [*Id.*]. However, he added that he did not know any of the facts about Respondent's substance abuse. [*Id.*].

Dr. Khan concluded that Minnesota has not said Respondent cannot work in the state. [*Id.*]. He added that ''as long as the state Board allows him to practice and we don't have any personal concerns about him, we don't have any problems with him practicing with us.'' [Tr. 116]. Dr. Khan emphasized that his primary concern with regards to Respondent's employment is whether he has a valid state license to practice medicine. [Tr. 117].

Furthermore, Dr. Khan explained that his personal opinion of the Respondent is based on his ''personal contact with him.'' [Tr. 115]. He stated generally that Respondent ''has done a good job and we have not had any problems with him.'' [*Id.*]. Specifically, with regards to prescription drugs, Dr. Khan credibly testified that ''we have never had any concerns about him'' working in the emergency room where there are ''a lot of people who have problems with drugs.'' [*Id.*]. Dr. Khan's affidavit similarly noted that, ''during his tenure at the [Thief River Falls Emergency Room], there has never been any issue regarding any prescriptions that he has written nor has there been any misuse of his DEA certificate.'' [Resp't Ex. 9, at 1].

Also testifying regarding Respondent's reputation was Gladys Luker (''Ms. Luker''), who is a registered nurse at J. Paul Jones Hospital in Camden, Alabama. [Tr. 218]. Ms. Luker first met Respondent in approximately 2008 when he began taking shifts at the hospital. [Tr. 219]. Ms. Luker said she has had the opportunity to observe him taking care of patients. [*Id.*]. She has accompanied him to see patients in the emergency room, assist while he does procedures, and carried out his medical orders. [Tr. 220]. Overall, Ms. Luker credibly testified that Respondent's professional reputation is ''[e]xcellent.'' [Tr. 219–20].

Ms. Luker admitted that she is aware of Respondent's guilty plea, but maintained that this does not affect her opinion of him. [Tr. 220]. However, she testified that she is not really sure what the drug conviction was for. [Tr. 221]. Ms. Luker has also not discussed Respondent's long history with drug use and abuse, prior disciplinary actions, and news articles about Respondent's conviction. [Tr. 221–22].

Respondent then called Shirley Candies (''Ms. Candies'') to testify. Ms. Candies is a registered nurse and the assistant director of nursing at J. Paul Jones Hospital in Camden, Alabama. [Tr. 223–24]. Ms. Candies worked with Respondent from approximately 2009 to 2012. [Tr. 224, 227]. Ms. Candies credibility testified that she has ''observed him to be a very professional doctor'' with ''good bedside manner.'' [Tr. 224].

Ms. Candies admitted that she is aware of Dr. Koch's history of substance abuse, but has not discussed it with other people. [Tr. 225]. She also testified that she is aware Respondent ''pled guilty to some type of steroid charge,'' but maintains that it does not have an impact on her impression of Respondent. [Tr. 225–26]. Finally, Ms. Candies admitted there have been disciplinary actions taken against Respondent by three medical boards, but testified that it does not change her impression of him. [Tr. 226].

Next, Sheila Roe (''Ms. Roe'') testified about Respondent's reputation. She is a registered nurse at J. Paul Jones Hospital, in Camden, Alabama. [Tr. 228]. Ms. Roe last worked with Respondent in approximately 2012. [Tr. 233]. In total, she worked with Respondent for over four years. [*Id.*]. She testified that Dr. Koch ''is a very excellent, thorough and intelligent physician.'' [Tr. 229]. She testified that she has never questioned a written or verbal order from the Respondent with regards to patient care. [*Id.*]. Specifically, she credibly testified that she has never questioned Respondent when writing prescriptions for patients. [Tr. 230].

Ms. Roe testified, however, that she is not aware of Respondent's history of drug abuse, or the specific details concerning Respondent's felony conviction. [Tr. 231–32]. She also testified that she has not read any newspaper articles about him, nor was she aware of the administrative proceedings against him. [Tr. 232]. The witness has not discussed any of these subjects with other employees, patients or Respondent. [Tr. 232–33]. The witness explained, she just wants to work with a physician who ''know[s] what he's doing,'' even if they have a few ''issue[s].'' [*Id.*].

Then, Respondent called Jan Wicker (''Ms. Wicker'') to testify. [Tr. 237]. She is a registered nurse, director of nurses, and assistant administrator. [Tr. 238, 240]. Ms. Wicker worked with Respondent in the emergency room as locum tenens in early 2011 and then in a clinic from October 2011 to October 2012. [Tr. 240]. Then she worked with him on a daily basis, Monday through Friday, until February 28, 2013. [Tr. 243].

Ms. Wicker testified that she was aware of Respondent's drug use and abuse, specifically with regards to steroids. [*Id.*]. She learned this from court documents when the hospital was considering whether to hire Respondent. [*Id.*]. She credibly testified that this does not concern her as long as he is rehabilitated and being monitored. [Tr. 245]. She further testified that she was not aware, however, that he had previously abused cocaine and alcohol. [Tr. 241]. The witness was familiar with the disciplinary actions in Alabama, but not Pennsylvania and Minnesota. [*Id.*]. The witness added that she was aware Respondent's Medicare and Medicaid numbers were ''denied.'' [Tr. 242]. Ms. Wicker testified that she had privately discussed some of Respondent's issues with the administrator, specifically Respondent's recent guilty plea. [Tr. 244–45]. However, she added that it had not impacted the administrator's hiring decision. [*Id.*]. The witness later clarified that she, personally, does not make decisions on hiring and firing physicians, or whether a physician should be credentialed. [Tr. 246].

During her testimony, Ms. Wicker laid the foundation for Respondent Exhibit 8,[103] which is a quarterly report of Respondent's conduct by a worksite monitor. [Tr. 238–39; Gov't Ex. 8]. The report was completed on April 5, 2013. [Tr. 243]. The report covers Respondent's conduct up until the facility closed on February 28, 2013. [*Id.*]. Ms. Wicker credibly testified that the report was written at the request of the Physician Health Program on April 4th or 5th of this year. [*Id.*]. The Program provided Ms. Wicker with the form. [Tr. 247]. The witness had completed similar reports in the past. [Tr. 244]. Ms. Wicker testified that Respondent's decision to leave the area and the clinic was the result of ''the closing of the hospital and clinic due to financial decline.'' [*Id.; see also* Resp't Ex. 8, at 1]. Ms. Wicker also wrote that ''[w]e were looking forward to a long and mutually beneficial relationship with Dr. Koch.'' [Resp't Ex. 8, at 1].

Judy Holloway (''Ms. Holloway'') followed with testimony concerning the Respondent. She has been licensed as a registered nurse for thirty years. [Tr. 250]. She testified that she has worked with the Respondent as an emergency

[103] The Quarterly Report completed by worksite monitor, Jan Wicker, was admitted into the record without objection as Respondent's Exhibit 8. [Resp't Ex. 8; Tr. 247].

room nurse at Elba General Hospital for approximately 300 hours, most recently in February 2012. [Tr. 251, 252, 254]. Ms. Holloway credibly testified that Dr. Koch's work is ''excellent.'' [Tr. 251]. She added that ''all [of] the patients liked him.'' [*Id.*].

Ms. Holloway said she was not aware of Respondent's drug abuse problem, but knew he had an issue with steroids. [Tr. 253]. Ms. Holloway added that her opinion of him did not change even knowing he had been disciplined by multiple state medical boards. [Tr. 253–54].

Thereafter, Rosanne Cook (''Dr. Cook'') testified telephonically. [Tr. 256–63]. Dr. Cook is a primary care physician in a community health center located in Pineapple, Alabama and staff member at J. Paul Jones Hospital in Camden, Alabama. [Tr. 257–58]. The witness testified that she has had an opportunity to work with him and has ''no complaints about his clinical skills, his diagnostic skills, and his ability to provide the right care for patients, both coming in to the emergency room and also in the in-patients in our little hospital. He took care of my patients quite well when I was not available, and I could trust his judgment.'' [Tr. 258]. Dr. Cook clarified that she does not know Dr. Koch socially. [Tr. 259]. She last worked with Dr. Koch approximately two years ago. [Tr. 263].

Dr. Cook said she was aware Respondent had a drug problem and had talked with him about it briefly. [Tr. 260–61]. She was aware of his drug-related felony conviction and five-year probationary term. [Tr. 261]. She was also aware of the disciplinary actions against Respondent's medical license. [*Id.*]. However, Dr. Cook offered credible testimony clarifying that when Dr. Koch has been at work in the hospital he had ''never in any way act[ed] like he was under any influences, other than just good judgment.'' [Tr. 262]. Dr. Cook admitted that she had never drug-tested him. [*Id.*].

Dr. Cook concluded that her impression of Dr. Koch's reputation was based on his ''clinical judgment.'' [Tr. 262]. Dr. Cook's affidavit [104] also noted that ''there has never been any complaint or problem with the care that he has given nor any misuse of his DEA certificate. I have never seen him impaired in any way.'' [Resp't Ex. 10, at 1].

Finally, although Jana Wyatt (''Ms. Wyatt'') was not able to testify, she noted in her affidavit [105] that as CEO of Mizell Memorial Hospital in Opp, Alabama she was ''familiar with Dr. Koch through the physician recruitment process.'' [Resp't Ex. 11, at 1; Tr. 207]. Ms. Wyatt said ''he could be a welcome addition to our staff,'' however, Ms. Wyatt admitted her opinion is only based on ''brief discussions'' with him. [Resp't Ex. 11, at 1].[106] Ms. Wyatt did not provide any insight into Respondent's experience handling controlled substances.

Generally, I find that the witnesses, who testified regarding Respondent's reputation, are credible. However, I will take into account the fact that the witnesses did not rely on Respondent's past misuse and abuse of controlled substances or his steroid conviction when forming their opinions. This consideration will affect the weight I afford to the witnesses' testimony.

I. Respondent's Remedial Actions

During his testimony, the Respondent said ''I'd been in denial of my problem,'' but ''once I realized I did have a problem, I accepted responsibility for it.'' [Tr. 120]. On February 1, 2005, he entered Talbot Recovery Center (''Talbot'') in Atlanta, Georgia and spent 14 weeks in rehabilitation.[107] [Tr. 120–21]. After being ''discharged with advocacy'' from Talbot, he signed an agreement with the Alabama Physician Health Program (''APHP''). [Tr. 121]. Respondent testified that ''since 2005 [he has] been compliant.'' [Tr. 197].

Dr. Koch credibly testified that he has not used cocaine since January 2005. [Tr. 121]. As a result, he has not had a positive drug test result since then. [Tr. 123]. Respondent also maintained that he has been drug-free since he completed the Talbot Program and alcohol-free since January 2005. [Tr. 139]. Respondent cited that the biggest change from pre-2005 to post-2005 was ''recogniz[ing] [he] had a problem'' and ''needed help with it.'' [*Id.*]. To this point, Respondent added that he has ''been compliant with everything that the State Board plus the Alabama Physician Health Program has asked me to do.'' [*Id.*]. Respondent also said ''[s]ince the day I've taken responsibility for [his] actions, [he has] not had any relapses. Nor [has he] used any alcohol or drugs.'' [*Id.*]. Throughout his testimony, Respondent did not deny that he violated past board orders as a result of using illegal drugs prior to 2005. [Tr. 160]. However, in accepting responsibility, he also failed to show genuine remorse for the risks associated with his previous actions. [*See* Tr. 160–61].

I find Respondent generally credible, with the exception of specific areas of Respondent's testimony that I do not find sufficiently detailed, consistent, and plausible to be fully credited in this recommended decision. First, I do not find the Respondent credible with respect to his testimony that he never missed a drug test. [Tr. 122, 138]. It is inconsistent with documentary evidence in the record that he missed twelve drug tests from July 2002 to February 2005. [Gov't Ex. 17, at 53–55]. It is also inconsistent with documentary evidence indicating he missed eight drug tests after his release from Talbot in May 2005. [*Id.*].

Secondly, when Government counsel asked Respondent if he had purchased, consumed or trafficked anabolic steroids, Respondent lacked credibility when he responded, ''[t]hat I did not do that.'' [Tr. 178]. Respondent's statement is contradictory to evidence contained in the factual resume of his indictment, which states: ''Mark Peter Koch, a physician practicing in Camden, Alabama and Monroeville, Alabama, purchased, consumed, and trafficked anabolic steroids.'' [Gov't Ex. 25, at 14]. The factual resume was incorporated into his plea agreement by reference. [Gov't Ex. 25, at 3].

Finally, I do not find that Respondent was credible when he testified that he has been ''compliant'' since 2005. [Tr. 197]. In 2012, Respondent was in violation of 21 U.S.C. 841(a)(1), which prohibits ''possession with [the] intent to distribute anabolic steroids,'' as well as 21 U.S.C. 846, which prohibits a ''conspiracy'' to distribute anabolic steroids. [Gov't Ex. 22]. While awaiting his sentencing for the conviction, a magistrate wrote in an order, which denied the Government's motion to revoke Respondent's order of release, that ''[w]ithout question, the defendant has violated the Court's release order by contacting his wife by phone, te[x]t messaging, and at least one personal visit.'' [Resp't Ex. 2, at 12]. This

[104] Dr. Cook's affidavit was admitted into evidence without objection. [Resp't Ex. 10; Tr. 265]. Dr. Cook's affidavit was signed and notarized. [Resp't Ex. 10, 1–2].

[105] Jana Wyatt's affidavit was admitted into evidence without objection. [Resp't Ex. 11; Tr. 207]. Her affidavit is signed and notarized. [Resp't Ex. 11, at 1–2].

[106] Wyatt also mentions that she has heard Dr. Koch has ''billing issues with Medicare and Medicaid,'' but does not go into detail about them. [Resp't Ex. 11, at 1].

[107] Dr. Koch said he entered Talbot on February 1, 2005 and was discharged on or about May 8 or May 10, 2005. [Tr. 122]. During this time period, he was being monitored in Pennsylvania. [Tr. 143–44]. Assuming Respondent was discharged on May 10, 2005, results from the Pennsylvania monitoring program indicate that Respondent missed eight drug tests, none of which can be attributed to Respondent's participation in the rehabilitation program. [Gov't Ex. 17, at 53–55]. Respondent added that he was not monitored by Alabama until May 2005. [Tr. 143].

evidence is contrary to Respondent's testimony about compliance with state and federal laws, which I do not find credible.

V. Statement of Law and Discussion

A. Positions of the Parties

1. Government's Position

The Government timely filed its closing brief (''Government's Brief'') with this Court on June 26, 2013. [Gov't Brief, at 1]. The Government offered proposed findings of fact and conclusions of law that support the denial of Respondent's renewal application and the revocation of Respondent's existing registrations. [Gov't Brief, at 2]. Government addressed its proposed factual findings and conclusions of law within the framework of the public interest analysis.

Concerning Respondent's conviction related to controlled substances, the Government proposed I find that Respondent pled guilty to a drug-related felony involving a conspiracy to distribute anabolic steroids. [Gov't Brief, at 21–22]. Government suggested I conclude that this conviction, on its own, is sufficient justification to revoke Respondent's registration. [*Id.*].

Additionally, with regards to Respondent's experience handling controlled substances, the Government suggested I find that Respondent had a long history of controlled substance abuse, which led to various violations of both state and federal law. [*Id.* at 23]. Specifically, the Government proposed I find that the various administrative board orders demonstrate a general pattern of Respondent's noncompliance with state law. [*See id.* at 13, 23–26]. The Government also proposed that I make factual findings concerning the various DEA investigations that arose when Respondent applied for DEA CORs, as well as the Memorandum of Agreement (''MOA'') that DEA entered into with Respondent, because they show a pattern of non-compliance with federal laws. [*Id.* at 4–5, 23–27].

Government further suggested that I find Respondent failed to take complete responsibility for his actions. [*Id.* at 14–16]. In support, the Government noted that the Respondent denied he had purchased, consumed, or trafficked anabolic steroids and instead testified that his ex-wife purchased the steroids, which he had neither consumed, nor trafficked. [*Id.*]. Government added that on other occasions, when Respondent took partial responsibility, I should find that he did so without remorse and without an apology. [*Id.* at 13, 29].

Government also pointed to evidence supporting their contention that the Respondent failed to take corrective actions concerning his future intentions to handle controlled substances. [*Id.* at 32–33]. The Government asserted that the Respondent failed to present a plan demonstrating that his past illegal conduct would not be repeated. [*Id.* at 33].

Government then proposed that I give limited weight to the testimony offered concerning Respondent's reputation, since it was based on general opinions of Respondent's patient care, and not his ability to handle controlled substances. [*Id.* at 9]. Government also suggested I find that the testimony from Respondent's colleagues carries little weight because they are not well-informed of Respondent's history of drug abuse and recent drug-related conviction. [*See id.* at 17–19, 34].

In conclusion, the Government urged that I find it has satisfied its prima facie case, but Respondent has failed to properly rebut it. [*Id.* at 29–30]. In reaching this result, Government requested that I exclude documentary evidence contained in Respondent's Exhibits 2 and 3, on the basis that they are irrelevant and immaterial, as well as exclude documentary evidence in Respondent's Exhibits 1(A) and 1(B) because they are inaccurate and unreliable. [*Id.* at 36, 38].

2. Respondent's Position

The Respondent filed a timely closing brief (''Respondent's Brief'') with this Court on June 27, 2013. [Resp't Brief, at 1]. The brief proposed several factual findings and legal conclusions.

First, Respondent suggested that I find he has not abused the discretionary authority granted to him pursuant to DEA CORs No. BK1391729 and FK1953327. [*Id.* at 2]. Second, he asserted I should find that he provided excellent medical care to his patients and further has never been subject of any complaint from his patients, peers, or employers. [*Id.* at 4]. Third, Respondent asserted that contrary to his drug convictions, there is no evidence he ever actually obtained or distributed the steroids alluded to in the criminal matter. [*Id.* at 5]. Fourth, Respondent proposed I find that he has not consumed any illegal substances since entering Talbot Recovery Campus in 2005, nor has he tested positive for any controlled substances since he has been enrolled in the APHP in May 2005. [*Id.* at 6–7].

Finally, Respondent suggested I find that the Government has not presented any evidence that shows his continued registration would be inconsistent with the public interest. [*Id.* at 6]. Respondent urged me to find that Government failed to meet its prima facie case to revoke Respondent's existing registrations and deny any applications for renewal or modification. [*Id.* at 8]. In conclusion, Respondent requested I issue an order denying Government's motion to revoke or suspend the DEA CORs of Dr. Koch, or in the alternative, continue the DEA CORs of Dr. Koch, subject to ''any conditions the ALJ might deem proper while Respondent's medical license is on a probationary basis.'' [*Id.* at 9].

B. Statement of Law and Analysis

Pursuant to 21 U.S.C. 823(f) (2011), the Deputy Administrator may deny an application for a DEA COR, if he determines that such registration would be inconsistent with the public interest.[108] Similarly, pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator may revoke a DEA COR, if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f) (2011).

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. *See Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (DEA 2003) (citing *Henry J. Schwartz, Jr. M.D.,* 54 FR 16,422, 16,424 (DEA 1989)). Moreover, the Deputy Administrator is ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Thus, ''this is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and

[108] The Deputy Administrator has the authority to make such a determination pursuant to 28 CFR 0.100(b), 0.104 (2012).

determine how many favor'' each party. *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (DEA 2009). ''Rather, it is an inquiry which focuses on protecting the public interest[.]'' *Id.*

The Government bears the ultimate burden of proving that the requirements for registration are not satisfied. 21 CFR § 1301.44(d) (2012). Specifically, the Government must show that Respondent has committed acts that are inconsistent with the public interest. 21 U.S.C. 823(f); *Jeri Hassman, M.D.,* 75 FR 8,194, 8,227 (DEA 2010) (citing *Paul J. Caragine, Jr.,* 63 FR 51,592, 51,601 (DEA 1998)). However, where the Government has made out a *prima facie* case that Respondent's application would be ''inconsistent with the public interest,'' the burden of production shifts to the applicant to ''present[] sufficient mitigating evidence'' to show why he can be trusted with a new registration. *See Medicine Shoppe—Jonesborough,* 73 FR 364, 387 (DEA 2008). To this point, the Agency has repeatedly held that the ''registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Id.; see also Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (DEA 2007). The Respondent must produce sufficient evidence that he can be trusted with the authority that a registration provides by demonstrating that he accepts responsibility for his misconduct and that the misconduct will not reoccur. *See id.; see also, Samuel S. Jackson, D.D.S.,* 72 FR at 23,853. The DEA has consistently held the view that ''past performance is the best predictor of future performance.'' *Alra Laboratories,* 59 FR 50,620 (DEA 1994), *aff'd Alra Laboratories, Inc.* v. *DEA,* 54 F.3d 450, 451 (7th Cir 1995).

On review, the Deputy Administrator must ''examine the relevant data'' and demonstrate in the record ''a rational connection between the facts found and the [decision] made.'' *Hoxie* v. *DEA,* 419 F.3d at 482. The Deputy Administrator's factual findings ''are conclusive if supported by substantial evidence.'' *Hoxie* v. *DEA,* 419 F.3d at 482; 21 U.S.C. § 877. Substantial evidence is ''more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established.'' *Hoxie* v. *DEA,* 419 F.3d at 482; *Morall* v. *DEA,* 412 F.3d at 176 (quoting *NLRB* v. *Columbian Enameling & Stamping Co.,* 306 U.S. 292, 299–300, 59 S.Ct. 501, 505 (1939)). Even if there is a ''possibility of drawing two inconsistent conclusions from the evidence,'' an agency's findings may nonetheless be ''supported by substantial evidence.'' *Shatz* v. *U.S. Dep't of Justice,* 873 F.2d 1089, 1092 (8th Cir. 1989) (citing *Trawick* v. *DEA,* 861 F.2d at 77 (internal citations omitted)). The Deputy Administrator's decision will be considered ''less substantial,'' however, when the Administrative Law Judge (ALJ) ''who has observed the witnesses and lived with the case has drawn [different] conclusions. . . . '' *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496, 71 S.Ct. 456, 469 (1951); 5 U.S.C. § 557 (b) (explaining that an ALJ's decisions are part of the record, but they are not binding on the Deputy Administrator). Thus, the ALJ's factual findings in this decision ''are entitled to significant deference.'' *Roni Dreszer, M.D.,* 76 FR 19,434, 19,444 (DEA 2011) (citing *Universal Camera Corp.* v. *NLRB,* 340 U.S. at 496).

On appeal, the Administrator's decision will be ''set aside if it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' '' *Hoxie* v. *DEA,* 419 F.3d at 482; 5 U.S.C. 706(2)(A); *Morall* v. *DEA,* 412 F.3d at 181 (vacating the DEA's decision to revoke a physician's registration because the agency had departed from its precedent without explanation); *cf. Chein* v. *DEA,* 533 F.3d 828, 835 (D.C. Cir. 2008) (finding that ''mere unevenness in the application of a sanction will not render [it] . . . 'unwarranted in law' '') (internal citations omitted).

Factor One: Recommendation of Appropriate State Licensing Board

Recommendations of state licensing boards are relevant, but not dispositive, in determining whether a respondent should be permitted to maintain a registration. *See Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009); *see also Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (DEA 1997). According to clear agency precedent, a ''state license is a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR at 15,230; *John H. Kennedy, M.D.,* 71 FR 35,705, 35,708 (DEA 2006).

DEA possesses ''a separate oversight responsibility with respect to the handling of controlled substances,'' which requires the Agency to make an ''independent determination as to whether the granting of [a registration] would be in the public interest.'' *Mortimer B. Levin D.O.,* 55 FR 8,209, 8,210 (1990); *see also Jayam Krishna-Iyer, M.D.,* 74 FR at 461. Even the reinstatement of a state medical license does not affect this Agency's independent responsibility to determine whether a DEA registration is in the public interest. *Mortimer B. Levin,* 55 FR at 8,210. The ultimate responsibility to determine whether a registration is consistent with the public interest has been delegated exclusively to the DEA, not to entities within a state government. *Edmund Chein, M.D.,* 72 FR 6,580, 6,590 (DEA 2007), *aff'd Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008).

Here, records from the Alabama SBME demonstrate that Respondent satisfies the state license and registration requirements for purposes of maintaining his DEA COR No. BK1391729 in Alabama. [Gov't Ex. 31, 33]. Documentary evidence confirms that Respondent currently has a probationary license to practice medicine in the state of Alabama. [Gov't Ex. 29, at 4; *see also* Gov't Ex. 31]. His probationary license is subject to the condition that Respondent ''maintain, indefinitely, a contract with the Alabama Physicians Health Program.'' [Gov't Ex. 29, at 4; Tr. 180–81]. Additionally, Respondent has been permitted to retain a full and unrestricted Alabama registration to handle controlled substances in Schedules II–V. [Gov't Ex. 31].

Likewise, records from the Minnesota BMP indicate that Respondent also has a state medical license for purposes of maintaining DEA COR No. FK1953327 in Minnesota. [Gov't Ex. 32, 34]. Respondent currently holds an active license as a physician and surgeon in the state of Minnesota. [Gov't Ex. 32]. At this time, there are no disciplinary actions pending against the Respondent in Minnesota. [*Id.*]. Although, Minnesota has indicated it will be deferential to any disciplinary actions taken by Alabama. [Gov't Ex. 43, at 3–4; Tr. 183, 199].

With regards to Respondent's Minnesota registration to handle controlled substances, the documentary evidence does not explicitly support the fact that Respondent maintains a valid state controlled substances certificate of registration. However, I find that Respondent has the authority to prescribe, administer, and dispense controlled substances within Schedules II through V, simply by having a valid license to practice osteopathic medicine in the state of Minnesota. According to state statutes, ''[a] doctor of osteopathy . . . in the course of professional practice only, may prescribe, administer, and dispense a controlled substance included in Schedules II through V. . . .'' Minn. Stat. Ann. § 152.12 (West 2013). Therefore, in accordance with 5 U.S.C. § 556(e), I take official notice that, pursuant to Minn. Stat. Ann. § 152.12, Respondent has state authority to handle controlled substances in Minnesota, by the very nature of his valid state license to

practice osteopathic medicine.[109] [Gov't Ex. 25].

While I find Respondent currently holds valid state medical licenses and registrations in Alabama and Minnesota, which satisfy the prerequisites for his DEA CORs under the first factor of the public interest analysis, this is not the end of the inquiry. This Agency is nonetheless required to make an independent determination of whether Respondent's continued registration is within the public interest. *See Mortimer B. Levin,* 55 FR at 8,210. I find that the plethora of state administrative actions against Respondent's license in the past sixteen years diminishes the weight I can give to the current state license status.

Specifically, in 2000, Alabama SBME revoked Respondent's medical license for cocaine use. [Gov't Ex. 6, at 3; Tr. 155]. A year later, Respondent's Pennsylvania medical license was suspended, the suspension was stayed, and his medical license was placed on probation. [Gov't Ex. 8, at 11]. It took Respondent nearly ten years to once again receive an unrestricted medical license. [*See* Gov't Ex. 21; Tr. 175]. However, no sooner had his license been fully reinstated, than he pled guilty to a drug-related felony. [Gov't Ex. 25, at 1; Tr. 126, 178]. As a result of this conviction, Respondent's Alabama license was again placed on indefinite probation and Minnesota [110] responded in a similar fashion. [Gov't Ex. 29, 43]. I find that the history of state administrative orders, which ranged in effect from revocation to complete reinstatement, to probation, diminishes the weight of the current state medical license status, which permits Respondent to practice medicine and handle controlled substances.

Thus, I conclude that the evidence offered under this public interest factor satisfies the state prerequisite for a DEA COR, but does not weigh in favor of permitting Respondent to maintain his DEA CORs.

Factors Two and Four: Registrant's Experience With Controlled Substances and Registrant's Compliance With Applicable State, Federal, or Local Laws Relating to Controlled Substances

Respondent's experiences with handling controlled substances, as well as his compliance with laws related to controlled substances, are relevant considerations under the public interest analysis. Pursuant to 21 U.S.C. § 822(b), ''[p]ersons registered by the Attorney General under this subchapter to . . . dispense controlled substances . . . are authorized to possess . . . or dispense such substances . . . to the extent authorized by their registration and in conformity with the other provisions of this subchapter.'' *Leonard E. Reaves, III, M.D.,* 63 FR 44,471, 44,473 (DEA 1998); *see also* 21 CFR 1301.13(a) (providing that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.'').

DEA regulations that apply to practitioner registrants address how to modify a registration,[111] maintain records and inventories,[112] and issue prescriptions.[113] This Agency examines a ''registrant's actions against a backdrop of how she has performed activity within the scope of the certificate.'' *Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,460 (DEA 2011). Specifically, the Agency considers the ''qualitative manner'' and ''quantitative volume'' of a respondent's handling of controlled substances. *Id.*

In the absence of authorization to handle controlled substances, it is ''unlawful for any person knowingly or intentionally to . . . dispense, or possess with intent to . . . dispense a controlled substance.'' 21 U.S.C. 841(a)(1); *see* 21 U.S.C. 802(10) (''the 'dispense' means to deliver a controlled substance to an ultimate user . . . pursuant to the lawful order of, a practitioner, including the prescribing . . . of a controlled substance'').

1. Respondent's Use of Cocaine Violated State and Federal Law

Respondent's ability to prescribe controlled substances as a registered practitioner, while briefly mentioned by Respondent's colleagues during their testimony, is not the basis for any of the allegations in this case. Rather, the relevant experience I must consider is Respondent's addiction to cocaine and illegal handling of anabolic steroids. [Tr. 144]. In order to follow agency precedent, I will take into consideration evidence of Respondent's drug abuse under the fifth public interest factor. *Tony T. Bui, M.D.,* 75 FR 49,979, 49,989 (DEA 2010). To this point, however, the violations of state and federal law between September 1997 and January 2005, which arose from Respondent's cocaine addiction and unlawful conspiracy to handle steroids, are relevant considerations under this public interest factor.

The manner in which the Respondent used cocaine was a violation of federal law.[114] Specifically, Respondent's use of cocaine [115] violated 21 U.S.C. 844(a), which provides that it is ''unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice . . . .'' No one disputes that Respondent did not have such a prescription.

Further, Respondent failed to comply with the MOA he entered into with the DEA. [Gov't Ex. 9]. Even though Supervisor Younker, the author of the document, testified that he was not aware of any violations [116] Respondent committed under the MOA, Respondent credibly testified that he failed to meet the restrictions concerning the purchasing of controlled substances and the prescribing, dispensing, and administering of controlled substances to family members. [Gov't Ex. 9, at 1–2; Tr. 161]. Evidence in the record also indicates that Respondent had a positive drug test on December 21, 2004, which fell squarely between the July 2003 and July 2005 term of the MOA. [Gov't Ex. 13; Tr. 87; Gov't Ex. 9, at 1–2].

Respondent's cocaine use also violated Alabama law and administrative orders. Under Alabama law, Respondent's use of cocaine was a violation of Ala. Code 1975 §§ 20–2–1, 13A–12–210, and specifically 13A–12–212, which provides that ''[a] person commits a crime of unlawful possession of controlled substance if: (1) [e]xcept as

[109] ''Under the Administrative Procedure Act, '[a]gencies may take official notice of facts at any stage in a proceeding-even in the final decision.' '' *Attorney General's Manual on the Administrative Procedure* Act 80 (1946) (Wm. W. Gaunt & Sons, Inc., reprint 1979). In accordance with the Act, Respondent may ''show to the contrary' by filing a request for reconsideration which includes supporting documentation within fifteen days of receipt of this order.'' *Id.*

[110] At this time, Respondent no longer maintains a DEA COR in Pennsylvania. [Tr. 84].

[111] 21 CFR 1301.51 (stating that a registrant ''may apply to modify his/her registration . . . or to change his/her name or address . . . by submitting a letter'' to the DEA).

[112] 21 CFR 1304.04.

[113] 21 CFR 1306.04.

[114] Respondent's involvement in a conspiracy to purchase anabolic steroids violated 21 U.S.C. 846 and 841(a)(1), which resulted in a felony conviction. [*See* Gov't Ex. 23, 26]. This is discussed in more detail under Factor 3 of the public interest analysis.

[115] Cocaine is regulated under Schedule II of the Controlled Substances Act. 21 U.S.C. 812; 21 CFR 1308.12(b)(4).

[116] [Tr. 75, 78; Gov't Ex. 9, at 2].

otherwise authorized, he or she possesses a controlled substance enumerated in Schedules I through V.'' Ala. Code 1975 § 13A–12–212. Such behavior also caused Respondent to lose his Alabama license to practice medicine in 2000 for failing to comply with the voluntary restrictions placed on his license, in violation of Ala. Code §§ 34–24–360 (2), (3), (15) and (19). [Gov't Ex. 6, at 2–3; Tr. 155]. Then, in 2004, after requesting reinstatement of his medical license, he failed to comply with drug-monitoring requirements and his Alabama medical license was once again suspended. [Gov't Ex. 12; Tr. 165]. Eventually, in 2006, Respondent successfully had his medical license reinstated subject to an indefinite contract with APHP. [Gov't Ex. 16, at 1]. In 2010, all restrictions were lifted from Respondent's medical license. [Gov't Ex. 21; Tr. 175]. However, in 2012, all of his progress quickly unraveled when his license was immediately suspended as a result of his drug-related felony conviction. [Gov't Ex. 27, at 1].

Respondent has a similar pattern of non-compliance with Pennsylvania laws and administrative orders. In 1998, Respondent agreed to voluntary restrictions on his medical license after he was found to be in violation of section 63 P.S. § 271.15(a)(4) of the Osteopathic Medical Practice Act as a result of his cocaine use. [Gov't Ex. 2, at 2]. But, he demonstrated his inability to comply with the restrictions when he later tested positive for cocaine. [Gov't Ex. 4, at 3]. Thus, in 1999, he was suspended from practicing medicine and entered into a consent agreement, which required him to stop using controlled substances. [*Id.* at 10, 21]. However, Respondent admitted during his testimony that he once again did not comply. [Tr. 153–54]. In 2001, Respondent's Pennsylvania license was put on probation for not less than five years for failing to comply with previous administrative orders, in violation of 63 P.S. § 271.15(a)(6). [Gov't Ex. 8, at 2, 11]. In 2007, Respondent entered into another consent agreement subject to licensing restrictions because, pursuant to 63 P.S. § 271.5(a)(5), Respondent was ''unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol. . . .'' [Gov't Ex. 17, at 3]. While Respondent ultimately received an unrestricted medical license in 2010, Pennsylvania has issued an Order to Show Cause concerning Respondent's felony conviction. [Gov't Ex. 20, at 1; Gov't Ex. 30, at 1].

2. There Is Insufficient Evidence That Respondent's Use of Anabolic Steroids Violated Federal Law

As for Respondent's use of anabolic steroids, the Government asserted that Respondent unlawfully consumed anabolic steroids. Specifically, the Government stated that Respondent's use of anabolic steroids: (1) Violated 21 U.S.C. 844, which prohibits illegal possession of anabolic steroids; (2) violated 21 U.S.C. 841(a)(1), which prohibits distribution of anabolic steroids; and (3) violated 21 U.S.C. 846, which penalizes participation in a conspiracy related to the possession or distribution of controlled substances. [Gov't Brief, at 23].

During his testimony, Respondent said that he did not purchase or consume anabolic steroids. [Tr.178]. However, Respondent admitted that he pled guilty to ''self-using the anabolic steroids.'' [Tr. 84]. Additionally, the factual resume of his indictment states that Respondent ''purchased, consumed, and trafficked anabolic steroids'' and Respondent ''admits in open court and under oath that [this] . . . statement is true and correct and constitutes evidence in the case.'' [Gov't Ex. 25, at 14].[117]

While the record contains some evidence that Respondent consumed anabolic steroids, I find that the Government has not met its burden of proving such consumption was *unlawful*. None of the counts in the indictment mentioned Respondent's unlawful consumption of steroids or offered a specific statute that Respondent had violated by such consumption. [*See generally* Gov't Ex. 23]. Furthermore, the only count from the indictment to which Respondent pled guilty was conspiracy to distribute anabolic steroids. [Gov't Ex. 23; Gov't Ex. 26]. Thus, the guilty plea made no mention of illegal consumption. [Gov't Ex. 25]. As a result, I find that since Respondent did not plead guilty to unlawful consumption and the evidence in the record does not support such consumption,[118] the record failed to prove that Respondent violated state or federal law with regards to the unlawful consumption of anabolic steroids.

3. Respondent's Failure to Maintain a DEA COR at his Principal Place of Business Violated a Duty of Registrants Under the CSA and Agency Regulations

a. Change of Address

The Government incorrectly asserted that Respondent's failure to notify the DEA of his change in address for his DEA COR in Minnesota demonstrated that Respondent violated a duty arising under agency regulations. [Gov't Brief, at 7]. Government grounded the existence of Respondent's duty to notify the DEA of a change in address in DI Riley's testimony, where he answered in the affirmative to Government counsel's question, ''Investigator Riley, is it the duty and responsibility of the DEA registrant to be able to be located at their registered address?'' [*Id.;* Tr. 273]. Government then offered as proof of Respondent's violation an envelope sent to Respondent's registered address in Virginia, Minnesota, which was returned to the DEA with stamps saying ''Undeliverable as Addressed,'' ''Return to Sender,'' and ''Unable to Forward.'' [Gov't Ex. 44].

DEA regulations do not explicitly define a registrant's duty to notify the DEA of a change in address. Under 21 CFR 1301.51, a ''[r]egistrant may apply to modify his/her registration . . . or change his/her name or address, by submitting a letter of request'' to the DEA. However, Respondent's ability to change the registered address, as indicated by ''may'' in the regulatory language, should not be confused with an affirmative responsibility of the Respondent to provide such notice under the regulations. If the DEA wanted to create a responsibility to notify the agency of a change in address, it could have used ''shall'' instead of ''may'' in the language of the regulation. Thus, pursuant to § 1301.51, a Respondent does not have a duty to notify the DEA of his change in address. Consequently, Government incorrectly asserted that Respondent violated such duty in an effort to prove Respondent has a history of non-compliance.

b. Principal Place of Business

Sua sponte, however, I find that the envelope,[119] which was returned to the DEA, is evidence that Respondent violated 21 CFR 1301.12. Under both the CSA and agency regulations, a registrant is required to obtain a ''separate registration . . . at each principal place of business or professional practice.'' 21 U.S.C. 822(e);

[117] The factual resume of the indictment was incorporated into Respondent's plea agreement by reference. [Gov't Ex. 25, at 3].

[118] The Administrator has explained that ''in the absence of probative and reliable evidence'' of a charge, ''Respondent ha[s] no obligation to refute the charge.'' *David A. Ruben, M.D.,* 78 FR 38,363, 38,384 n.45 (DEA 2013). Here, since the record did not contain probative and reliable evidence that Respondent unlawfully consumed anabolic steroids, the Respondent is not required to refute it according to agency precedent.

[119] [Gov't Ex. 44].

21 CFR 1301.12.[120] Published guidance from the DEA concerning the ''Registration Requirements for Individual Practitioners Operating in a 'Locum Tenens' Capacity'' instructs that the location where a practitioner will work in a locum tenens capacity is considered his ''principal place of business or professional practice'' for purposes of a DEA registration. *Registration Requirements for Individual Practitioners Operating in a ''Locum Tenens'' Capacity,* 74 FR 55,499, 55,501 (DEA 2009).

Here, Respondent testified that he was working in a locum tenens capacity in Minnesota. [Tr. 128]. The envelope sent by the DEA to Respondent, which was returned to DEA as undeliverable, listed the following address: 815 12th Street North, Virginia, Minnesota 55792. [Gov't Ex. 44]. Such address is the Respondent's registered address. [Gov't Ex. 34, at 1]. Because the envelope was returned to DEA having been marked as undeliverable, I find that Respondent was not registered at his principal place of business while working in a locum tenens capacity in Minnesota, in violation of 21 CFR 1301.12 (requiring any person to have a separate registration to handle controlled substances for each principal place of business or professional practice).

In conclusion, I find that Government incorrectly asserted that Respondent violated a duty to notify DEA of a change in his registered address. I do not find that such duty exists under the statute or regulations. However, I find that Respondent, by failing to maintain his registration at his principal place of business, violated 21 CFR 1301.12. Therefore, Respondent failed to obtain a separate registration for his principal place of business in Minnesota where he was working in a locum tenens capacity. Thus, Respondent's violation of § 1301.12 weighs in favor of finding that Respondent's continued registration is inconsistent with the public interest.

4. Respondent's Failure To Notify DEA of His Intention to Cease Medical Practice in Alabama Violated His Duties as a Registrant

Government argued that Respondent failed to comply with agency regulations when he failed to notify DEA that his Alabama medical license and certificate of registration were suspended in 2012. [Gov't Brief, at 15; Tr. 180; Gov't Ex. 27]. Government added that Respondent violated agency regulations when he failed to surrender his DEA COR during periods of time when he did not have a valid medical license or state registration. Specifically, Supervisor Dittmer indicated during his testimony that he believed Respondent had a responsibility to surrender his registration upon losing his Pennsylvania medical license in 2001. [Gov't Brief, at 4; Tr. 62; Gov't Ex. 3, at 7].

The Government offered as a legal basis for such duties, 21 CFR 1307.02, which provides that ''[n]othing in [the regulations] shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under other Federal laws . . . or under the law of the State in which he/she desires to do such act. . . .'' It also cited to 21 U.S.C. 824(a)(3), which indicates that a DEA COR may be revoked or suspended if the registrant ''has had his State license or registration suspended, revoked, or denied by competent State authority. . . .'' I find that the Government incorrectly inferred a duty to notify and surrender a DEA COR from these broad provisions.

''[T]he registration of any person . . . shall terminate . . . if and when such person dies, ceases legal existence or discontinues business or professional practice.'' 21 CFR 1301.52(a). Agency precedent has interpreted this language to mean that such duty to notify arises when a registrant establishes that ''he intends to permanently cease the practice of medicine.'' *William R. Lockridge, M.D.,* 71 FR 77,791, 77,797 (DEA 2006). A registrant may also demonstrate his intent through returning his DEA COR for cancellation. *See* 21 CFR 1301.52(c); *John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (DEA 2009). Here, Respondent never testified that he intended to cease the practice of medicine in 2001 when his Pennsylvania license was suspended or in 2012 when his Alabama license was suspended. *See Wayne D. Longmore, M.D.,* 77 FR 67,669, 67,671 (DEA 2012). Thus, Respondent did not violate a duty of notice under the agency regulations with respect to these circumstances.

Sua sponte, however, I find that Respondent should have notified the DEA when he decided in 2004 that he no longer had any intention of practicing medicine in Alabama. [Tr. 165]. Respondent testified that in 2004 he notified both his attorney and the Alabama SBME that he would not pursue an Alabama license. [Tr. 165]. As a result, the Alabama SBME rescinded its offer to reinstate his medical license. [Gov't Ex. 12]. Under these circumstances, Respondent expressed a clear intent to cease professional practice, which triggered 21 CFR § 1301.52(a) and the duty to notify DEA.

Even so, this does not mean that Respondent was also required to surrender his or her DEA COR. Surrendering a registration is a voluntary decision under agency regulations. *See* 21 CFR 1301.52(a); *Voluntary Surrender of Certificate of Registration,* 76 FR 61,563, 61,563 (DEA 2011). Upon receiving notice, DEA can decide whether to institute proceedings against a registrant to revoke his registration, but the registrant is not obligated to surrender his registration. Consequently, I find that Respondent violated the regulations and failed to notify the DEA in 2004 of his intentions to cease the practice of medicine in Alabama. However, I do not find that the other circumstances described by the Government in 2001 and 2012 constituted non-compliance with agency regulations.

In conclusion, I find that the evidence offered in support of Factors 2 and 4 proves several violations of federal and state laws, as well as administrative orders, which illustrate a pattern of non-compliance that heavily weighs in favor of finding that Respondent's maintenance of a DEA COR would be inconsistent with the public interest.

Factor Three: Registrant's Conviction Record Relating to Controlled Substances

Pursuant to 21 U.S.C. 823(f)(3), the Deputy Administrator may deny a pending application for a certificate of registration upon a finding that the applicant has been convicted [121] of a felony related to controlled substances under state or federal law. *See Thomas G. Easter II, M.D.,* 69 FR 5,579, 5,580 (DEA 2004); *Barry H. Brooks, M.D.,* 66 FR 18,305, 18,307 (DEA 2001); *John S. Noell, M.D.,* 56 FR 12,038, 12,039 (DEA 1991).

The Deputy Administrator may revoke a respondent's certificate of registration on a similar basis. Pursuant to 21 U.S.C. § 824(a)(4), a registration may be suspended or revoked by the [Deputy Administrator] upon a finding that the registrant . . . has been convicted of a felony . . . relating to any substance defined . . . as a controlled substance.'' *See Algirdas J.*

[120] I find Government's citation to 21 CFR 1301.52, which discusses the conditions that may terminate registrations, and the citation to 21 CFR 1301.11, which addresses who is required to obtain a registration, are equally unhelpful. [Gov't Brief, at 26–27].

[121] The Administrator interprets the term ''conviction'' by affording it the ''broadest possible meaning.'' *Donald Patsy Rocco, D.D.S.,* 50 FR 34,210, 34,211 (DEA 1985). Thus, evidence of a guilty plea is probative under the third factor of the public interest analysis. *See e.g., Farmacia Ortiz,* 61 FR 726, 728 (DEA 1996); *Roger Pharmacy,* 61 FR 65,079, 65,080 (DEA 1996).

Krisciunas, M.D., 76 FR 4,940, 4,944 (DEA 2011); *Ivan D. Garcia-Ramirez, M.D.,* 69 FR 62,092, 62,093 (DEA 2004); *William C. Potter, D.V.M.,* 65 FR 50,569, 50,569 (DEA 2000). The drug-related activity that gives rise to the convictions does not have to involve the registrant's DEA COR in order to justify the revocation. *See e.g., Paul Stepak, M.D.,* 51 FR 17,556, 17,556–57 (DEA 1986) (revocation of registration for distributing LSD); *William H. Carranza, M.D.,* 51 FR 2,771, 2,771–72 (DEA 1986) (denial of registration application for possessing heroin and cocaine); *Aaron Moss, D.D.S.,* 45 FR 72,850, 72,851 (DEA 1980) (denial of registration application for smuggling cocaine).

It is important to note that the doctrine of *res judicata* precludes a respondent from re-litigating previous criminal convictions in a DEA administrative proceeding. *See Robert L. Dougherty, M.D.,* 76 FR 16,823, 16,830 (DEA 2011); *Dan E. Hale, D.O.,* 69 FR 69,402, 69,406 (DEA 2004) (citing *Robert A. Leslie, M.D.,* 64 Fed Reg. at 25,908–25,910). Likewise, collateral estoppel precludes a respondent from re-litigating the underlying factual findings of his criminal convictions in a DEA administrative hearing. *Shahid Musus Siddiqui, M.D.,* 61 FR 14,818, 14,818–19 (DEA 1996). The purpose of both doctrines is to ''protect[t] the litigants from the burden of relitigating'' and ''promot[e] judicial economy.'' *Jose G. Zavaleta, M.D.,* 78 FR 27,431, 27,434 (DEA 2013) (citing *Parklane Hosiery Co. Inc.* v. *Shore,* 439 U.S. 322, 326 (1979)).

In this case, Respondent's September 2011 guilty plea is considered a conviction for purposes of this factor of the public interest analysis. *See Farmacia Ortiz,* 61 FR at 728. Thus, Respondent has a recent drug-related felony conviction that strongly supports a finding that continuing his registration and granting his renewal application would be inconsistent with the public interest. [Gov't Ex. 25].

Furthermore, I find that since Respondent has already pled guilty to the charges, he has waived his ability to defend his actions. I will not reconsider Respondent's conviction, or the underlying facts of his case, in accordance with the doctrines of *res judicata* and collateral estoppel. *See Dan E. Hale, D.O.,* 69 FR at 69,406 (citing *Robert A. Leslie, M.D.,* 64 FR at 25,908–25,910). I will simply adopt the findings in the factual resume of Respondent's plea agreement. [*See* Gov't Ex. 25, at 14–16]. By signing the plea agreement, Respondent agreed that he entered into it freely and he ''plea[d] guilty because he is guilty.'' [Gov't Ex. 25, at 3 ¶ 10]. This conviction weighs heavily in favor of revoking Respondent's registration and denying Respondent's renewal application because it is related to controlled substances. It carries even greater weight because the conviction is in close proximity to this adjudication. Additionally, the events that gave rise to the conviction began within a month [122] or so of the expiration of the Respondent's DEA MOA. [Gov't Brief, at 3].

Despite significant documentary evidence regarding the conviction, Respondent nevertheless attempted to downplay his involvement in the events that gave rise to the conviction. Respondent tried to pass blame for the conviction to his ex-wife because she was allegedly the one purchasing steroids from individuals in northern Alabama. [Tr. 126, 195–96]. He explained that he ''wound up getting drug (sic) into a steroid charge'' because he gave his ex-wife money to buy Viagra and Cialis during the same transaction. [Tr. 130]. I find that this testimony in no way mitigates the weight of Respondent's conviction. If anything, Respondent's failure to apologize or show remorse for such actions is an aggravating circumstance under this factor of the public interest analysis.

Finally, in its closing brief, the Government identified agency precedent that permits the Deputy Administrator to revoke a respondent's registration solely based on a felony conviction, even if the drug-related activity did not specifically involve the registration. [Gov't Brief, at 21–22]. While I acknowledge that a drug-related felony conviction could provide sufficient basis to recommend revocation of the Respondent's registration or denial of his renewal application, I will still make findings as to the other public interest factors. However, the findings under this factor weigh heavily in favor of revoking Respondent's registration and denying his renewal application since a drug-related felony conviction is extremely inconsistent with the public interest.

Factor Five: Such Other Conduct Which May Threaten the Public Health and Safety

Under the fifth public interest factor, the Agency considers ''[s]uch *other conduct* which may threaten the public health and safety.'' 21 U.S.C. § 823(f)(5) (emphasis added). The Administrator has clarified this language by reasoning that since Congress used the word ''may,'' factor five includes consideration of conduct, ''which creates a probable or possible threat (and not an actual) threat to public health and safety.'' *Roni Dreszer, M.D.,* 76 FR at 19,434; *Michael J. Aruta,* 76 FR 19,420, 19,420 (DEA 2011); *Beau Boshers, M.D.,* 76 FR 19,401, 19,403 (DEA 2011); *Jacobo Dreszer, M.D.,* 76 FR 19,386, 19,386 (DEA 2011).

Taking into consideration Congress's clear statutory language and legislative intent under the CSA, misconduct considered under factor five also ''must be related to controlled substances.'' *Terese, Inc. D/B/A Peach Orchard Drugs,* 76 FR 46,843, 46,848 n.11 (DEA 2011); *Tony T. Bui, M.D.,* 75 FR at 49,989 (finding that prescribing practices related to a non-controlled substance, such as human growth hormone, may not provide an independent basis for concluding that a registrant has engaged in conduct, which may threaten public health and safety); *cf., Paul Weir Battershell, N.P.,* 76 FR 44,359, 44,360, 44,368 n.27 (DEA 2011) (reasoning that while respondent's violation of the Food, Drug, and Cosmetic Act for improperly dispensing Human Growth Hormone does not relate to a controlled substance, such violation is relevant in assessing respondent's future compliance with the CSA).

Long-standing agency precedent indicates that a ''practitioner's self-abuse of a controlled substance is a relevant consideration under factor five.'' *Tony T. Bui, M.D.,* 75 FR at 49,989; *Allan L. Gant, D.O.,* 59 FR 10,826, 10,827 (DEA 1994); *David E. Trawick, D.D.S,* 53 FR 5,326 (DEA 1988). This Agency has upheld such a position, ''even when there [was] no evidence that the registrant abused his prescription writing authority'' or when there was ''no evidence that the practitioner committed acts involving unlawful distribution to others.'' *Tony T. Bui, M.D.,* 75 FR at 49,989.

Here, Respondent credibly testified that he struggled with his addiction from 1985 to 2005. [Tr. 120]. Respondent openly admitted that he abused both drugs and alcohol, during this time period. [Tr. 144]. Respondent said he used cocaine several times a year while on vacation in the Caribbean. [Tr. 145]. He also used to drink alcohol three times a week, consuming up to eight or ten cans of beers each episode. [*Id.*]. I find that Respondent failed to show genuine remorse for these actions that could have had very devastating personal and professional consequences. [Tr. 160–61]. Thus, his conduct and lack of remorse weighs

[122] Respondent's MOA with DEA expired July 15, 2005. [Gov't Ex. 9, at 2]. Count I of the indictment indicates that Respondent became involved with the conspiracy in approximately August 2005. [Gov't Ex. 23, at 1].

against Respondent's maintenance of a DEA registration.

As previously explained by the Deputy Administrator, ''[t]he paramount issue is not how much time has elapsed since [the Respondent's] unlawful conduct, but rather, whether during that time [the] Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with a DEA registration.'' *Leonardo V. Lopez, M.D.,* 54 FR 36,915, 36,915 (DEA 1989). Nonetheless, time is certainly an appropriate factor to be considered. *See Robert G. Hallermeier, M.D.,* 62 FR 26,818, 26,821 (DEA 1997) (four years); *John Porter Richards, D.O.,* 61 FR 13,878, 13,879 (DEA 1996) (ten years); *Norman Alpert, M.D.,* 58 FR 67,420, 67,421 (DEA 1993) (seven years).

In this case, the record demonstrates that the Respondent's cocaine abuse occurred from 1985 to January 2005. [Tr. 120]. The record contains no other use evidence of cocaine abuse. I find that Respondent's sobriety since 2005 weighs in Respondent's favor.

However, an issue arises concerning the Respondent's handling of steroids. Respondent denied purchasing, consuming, and trafficking anabolic steroids,[123] even though contradictory evidence was contained in the factual resume [124] of his indictment, which stated: ''Mark Peter Koch, a physician practicing in Camden, Alabama and Monroeville, Alabama, purchased, consumed, and trafficked anabolic steroids.'' [Gov't Ex. 25, at 14]. Since I determined that Respondent's testimony on this issue was not credible, I find that his recent conduct of purchasing and trafficking anabolic steroids, as documented in the factual resume, demonstrates he has not learned from his past mistakes concerning the handling of controlled substances. Thus, his conduct weighs against the Respondent's maintenance of a DEA registration.

Overall, I conclude that the evidence under factor five weighs against a finding that Respondent's continued registration and renewal application are consistent with the public interest.

1. Mitigating Evidence

a. Respondent's Candor

Once the Government has proved that Respondent has ''committed acts inconsistent with the public interest'' the Respondent must ''present sufficient mitigating evidence to assure the Deputy Administrator that it can be entrusted with the responsibility carried by such a registration.'' *Medicine Shoppe—Jonesborough,* 73 FR at 387 (internal citations omitted). DEA has consistently held that ''[c]andor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a . . . registration is consistent with the public interest'' and noting that a registrant's ''lack of candor and failure to take responsibility for his past legal troubles . . . provide substantial evidence that his registration is inconsistent with the public interest.'' *Jeri Hassman, M.D.,* 75 FR at 8,236; *see also Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (DEA 1995); *see also Ronald Lynch, M.D.,* 75 FR 78,745, 78,749–750 (DEA 2010) (Respondent's attempts to minimize misconduct held to undermine acceptance of responsibility).

During the hearing, Respondent discussed his sincere efforts to rehabilitate. He described how he experienced a major turning point in 2005, which enabled him to recognize that he had a substance abuse problem. [*See* Tr. 139]. He further explained that in February of 2005 he entered Talbot Recovery Center. [Tr. 120–21]. With the help of this treatment, Respondent testified he has been drug-free since February 2005 and alcohol-free since January 2005. [Tr. 139]. From his demeanor, I find that Respondent's testimony on his rehabilitation was credible. His ability to completely abstain from drugs and alcohol for eight years certainly weighs in Respondent's favor.

However, while I find that Respondent's candor during this testimony was very open and honest about his addiction, he failed to testify credibly about his handling of anabolic steroids. Respondent blamed his ex-wife for conduct to which he pled guilty, thereby undermining the circumstances where he had actually accepted responsibility for his actions. This demonstrates a lack of candor and weighs against the Respondent's continued registration.

b. Evidence of Respondent's Community Impact and Professional Reputation

The Agency does not ''consider community impact evidence in exercising its authority . . .'' to either deny an application for registration or revoke an existing registration. *Linda Sue Cheek, M.D.,* 76 FR 66,972, 66,973 (DEA 2011); *see also Steven M. Abbadessa, D.O.,* 74 FR 10,077, 10,078 (DEA 2009) (the hardship imposed because Respondent lacks a registration is not a relevant consideration under the Controlled Substances Act).

With regards to evidence offered in support of Respondent's professional reputation, I find such testimony supportive, as far as it goes. The Government never challenged Respondent's practice of medicine. Therefore, the Respondent's professional reputation does not mitigate the Respondent's misconduct in this case.

However, I have considered the Respondent's evidence, specifically the testimony from his colleagues concerning Respondent's ability to practice medicine. For example, Ms. Luker and Ms. Holloway described his professional reputation as ''[e]xcellent.'' [Tr. 219–20, 251]. Ms. Candies commented that she ''observed [Dr. Koch] to be a very professional doctor'' with ''good bedside manner.'' [Tr. 224]. Dr. Khan testified that ''as long as the state Board allows him to practice and we don't have any personal concerns about him, we don't have any problems with him practicing with us.'' [Tr. 116]. I find this testimony carries little value under the public interest analysis because it does not bear a connection to Respondent's ability to handle controlled substances. *Terese, Inc. D/B/A Peach Orchard Drugs,* 76 FR at 46848 n.11. The fundamental issue in this case is *not* Respondent's ability to practice medicine, but rather Respondent's ability to handle controlled substances. Whether Respondent is qualified to maintain a medical license is for the state medical boards to decide. As a result, I find that any general testimony offered in support of Respondent's reputation to practice medicine is of little value for purposes of the public interest analysis in this case.

On the other hand, I acknowledge that Respondent's colleagues offered a few general comments about Respondent's reputation related to drugs, which deserve some consideration. Dr. Khan credibly testified that ''we have never had any concerns about [Dr. Koch]'' working in the emergency room where there are ''a lot of people who have problems with drugs.'' [Tr. 115]. Ms. Roe said she has never questioned Respondent when he wrote prescriptions for patients. [Tr. 230]. Dr. Cook said she never thought he was acting under the influence of drugs or alcohol while on the job. [Tr. 262]. While this testimony is more probative than the testimony on Respondent's ability to practice medicine, it still does not carry significant weight for purposes

[123] [*See* Tr. 178].

[124] The factual resume was incorporated into his plea agreement by reference. [Gov't Ex. 25, at 3]. However, I have found that Government failed to prove that the Respondent unlawfully consumed steroids.

of this public interest factor because: (1) The witnesses did not specifically mention controlled substances; (2) they were not asked follow-up questions that would have given context to these comments; and (3) they were not well-informed about the facts involved in the Respondent's history of drug abuse or his drug-related conviction.

Finally, I am not persuaded by Respondent's testimony that his registration is in the ''best interest of the community,'' [125] because long-standing agency precedent indicates this is not a relevant consideration. *See e.g., Linda Sue Cheek, M.D.,* 76 FR at 66973.

C. Conclusion and Recommendation

I conclude that the Government has proven, by a preponderance of the evidence, that Respondent's renewal application for DEA COR No. FK1953327 in Minnesota should be denied and Respondent's DEA COR No. BK1391729 in Alabama should be revoked. Respondent has been granted numerous opportunities to act as a responsible DEA registrant and has failed each time. I do not see any conditions that could be placed on Respondent's registration now that would ensure that Respondent would be a responsible DEA registrant, especially considering that Respondent has been the subject of numerous state medical board orders that imposed probationary periods, that Respondent violated his DEA MOA, and that Respondent recently pled guilty to a felony concerning controlled substances. Furthermore, Respondent has not shown that he has learned from his past mistakes in a way that will prevent future misconduct.

Although Respondent offered ample testimony concerning his reputation as a practicing physician and his impact on the medical community, the only probative mitigating evidence offered was generalized testimony about his ability to handle prescription drugs. Because Respondent has not taken full responsibility for his mistakes and genuinely expressed remorse, I find that granting Respondent's renewal application for the DEA COR in Minnesota is against the public interest and revoking Respondent's DEA COR in Alabama is appropriate. Consequently, I recommend that Dr. Koch's renewal application for DEA COR No. FK1953327 be denied and DEA Registration No. BK1391729 be revoked.

Dated: July 18, 2013.
Gail A. Randall,
Administrative Law Judge.

[125] [Tr. 229; Resp't Brief, at 4].

[FR Doc. 2014–07450 Filed 4–2–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Wage and Hour Division

Presidential Memorandum of March 13, 2014; Updating and Modernizing Overtime Regulations

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

On March 13, 2014, President Barack Obama issued a memorandum to the Secretary of Labor, directing him to modernize and streamline the existing overtime regulations for executive, administrative and professional employees. The last change to these overtime regulations was in 2004.

The text of this memorandum reads—

The Fair Labor Standards Act (the ''Act''), 29 U.S.C. 201 *et seq.,* provides basic rights and wage protections for American workers, including Federal minimum wage and overtime requirements. Most workers covered under the Act must receive overtime pay of at least 1.5 times their regular pay rate for hours worked in excess of 40 hours per week.

However, regulations regarding exemptions from the Act's overtime requirement, particularly for executive, administrative, and professional employees (often referred to as ''white collar'' exemptions) have not kept up with our modern economy. Because these regulations are outdated, millions of Americans lack the protections of overtime and even the right to the minimum wage.

Therefore, I hereby direct you to propose revisions to modernize and streamline the existing overtime regulations. In doing so, you shall consider how the regulations could be revised to update existing protections consistent with the intent of the Act; address the changing nature of the workplace; and simplify the regulations to make them easier for both workers and businesses to understand and apply.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Dated: March 21, 2014.

Laura A. Fortman,

Principal Deputy Administrator, Wage and Hour Division.

[FR Doc. 2014–07379 Filed 4–2–14; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee Business and Operations; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: April 30, 2014; 1:00 p.m. to 5:30 p.m. (EST); May 1, 2014; 8:00 a.m. to 12:00 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235.

Type of Meeting: OPEN.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda:

Wednesday, April 30, 2014 1:00 p.m.–5:30 p.m.: Welcome/Introductions; BFA/OIRM/CIO Updates; OMB Publication of Uniform Guidance; Report from Working Group to Consider the Issue of Linking NSF Organizational Goals and Objectives with Employee Performance Plans; Virtual Panels.

Thursday, May 1, 2014 8:00 a.m.–12:00 p.m.: Business Systems Review (BSR)

Process; Prepare for Meeting with Dr. Marrett; Discussion with Dr. Marrett; Closing Discussion.

Dated: March 31, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–07438 Filed 4–2–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATES: Week of March 31, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 31, 2014

Tuesday, April 1, 2014

3:30 p.m. Affirmation Session (Public Meeting) (Tentative)

Florida Power & Light Co. (St. Lucie Plant, Unit 2), Docket No. 50–389, Motion to Stay Restart Pending Conclusion of Hearing Regarding De Facto Amendment of Operating License (March 10, 2014) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

ADDITIONAL INFORMATION

By a vote of 5–0 on March 31, 2014, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on April 1, 2014.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: April 1, 2014.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–07608 Filed 4–1–14; 4:15 pm]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, April 24, 2014, at the Observation Post, 211 Lincoln Boulevard, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to take action on the minutes of a previous Board meeting, to provide the Chairperson's report, to provide the Executive Director's report, to provide a remediation program update, to provide an Officers' Club update and take action on a related construction project, to provide a Presidio Gateway project update, and to receive public comment in accordance with the Trust's Public Outreach Policy. Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415–561–5300 prior to April 17, 2014.

Time: The meeting will begin at 6:30 p.m. on Thursday, April 24, 2014.

ADDRESSES: The meeting will be held at the Observation Post, 211 Lincoln Boulevard, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415–561–5300.

Dated: March 27, 2014.

Karen A. Cook,

General Counsel.

[FR Doc. 2014–07436 Filed 4–2–14; 8:45 am]

BILLING CODE 4310–4R–P

REAGAN-UDALL FOUNDATION FOR THE FOOD AND DRUG ADMINISTRATION

[BAC 416404]

Annual Public Meeting

ACTION: Notice of annual meeting.

SUMMARY: The Reagan-Udall Foundation for the Food and Drug Administration (FDA), which was created by Title VI of the Food and Drug Amendments of 2007, is announcing an annual open public meeting. The Foundation will provide an overview of its history, project updates, as well as projected activities going forward.

DATES: The open public meeting will be held on May 14, 2014, from 10 a.m. until 12 p.m. Interested persons may sign up to attend in person and/or make comments at the meeting or submit written comments by visiting *http://www.ReaganUdall.org* on or before May 6, 2014. Oral comments from the public will be scheduled between approximately 11 a.m. and 12 p.m. Time allotted for each registrant will be 3 minutes. The contact person will notify interested persons regarding their request to speak by May 9, 2014. Written comments are encouraged. Those individuals interested in making formal comments should notify the contact person and submit a brief statement of the general nature of the comments they wish to present. Written comments are encouraged through May 12, 2014.

ADDRESSES: The public meeting will be held at 901 East Conference Center, The Pew Charitable Trusts, 901 East St. NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jane Reese-Coulbourne, Reagan-Udall Foundation for the FDA, 202–828–1206, *Meetings@ReaganUdall.org.*

SUPPLEMENTARY INFORMATION:

I. Background

The Reagan-Udall Foundation for the FDA (the Foundation) is an independent 501(c)(3) not-for-profit organization

created by Congress to advance the mission of FDA to modernize medical, veterinary, food, food ingredient, and cosmetic product development; accelerate innovation; and enhance product safety. With the ultimate goal of improving public health, the Foundation provides a unique opportunity for different sectors (FDA, patient groups, academia, other government entities, and industry) to work together in a transparent way to create exciting new research projects to advance regulatory science.

The Foundation acts as a neutral third party to establish novel, scientific collaborations. Much like any other independently developed information, FDA evaluates the scientific information from these collaborations to determine how Reagan-Udall Foundation projects can help the Agency to fulfill its mission.

The Foundation's projects include: The Innovation in Medical Evidence Development and Surveillance (IMEDS) Program, methods for using observational electronic health care data for postmarket evidence generation, including postmarket safety surveillance; the Systems Toxicology Project, an evaluation of a systems biology approach to preclinical safety testing; and the Critical Path to Tuberculosis Multidrug Regimens (CPTR) Project, looking at new ways to develop tuberculosis combination therapies. The Foundation seeks comments on these and other potential topics for future activities.

II. Agenda

The Foundation will be providing an overview of its history, project updates, as well as projected activities going forward. Find the Meeting Agenda at *http://www.ReaganUdall.org.*

Dated: March 31, 2014.

Jane Reese-Coulbourne,

Executive Director, Reagan-Udall Foundation for the FDA.

[FR Doc. 2014–07484 Filed 4–2–14; 8:45 am]

BILLING CODE 4164–04–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30998]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 28, 2014.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2014. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 22, 2014, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE., Washington, DC 20549–8010.

Lazard Alternative Strategies Fund, L.L.C. [File No. 811–10415]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets to Lazard Alternative Strategies 1099 Fund, and on December 31, 2013, made a distribution to its shareholders based on net asset value. Expenses of $200,000 incurred in connection with the reorganization were paid by Lazard Asset Management LLC, applicant's investment adviser.

Filing Dates: The application was filed on January 30, 2014, and amended on March 26, 2014.

Applicant's Address: 30 Rockefeller Plaza, New York, NY 10112–6300.

Dreyfus Money Market Instruments Inc. [File No. 811–2557]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 7, 2013, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $1,897 incurred in connection with the reorganization were paid by The Dreyfus Corporation, applicant's investment adviser.

Filing Dates: The application was filed on January 15, 2014, and amended on March 21, 2014.

Applicant's Address: c/o The Dreyfus Corporation, 200 Park Ave., New York, NY 10166.

ING Emerging Markets Local Bond Fund [File No. 811–22505]; ING Global Strategic Income Fund [File No. 811–22681]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on March 7, 2014.

Applicants' Address: 7337 E Doubletree Ranch Rd., suite 100, Scottsdale, AZ 85258.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07471 Filed 4–2–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30999; File No. 812–14203]

Minnesota Life Insurance Company, et al.; Notice of Application

March 28, 2014.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order approving the substitution of certain securities pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the ''1940 Act'' or ''Act'') and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

APPLICANTS: Minnesota Life Insurance Company (''Minnesota Life''), Variable Annuity Account (''VAA''), Minnesota Life Variable Life Account (''VLI''), Minnesota Life Variable Universal Life Account (''VGUL''), Group Variable Universal Life Account (''Private VGUL I''), Variable Universal Life Account II (''Private VGUL II''), Securian Life Insurance Company (''Securian Life''), and Securian Life Variable Universal Life Account (''SVGUL''). Minnesota Life and Securian Life are referred to individually as a ''Life Company'' and collectively as ''Life Companies.'' VAA, VLI, VGUL, Private VGUL I, Private

VGUL II, and SVGUL are referred to individually as a ''Separate Account'' and collectively as the ''Separate Accounts.'' The Life Companies and the Separate Accounts collectively referred to as the ''Section 26 Applicants''. Securian Funds Trust (''SFT''), the Life Companies and the Separate Accounts are collectively, referred to as the ''Section 17 Applicants''.

SUMMARY OF APPLICATION: The Section 26 Applicants seek an order pursuant to Section 26(c) of the 1940 Act, approving certain proposed substitutions of securities (the ''Proposed Substitutions''). The Section 17 Applicants seek an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the Act to the extent necessary to permit them to effectuate the Proposed Substitutions by redeeming all or a portion of the securities of one or more of certain existing portfolios in-kind and using those portfolio securities received from these existing portfolios to purchase shares of replacement portfolios (the ''In-Kind Transactions''). The date of the Proposed Substitutions is expected to be on or about May 1, 2014 (the ''Substitution Date'').

DATES: *Filing Date:* The application was filed on August 22, 2013, and an amended and restated application was filed on March 27, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2014, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 100 F Street NE., Washington, DC 20549–1090. Applicants, Minnesota Life, VAA, VLI, VGUL, Private VGUL I, Private VGUL II, Securian Life, SVGUL, and SFT, 400 Robert Street North, St. Paul, Minnesota 55101–2098.

FOR FURTHER INFORMATION CONTACT: Alberto H. Zapata, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Insured Investments Office, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. Minnesota Life serves as the depositor of all the Separate Accounts except for SVGUL. Securian Life serves as the depositor for SVGUL.

2. Each of the Separate Accounts is a segregated asset account of Minnesota Life or Securian Life, as applicable, and was established under Minnesota law pursuant to resolutions of the applicable Life Company's Board of Directors to fund the variable annuity contracts, variable life insurance policies, or variable universal life insurance policies described in the Application (the ''VA Contracts,'' ''VLI Policies,'' ''VGUL Policies,'' ''SVGUL Policies,'' ''Private VGUL I Policies,'' and ''Private VGUL II Policies,'' respectively; each a ''Contract,'' and collectively, the ''Contracts''). Each Separate Account, except for Private VGUL I and Private VGUL II, is registered under the 1940 Act as a unit investment trust. Interests under the Contracts, except for Contracts issued through Private VGUL I and Private VGUL II, are registered under the Securities Act of 1933, as amended (the ''1933 Act''). Each Separate Account meets the definition of ''separate account'' contained in Section 2(a)(37) of the 1940 Act.

3. Each Separate Account is divided into subaccounts (each a ''Subaccount,'' collectively, the ''Subaccounts''). Each Subaccount invests in the securities of a single portfolio of an underlying mutual fund (''Portfolio''). Purchase payments under the Contracts are allocated to one or more Subaccounts.

4. The Contracts include the VA Contracts, VLI Policies, VGUL Policies, SVGUL Policies, Private VGUL I Policies, and Private VGUL II Policies listed in the Application. The Contracts may be issued as individual or group Contracts. Contract owners (and participants in group Contracts) (each a ''Contract Owner,'' and collectively, the ''Contract Owners'') may allocate some or all of their Contract value (''Contract value'') to one or more Subaccounts that are available as investment options under the Contracts.

5. Under the Contracts, the Life Companies reserve the right to substitute, for the shares of a Portfolio held in any Subaccount, the shares of another Portfolio. The prospectuses or offering documents, as applicable, for the Contracts include appropriate disclosure of this reservation of right.

6. SFT is registered with the Commission as an open-end management investment company under the 1940 Act and its securities are registered under the 1933 Act. SFT was organized as a Delaware statutory trust on July 8, 2011. SFT's predecessor, Advantus Series Fund, Inc. (''Series Fund'') was organized as a Minnesota corporation on February 25, 1985. Effective May 1, 2012, each of the seven then-existing series of the Series Fund was reorganized into a corresponding ''shell'' series of SFT (''Series'') pursuant to an agreement and plan of reorganization approved by a majority of the shareholders of each series of the Series Fund on October 21, 2011.

7. SFT currently consists of eight Series. The SFT Board of Trustees (''Board'') has authorized the creation of four new Series. In addition to one unaffiliated Portfolio, the Proposed Substitutions will involve four new Series of SFT. Three of the new SFT Series, T. Rowe Price Value Fund, Ivy Growth Fund, and Ivy Small Cap Growth Fund, will offer a single class of shares. The fourth new SFT Series, Pyramis Core Equity Fund, will offer two classes of shares (Class 1 and Class 2). Each of the current eight Series offers two classes of shares (Class 1 and Class 2), except that the money market fund and managed volatility fund offer shares in only one class. Shares of the Series are currently offered through Minnesota Life and Securian Life separate accounts, including the Separate Accounts, to fund variable annuities, variable life insurance policies and variable universal life policies, including the VA Contracts, VLI Policies, VGUL Policies, SVGUL Policies, Private VGUL I Policies, and Private VGUL II Policies. Series shares also may be offered to fund variable annuities, variable life insurance policies, and variable universal life insurance policies issued by other insurance companies. Currently, no other life insurance company invests in any Series. SFT has adopted a plan of distribution pursuant to rule 12b–1 under the 1940 Act (''Plan''), covering Class 2 shares and shares of the money market fund and the managed volatility fund (Class 1 shares are not part of the Plan). Under the Plan, each covered share class pays a distribution fee which, on an annual basis, is equal to .25% of the average daily net assets held in such covered share class.

8. Advantus Capital Management, Inc. (''Advantus'' or the ''Manager''), an indirect wholly-owned subsidiary of

Minnesota Mutual Companies, Inc., serves as the investment manager of each of the Series of SFT. Securian Financial Services, Inc., also an indirect wholly-owned subsidiary of Minnesota Mutual Companies, Inc., serves as the distributor for the shares of the Series.

9. SFT and the Manager may rely on an order from the Commission (*In the Matter of Advantus Capital Management, Inc., et al.,* Investment Company Act Release No. 23008 (Jan. 27, 1998) File No. 812–10542 (the ''Manager of Managers Order'')) that permits the Manager, subject to certain conditions, including approval of the Board, including Trustees who are not ''interested persons,'' as defined in Section 2(a)(19) of the 1940 Act, and without the approval of shareholders, to: (i) Engage a new or additional subadviser (''Subadviser'') for each Series; (ii) enter into and materially amend existing sub-adviser agreements; and (iii) terminate and replace Subadvisers.

10. The Life Companies, on behalf of themselves and their Separate Accounts, propose to exercise their contractual right to substitute shares of one Portfolio for that of another Portfolio by replacing the shares of 14 existing Portfolios listed below (the ''Existing Portfolios'') that are held in Subaccounts of their Separate Accounts with shares of the corresponding replacement Portfolios listed below (the ''Replacement Portfolios''). Twelve of the Proposed Substitutions will involve substitutions from unaffiliated Existing Portfolios to affiliated Replacement Portfolios. Two of the Proposed Substitutions will involve substitutions from unaffiliated Existing Portfolios to unaffiliated Replacement Portfolios.

Proposed substitution	Existing portfolio	Replacement portfolio
1	American Century VP Value Fund: Class II Shares	SFT—T. Rowe Price Value Fund.
2	MFS VIT Value Series: Service Class Shares	SFT—T. Rowe Price Value Fund.
3	American Century VP Ultra Fund: Class II Shares	SFT—Ivy Growth Fund.
4	Franklin Templeton VIP Trust—Franklin Large Cap Growth Securities Class 2 Shares.	SFT—Ivy Growth Fund.
5	Invesco VI American Franchise: Series II Shares	SFT—Ivy Growth Fund.
6	Ivy Funds VIP Growth	SFT—Ivy Growth Fund.
7	MFS VIT Investors Growth Stock Series Service Class Shares	SFT—Ivy Growth Fund.
8	Oppenheimer Variable Account Funds—Capital Appreciation Fund/VA: Service Shares.	SFT—Ivy Growth Fund.
9	Ivy Funds VIP Small Cap Growth	SFT—Ivy Small Cap Growth Fund.
10	MFS VIT New Discovery Series: Service Class Shares	SFT—Ivy Small Cap Growth Fund.
11	Invesco VI Core Equity Fund: Series II Shares	SFT—Pyramis Core Equity Fund: Class 2 Shares.
12	Fidelity VIP Contrafund:	SFT—Pyramis Core Equity Fund:
	Initial Class Shares	Class 1 Shares.
	Service Class 2 Shares	Class 2 Shares.
13	Fidelity VIP High Income: Service Class 2 Shares	Ivy Funds VIP High Income.
14	Oppenheimer Variable Account Funds—Global Strategic Income/VA: Service Shares.	Ivy Funds VIP High Income.

11. The following tables compare the fees and expenses of the Existing Portfolio and the Replacement Portfolio using percentage daily net assets as of December 31, 2012. The data for the Replacement Portfolios in Proposed Substitutions 1 through 12 are estimates for the current year.

PROPOSED SUBSTITUTION 1

	Existing portfolio American Century VP Value Fund—Class II Shares	Replacement portfolio SFT—T. Rowe Price Value Fund
Management Fees	0.90% of first $500 million	0.67% of first $1 billion.
	0.85% of next $500 million	0.65% of next $1.5 billion.
	0.80% over $1 billion	0.60% over $2.5 billion.
Other Expenses	0.01%	0.09%
12b–1 Fees	0.25%	0.25%
Total Gross Expenses	1.13%	1.01%
Expense Waiver	0.04%	0.00%
Total Net Expenses	1.09%	1.01%

PROPOSED SUBSTITUTION 2

	Existing portfolio MFS VIT Value Series—Service Class Shares	Replacement portfolio SFT—T. Rowe Price Value Fund
Management Fees	0.75% of first $1 billion	0.67% of first $1 billion.
	0.65% over $1 billion	0.65% of next $1.5 billion
	0.60% over $2.5 billion	0.60% over $2.5 billion.
Other Expenses	0.06%	0.09%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.03%	1.01%.
Expense Waiver	0.00%	0.00%.

PROPOSED SUBSTITUTION 2—Continued

	Existing portfolio MFS VIT Value Series—Service Class Shares	Replacement portfolio SFT—T. Rowe Price Value Fund
Total Net Expenses	1.03%	1.01%.

PROPOSED SUBSTITUTION 3

	Existing portfolio American Century VP Ultra Fund—Class II Shares	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0.90% of first $500 million 0.85% of next $500 million 0.80% over $1 billion	0.67% of first $500 million. 0.625% of next $300 million. 0.60% of next $200 million. 0.50% over $1 billion.
Other Expenses	0.01%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.16%	0.97%.
Expense Waiver	0.04%	0.00%.
Total Net Expenses	1.12%	0.97%.

PROPOSED SUBSTITUTION 4

	Existing portfolio Franklin Templeton VIP Trust—Franklin Large Cap Growth Securities—Class 2 Shares	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0.75% up to $500 million 0.625% over $500 million 0.50% over $1 billion	0.67% of first $500 million. 0.625% of next $300 million. 0.60% of next $200 million. 0.50% over $1 billion.
Other Expenses	0.05%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.05%	0.97%.
Expense Waiver	0.00%	0.00%.
Total Net Expenses	1.05%	0.97%.

PROPOSED SUBSTITUTION 5

	Existing portfolio Invesco VI American Franchise—Service II Shares	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0.695% first $250 million 0.67% next $250 million 0.645% next $500 million 0.62% next $550 million 0.60% next $3.45 billion. 0.595% next $250 million. 0.57% next $2.25 billion. 0.545% next $2.5 billion. 0.52% over $10 billion.	0.67% of first $500 million. 0.625% of next $300 million. 0.60% of next $200 million. 0.50% over $1 billion.
Other Expenses	0.30%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.23%	0.97%.
Expense Waiver	0.08%	0.00%.
Total Net Expenses	1.15%	0.97%.

PROPOSED SUBSTITUTION 6

	Existing portfolio Ivy Funds VIP Growth	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0.70% up to $1 billion 0.65% over $1 billion 0.60% over $2 billion 0.55% over $3 billion	0.67% of first $500 million. 0.625% of next $300 million. 0.60% of next $200 million. 0.50% over $1 billion.
Other Expenses	0.05%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.00%	0.97%.
Expense Waiver	0.03%	0.00%.

PROPOSED SUBSTITUTION 6—Continued

	Existing portfolio Ivy Funds VIP Growth	Replacement portfolio SFT—Ivy Growth Fund
Total Net Expenses	0.97%	0.97%.

PROPOSED SUBSTITUTION 7

	Existing portfolio MFS VIT Investors Growth Stock Series—Service Class Shares	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0.75% of first $1 billion	0.67% of first $500 million.
	0.65% over $1 billion	0.625% of next $300 million.
		0.60% of next $200 million.
		0.50% over $1 billion.
Other Expenses	0.08%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.08%	0.97%.
Expense Waiver	0.00%	0.00%.
Total Net Expenses	1.08%	0.97%.

PROPOSED SUBSTITUTION 8

	Existing portfolio Oppenheimer Variable Account Funds—Capital Appreciation Fund/VA—Service Shares	Replacement portfolio SFT—Ivy Growth Fund
Management Fees	0 0.75% of first $200 million	0.67% of first $500 million.
	0.72% of next $200 million	0.625% of next $300 million.
	0.69% of next $200 million	0.60% over $200 million.
	0.66% of next $200 million	0.50% over $1 billion.
	0.60% over $800 million.	
Other Expenses	0.12%	0.05%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.06%	0.97%.
Expense Waiver	0.01%	0.00%.
Total Net Expenses	1.05%	0.97%.

PROPOSED SUBSTITUTION 9

	Existing portfolio Ivy Funds VIP Small Cap Growth	Replacement portfolio SFT—Ivy Small Cap Growth Fund
Management Fees	0.85% up to $1 billion	0.85% up to $1 billion.
	0.83% over $1 billion	0.80% of next $2 billion.
	0.80% over $2 billion	0.76% over $3 billion.
	0.76% over $3 billion.	
Other Expenses	0.06%	0.11%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.16%	1.21%.
Expense Waiver	0.02%	0.07%.
Total Net Expenses	1.14%	1.14%.

PROPOSED SUBSTITUTION 10

Existing portfolio MFS VIT New Discovery Series—Service Class Shares		Replacement Portfolio SFT—Ivy Small Cap Growth Fund
Management Fees	0.90% of first $1 billion	0.85% up to $1 billion.
	0.80% over $1 billion	0.80% of next $2 billion.
		0.76% over $3 billion.
Other Expenses	0.07%	0.11%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.22%	1.21%.
Expense Waiver	0.00%	0.07%.
Total Net Expenses	1.22%	1.14%.

PROPOSED SUBSTITUTION 11

Existing portfolio Invesco VI Core Equity Fund Series II Shares		Replacement portfolio SFT—Pyramis Core Equity Fund—Class 2 Shares
Management Fees	0.65% first $250 million 0.60% of the excess over $250 million.	0.65%.
Other Expenses	0.29%	0.11%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	1.15%	1.01%.
Expense Waiver	0.02%	0.12%.
Total Net Expenses	1.13%	0.89%.

PROPOSED SUBSTITUTION 12

Existing portfolio Fidelity VIP Contrafund		Replacement portfolio SFT—Pyramis Core Equity Fund
Management Fees	The Existing Portfolio pays the Adviser a monthly management fee which has two components: a group fee rate and an individual fund fee rate. The group fee rate is based on the monthly average net assets of all of the registered investment companies with which the Adviser has management contracts.	0.65% Class I Shares. 0.65% Class 2 Shares.
Other Expenses	0.06% Initial Class Shares 0.08% Service Class 2 Shares	0.11% Class I Shares. 0.11% Class 2 Shares.
12b–1 Fees	0.00% Initial Class Shares 0.25% Service Class 2 Shares	0.00% Class I Shares. 0.25% Class 2 Shares.
Total Gross Expenses	0.64% Initial Class Shares 0.89% Service Class 2 Shares	0.76% Class I Shares. 1.01% Class 2 Shares.
Expense Waiver	0.00% Initial Class Shares 000% Service Class 2 Shares	0.12% Class I Shares. 0.12% Class 2 Shares.
Total Net Expenses	0.64% Initial Class Shares 0.89% Service Class 2 Shares	0.64% Class I Shares. 0.89% Class 2 Shares.

PROPOSED SUBSTITUTION 13

Existing portfolio Fidelity VIP High Income—Service Class 2 Shares		Replacement portfolio Ivy Funds VIP High Income
Management Fees	The Existing Portfolio pays the Adviser a monthly management fee which has two components: a group fee rate and an individual fund fee rate. The group fee rate is based on the monthly average net assets of all of the registered investment companies with which the Adviser has management contracts.	0.63%.
Other Expenses	0.12%	0.06%.
12b–1 Fees	0.25%	0.25%.
Total Gross Expenses	0.93%	0.94%.
Expense Waiver	0.00%	0.00%.
Total Net Expenses	0.93%	0.94%.

PROPOSED SUBSTITUTION 14

Existing portfolio Oppenheimer Variable Account Funds—Global Strategic Income/VA—Service Shares		Replacement portfolio Ivy Funds VIP High Income
Management Fees	0.75% of first $200 million 0.72% of next $200 million. 0.69% of next $200 million. 0.66% of next $200 million. 0.60% of next $200 million. 0.50% over $1 billion.	0.63%.
Other Expenses	0.14%	0.06%.
12b–1 Fees	0.25%	0.25%.
Acquired Fund Fees & Expenses	0.06%	0.00%.

PROPOSED SUBSTITUTION 14—Continued

Total Gross Expenses	1.03%	0.94%.
Expense Waiver	0.06%	0.00%.
Total Net Expenses	0.97%	0.94%.

12. The Proposed Substitutions are designed and intended to simplify the Portfolio offerings by eliminating overlapping offerings that largely duplicate one another by having substantially similar investment objectives, strategies and risks. The Section 26 Applicants believe that eliminating investment option redundancy via the Proposed Substitutions would result in a more consolidated and attractive menu of investment options under the Contracts. Moreover, because the Proposed Substitutions involve consolidating duplicative investment options, the diversity of investment options available under the Contracts will not be adversely impacted.

13. Except for Proposed Substitutions 9, 12, and 13, Contract Owners with Contract value allocated to the Subaccounts of the Existing Portfolios will experience lower total annual operating expenses (before expense waivers or reimbursements) (''annual gross operating expenses'') for the Replacement Portfolio than those of the corresponding Existing Portfolio.

14. Proposed Substitutions 9, 12 and 13 are expected to result in annual gross operating expenses for the Replacement Portfolio that are higher (0.05%, 0.12%, and 0.01%, respectively) than those of the corresponding Existing Portfolio. However, total net operating expenses are expected to be the same or lower for two years (for Proposed Substitutions 9 and 13) and for the life of the Contracts outstanding on the Substitution Date (for Proposed Substitution 12) after Life Company reimbursements.

15. Proposed Substitutions 11, 12, 13 and 14 are expected to result in a management fee for the Replacement Portfolio that is higher (0.04%, 0.09%, 0.07%, and 0.05%, respectively) than that of the corresponding Existing Portfolio. Notwithstanding, total gross operating expenses for the Replacement Portfolios in Proposed Substitutions 11 and 14 are lower than the corresponding Existing Portfolio. Moreover, the Section 26 Applicants agree that, except for Proposed Substitutions 11 and 12, for a two year period commencing on the Substitution Date, and for those Contracts with assets allocated to an Existing Portfolio on the Substitution Date, the issuing Life Company, as applicable, will, no later than the last business day of each fiscal quarter, make a reduction in Separate Account (or Subaccount) expenses, for each Contract outstanding on the Substitution Date, to the extent that total annual operating expenses of each Replacement Portfolio (taking into account applicable fee waivers and expense reimbursements) (''annual net operating expenses'') for such period exceeds, on an annualized basis, the corresponding Existing Portfolio's total annual net operating expenses for the 2013 fiscal year. The Section 26 Applicants further agree that, except for Proposed Substitutions 11 and 12, Separate Account charges (net of any reimbursements or waivers) for any Contract Owner on the Substitution Date, will not be increased at any time during the two year period following the Substitution Date, while the caps discussed in this paragraph are in effect on the Replacement Portfolios. For Proposed Substitutions 11 and 12, the reimbursements described above will apply for the life of the Contract of all Contracts outstanding on the Substitution Date. Accordingly, Contract Owners will bear the same or lower expenses as a result of the Proposed Substitutions for a period of two years following the Substitution Date (for Proposed Substitutions 1–10, 13 and 14) and for the life of the Contract (for Proposed Substitutions 11 and 12).

16. Section 26 Applicants believe another benefit of the Proposed Substitutions is that a greater number of Portfolios available through the Contracts will be Series of SFT. The Section 26 Applicants state that as a result more of the prospectuses and other disclosures and communications that Contract Owners receive regarding their investment options under the Contracts will be in a consistent format. The Section 26 Applicants state that fewer and more uniform disclosures and communications also should result in cost savings to the Life Companies.

17. Section 26 Applicants state that the Proposed Substitutions will result in more investment options under the Contracts having the improved portfolio manager selection afforded by the Manager of Managers Order, which the Section 26 Applicants believe will appeal to both existing and prospective Contract Owners.

18. The Section 26 Applicants state that the Proposed Substitutions will enable the Life Companies to more efficiently administer those aspects of the Contracts that pertain to Portfolios. These aspects include not only coordinating mailings of Portfolio disclosures and other communications to Contract Owners but also various compliance matters, such as computing accumulation unit values pursuant to rule 22c–1 under the 1940 Act, detecting and preventing market timing or other disruptive trading activities, and monitoring for potential conflicts, including material irreconcilable conflicts due to so-called ''mixed and shared funding.''

19. The Section 26 Applicants state that the Proposed Substitutions are designed to provide Contract Owners with the ability to continue their investment in similar investment options without interruptions and at no additional cost to them. In this regard, the Life Companies or an affiliate will bear all expenses and transaction costs incurred in connection with the Proposed Substitutions and related filings and notices, including legal, accounting, brokerage, and other fees and expenses. The Proposed Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract Owners to be greater after the Proposed Substitutions than before the Proposed Substitutions. The charges for optional living benefit riders, of course, may change from time to time and any such changes would be unrelated to the Proposed Substitutions.

20. The Proposed Substitutions will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission or in other supplemental disclosure documents for the VGUL I and VGUL II Policies (collectively, ''Supplements'') and delivered to all affected Contract Owners at least 30 days before the Substitution Date. The Supplements will give Contract Owners notice of the respective Life Company's intent to take the necessary actions, including seeking the order requested by this Application, to substitute shares of the Existing Portfolios as described in this application on the Substitution Date.

21. The Section 26 Applicants will send the appropriate prospectus supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract Owners (''Inactive Contracts'')),

containing this disclosure to all existing Contract Owners. Prospective purchasers and new purchasers of Contracts will be provided with a Contract prospectus and the supplement containing disclosure regarding the proposed Substitutions, as well as prospectuses and supplements for the Replacement Portfolios.

22. In addition to the Supplements distributed to Contract Owners, within five (5) business days after the Substitution Date, the Life Companies will send Contract Owners a written confirmation of the completed Proposed Substitutions in accordance with rule 10b–10 under the Securities Exchange Act of 1934, as amended. The confirmation statement will include or be accompanied by a statement that reiterates the free transfer rights disclosed in the Supplements. The Life Companies will also send each Contract Owner current prospectuses for the Replacement Portfolios involved to the extent that they have not previously received a copy.

23. Each Substitution will take place at the applicable Existing and Replacement Portfolios' relative per share net asset values determined on the Substitution Date in accordance with Section 22 of the 1940 Act and rule 22c–1 under the Act.

24. The process for accomplishing the transfer of assets from each Existing Portfolio to its corresponding Replacement Portfolio will be determined on a case-by-case basis. In most cases, it is expected that the substitutions will be effected by redeeming shares of an Existing Portfolio for cash and using the cash to purchase shares of the Replacement Portfolio. In certain other cases, it is expected that the substitutions will be effected by redeeming the shares of an Existing Portfolio in-kind; those assets will then be contributed in-kind to the corresponding Replacement Portfolio to purchase shares of that Portfolio. All in-kind redemptions from an Existing Portfolio of which any of the Section 26 Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission staff's no-action letter issued to *Signature Financial Group, Inc.* (Dec. 28, 1999).

Legal Analysis and Conditions

Section 26(c) Relief

1. The Section 26 Applicants request that the Commission issue an order pursuant to Section 26(c) of the 1940 Act approving the Proposed Substitutions. Section 26(c) of the 1940 Act makes it unlawful for the depositor of a registered unit investment trust that invests in the securities of a single issuer to substitute another security for such security unless the Commission approves the substitution. Section 26(c) requires the Commission to issue an order approving a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Section 26 Applicants argue that the terms and conditions of the Proposed Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. The Section 26 Applicants further state that the Proposed Substitutions will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the 1940 Act.

3. Minnesota Life and Securian Life are also seeking approval of the Proposed Substitutions from any state insurance regulator where approval may be necessary.

4. The Section 26 Applicants submit that each of the Proposed Substitutions is consistent with the protection of investors and the policy and provisions of the 1940 Act and supported by applicable precedent.

5. Moreover, the Section 26 Applicants agree that, except for Proposed Substitutions 11 and 12, for a two year period commencing on the Substitution Date, and for those Contracts with assets allocated to an Existing Portfolio on the Substitution Date, the issuing Life Company, as applicable, will, no later than the last business day of each fiscal quarter, make a reduction in Separate Account (or Subaccount) expenses, for each Contract outstanding on the Substitution Date, to the extent that total annual operating expenses of each Replacement Portfolio (taking into account applicable fee waivers and expense reimbursements) (''annual net operating expenses'') for such period exceeds, on an annualized basis, the corresponding Existing Portfolio's total annual net operating expenses for the 2013 fiscal year.

6. The Section 26 Applicants further agree that, except for Proposed Substitutions 11 and 12, Separate Account charges (net of any reimbursements or waivers) for any Contract Owner on the Substitution Date, will not be increased at any time during the two year period following the Substitution Date, while the caps discussed above are in effect on the Replacement Portfolios.

7. For Proposed Substitutions 11 and 12, the reimbursements described above will apply for the life of the Contract of all Contracts outstanding on the Substitution Date. Accordingly, Contract Owners will bear the same or lower expenses as a result of the Proposed Substitutions for a period of two years following the Substitution Date (for Proposed Substitutions 1–10, 13 and 14) and for the life of the Contract (for Proposed Substitutions 11 and 12).

8. The Contract value for each Contract Owner impacted by the Proposed Substitutions will not change as a result of the Substitutions. In addition, the Section 26 Applicants agree that the Life Companies will not increase total Separate Account charges for any existing Contract Owner on the Substitution Date for two (2) years from the Substitution Date, or for Proposed Substitutions 11 and 12, for life of the Contracts outstanding on the Substitution Date.

9. For Proposed Substitutions 13 and 14, Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits paid by the Replacement Portfolios, its advisers or underwriters (or their affiliates), in connection with assets attributable to Contracts affected by the Substitution, at a higher rate than Applicants have received from the corresponding Existing Portfolios, its advisers or underwriters (or their affiliates), including without limitation rule 12b–1 fees, shareholder service, administration, or other service fees, revenue sharing, or other arrangements in connection with such assets. Proposed Substitutions 13 and 14, and the selection of the Replacement Portfolio were not motivated by any financial consideration paid or to be paid to the Life Companies or their affiliates by the Replacement Portfolio, its advisers underwriters or their affiliates.

10. Notwithstanding the Manager of Managers Order, SFT has agreed, as a condition of this Application, that it will not change a Subadviser, add a new Subadviser, or otherwise relay on the Manager of Managers Order with respect to any SFT Replacement Portfolio without first obtaining shareholder approval of the change in Subadviser, the new Subadviser, or the SFT Replacement Portfolio's ability to add or to replace a Subadviser in reliance on the Manager of Managers Order at a shareholder meeting, the record date for which shall be after the Proposed Substitution has been effected.

Section 17(b) Relief

1. The Section 17 Applicants respectfully request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the In-Kind Transactions.

2. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

3. Certain Existing and Replacement Portfolios may be deemed to be affiliated persons of one another, or affiliated persons of an affiliated person. Shares held by a separate account of an insurance company are legally owned by the insurance company. In addition, Advantus, as the Manager of the Replacement Portfolios, may be deemed to be a control person. Because the Life Companies and Advantus are under common control, entities that they control likewise may be deemed to be under common control, and thus affiliated persons of each other, notwithstanding the fact that the Contract Owners may be considered the beneficial owners of those shares held in the Separate Accounts. The Existing Portfolios and the Replacement Portfolios also may be deemed to be affiliated persons of affiliated persons. This result follows from the fact that, regardless of whether the Life Companies can be considered to control these Existing and Replacement Portfolios, the Life Companies may be deemed to be an affiliated person thereof because it, through its Separate Accounts, owns of record 5% or more of the outstanding shares of such Portfolios. In addition, the Life Companies may be deemed an affiliated person of the Replacement Portfolios because its affiliate, Advantus, may be deemed to control the Replacement Portfolios by virtue of serving as their investment adviser. As a result of these relationships, each of these Existing Portfolios may be deemed to be an affiliated person of an affiliated person (the Life Companies or the Separate Accounts) of the Replacement Portfolios, and vice versa. The proposed In-Kind Transactions, therefore, could be seen as the indirect purchase of shares of a Replacement Portfolio with portfolio securities of the corresponding Existing Portfolio and conversely the indirect sale of portfolio securities of the Existing Portfolio for shares of the corresponding Replacement Portfolio. The proposed In-Kind Transactions also could be categorized as a purchase of shares of the Replacement Portfolio by the Existing Portfolio, acting as principal, and a sale of portfolio securities by the Existing Portfolio, acting as principal, to the Replacement Portfolio. In addition, the proposed In-Kind Transactions could be viewed as a purchase of securities from the Existing Portfolio and a sale of securities to the Replacement Portfolio by the Life Companies (or the Separate Accounts), acting as principal. If characterized in this manner, the proposed In-Kind Transactions may be deemed to contravene Section 17(a) due to the affiliated status of these entities.

4. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, as described in this Application, are reasonable and fair and do not involve overreaching on the part of any person concerned because: (1) The proposed In-Kind Transactions will not adversely affect or dilute the interests of Contract Owners; and (2) the proposed In-Kind Transactions will comply with the conditions set forth in rule 17a–7 and the 1940 Act, other than the requirement relating to cash consideration. The Section 17 Applicants also submit that the proposed In-Kind Transactions are, or will be, consistent with the policies of each of the Existing Portfolios and the Replacement Portfolios involved in such Transactions, as recited in their registration statements and reports filed with the Commission. Finally, the Section 17 Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act.

5. The In-Kind Transactions will be effected at the respective net asset values of the Existing Portfolio and the Replacement Portfolio involved, as determined in accordance with the procedures disclosed in their respective registration statements and as required by rule 22c–1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract Owner's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. Immediately after the proposed In-Kind Transactions, the value of a Separate Account's investment in a Replacement Portfolio will equal the value of its investments in the corresponding Existing Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) immediately before the In-Kind Transactions. In addition, the Section 17 Applicants will carry out the In-Kind Transactions in compliance with the conditions of rule 17a–7, which outline the types of safeguards that parties to such transactions should implement to ensure that the terms of a transaction involving a registered investment company and an affiliated person thereof are fair and reasonable, and that the transaction does not involve overreaching on the part of any person involved in the transaction.

6. The proposed In-Kind Transactions will be effected based upon the independent current market price of the portfolio securities as specified in paragraph (b) of rule 17a–7. The proposed In-Kind Transactions will be consistent with the policy of each registered investment company and separate series thereof participating in the In-Kind Transactions, as recited in the relevant registered investment companies' registration statements or reports in accordance with paragraph (c) of rule 17a–7. In addition, the proposed In-Kind Transactions will comply with paragraph (d) of rule 17a–7 because no brokerage commission, fee, or other remuneration (except for any customary transfer fees) will be paid to any party in connection with the proposed In-Kind Transactions. Moreover, each of the Existing and Replacement Portfolios involved will be responsible for compliance with the applicable board oversight and fund governance provisions of paragraphs (e) and (f) of rule 17a–7. Finally, a written record of the proposed In-Kind Transactions will be maintained and preserved in accordance with paragraph (g) of rule 17a–7.

7. Even though the proposed In-Kind Transactions will not comply with the cash consideration requirement of paragraph (a) of rule 17a–7, the terms of the proposed In-Kind Transactions will offer to the relevant Existing and Replacement Portfolios the same degree of protection from overreaching that rule 17a–7 generally provides in connection with the purchase and sale of securities under that rule in the ordinary course of business. The Section 17 Applicants represent that the In-Kind Transactions will be carried out in compliance with the other conditions of rule 17a–7.

8. The proposed redemption of shares of each Existing Portfolio will be consistent with its investment policies,

as recited in its current registration statement, because the shares will be redeemed at their net asset value in conformity with rule 22c–1 under the 1940 Act. Likewise, the proposed sale of shares of each Replacement Portfolio for investment securities will be consistent with its investment policies, as recited in its registration statement, because: (1) The shares will be sold at their net asset value; and (2) the investment securities will be of the type and quality that the Replacement Portfolio could have acquired with the proceeds from the sale of their shares had the shares been sold for cash.

9. The Section 17 Applicants submit that the proposed In-Kind Transactions, are consistent with the general purposes of the 1940 Act as stated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

10. The Section 17 Applicants respectfully submit that, for all the reasons stated above, the Commission should issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the proposed In-Kind Transactions. The Section 17 Applicants assert that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, are reasonable and fair to: (1) Each Existing Portfolio and corresponding Replacement Portfolio; and (2) Contract Owners. The Section 17 Applicants also assert that the proposed In-Kind Transactions do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed In-Kind Transactions are, or will be, consistent with all relevant policies of (1) each Existing Portfolio and corresponding Replacement Portfolio as stated in their respective registration statements and reports filed under the 1940 Act, and (2) the general purposes of the 1940 Act.

Conclusion

For the reasons and upon the facts set forth in this Application, the Section 26 Applicants and Section 17 Applicants, respectively, submit that the Proposed Substitutions and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and Section 17(b) of the 1940 Act and respectfully request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71828; File No. SR–DTC–2014–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Existing Procedures as They Relate to Processing Mandatory Corporate Actions

March 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2014, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) [3] of the Act and Rule 19b–4(f)(4) [4] thereunder; the proposed rule change was 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

As discussed below, this rule change will mitigate risk associated with mandatory corporate actions processing by eliminating inaccurate allocations caused by Participants' adjusting their positions after the position capture. The change will also bring operational efficiencies to DTC by reducing the number of post allocation adjustments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DTC processes mandatory corporate actions through its Reorganization, Dividends, Proxy (''RDP'') system. Currently, when processing a mandatory corporate action in which new securities are exchanged for existing securities held at DTC, one day prior to processing allocation of the new securities to Participant Accounts, the RDP system will automatically identify the positions of the existing securities in the Participant's Account (including the Segregated Account) to allocate the new securities in accordance with the Participant's holdings of the existing securities on the day preceding the effective date of the corporate action, referred to as ''position capture.'' However, in certain instances, between its segregated position and free position, a Participant may have adjusted its position between its segregated position and free position,[5] or may have delivered out the securities from its accounts.

To eliminate discrepancies due to these changes between the time of position capture and allocation, DTC is updating its systems to add a second position capture immediately prior to allocation (referred to as ''real-time position capture''). This real time position capture will recognize any adjustments a Participant made between the time of position capture and the time of allocation. This change will mitigate risk associated with mandatory corporate actions processing by self-correcting allocations for changes made between position capture and real-time position capture. The change will also improve efficiency by reducing the number of post allocation adjustments.

Implementation Timeframe

DTC expects to implement these changes by end of the first quarter of 2014. DTC will announce the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(4).

[5] The Sub-Accounting Service allows Participants to protect securities on deposit at DTC by moving them from their free position to their segregated position. The securities remain segregated and unavailable for any transactions until the Participant authorizes DTC to release them and return them to their free position.

implementation date by Important Notice.

2. Statutory Basis

By adding real time position capture immediately prior to allocation, the proposed rule change streamlines processes associated with corporate action events and mitigates risk associated with such processing; it allows for more prompt and accurate crediting of corporate action securities to the Accounts of Participants. Therefore, DTC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)[6] of the Act which requires that DTC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition. As stated above, the proposed change adds a real-time position capture to facilitate accurate corporate actions processing which will benefit all Participants' equally and should have no effect on competition within or without DTC.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change became effective on March 27, 2014, pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f)(4) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–DTC–2014–03 on the subject line.

Paper Comments

- Send in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC, 20549–1090.

All submissions should refer to File No. SR–DTC–2014–03. 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 filings will also be available for inspection and copying at the principal office of DTC.

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 No. SR–DTC–2014–03 and should be submitted on or before April 24, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07470 Filed 4–2–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2)

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Aclor International, Inc., Acrongenomics, Inc., Diversified Global Holdings Group, Inc., FutureIT, Inc., Southern Star Energy, Inc., and W Holding Co., Inc.; Order of Suspension of Trading

April 1, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aclor International, Inc. because it has not filed any periodic reports since it filed a Form 10 registration statement on December 1, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Acrongenomics, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Diversified Global Holdings Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FutureIT, Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Southern Star Energy, Inc. because it has not filed any periodic reports since the period ended November 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of W Holding Co., Inc. because it has not filed any periodic reports since the period ended September 30, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 1, 2014, through 11:59 p.m. EDT on April 14, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–07523 Filed 4–1–14; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies—Early Stage SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Notice; Extension of deadlines for Early Stage fund managers.

SUMMARY: On February 4, 2014, the U.S. Small Business Administration (''SBA'') published a Call for Early Stage Fund Managers (the ''Call'') in the **Federal Register** to submit the preliminary materials discussed in Section II of the Call for consideration to be licensed as Early Stage Small Business Investment Companies (''SBICs''). As set forth in the **DATES** section below, this notice modifies the current deadlines for the submission of such materials, as well as the dates for various steps in the Early Stage SBIC licensing process.

DATES: The deadlines for material requested in the SBA notice published on February 4, 2014 (79 FR 6664) are modified. The following table provides the modified dates for the Early Stage SBIC Initiative.

Milestones	Dates/times
Question and Answer Period Closes	5 p.m. Eastern Time (''ET'') on May 16, 2014.
Initial Review Period	
Management Assessment Questionnaires (''MAQs'') Due	5 p.m. ET–May 16, 2014.
Interview Period	June 30, 2014–July 8, 2014.
Anticipated Greenlight Decision	June 30, 2014–July 8, 2014.
Licensing Periods	
For funds with $20M of Regulatory Capital seeking a license in FY 2014	5 p.m. ET July 31, 2014.
Anticipated Licensing Date for FY 2014 funds	September 30, 2014.
All other funds have 12 months from issuance of a Greenlight to submit their license application.	Applications considered as they are received.

Notes:

• *SBA reserves the right to extend its interview, due diligence, committee, and approval timelines, as appropriate. SBA will update its Web site at www.sba.gov/inv/earlystage should these dates change. Applicants will be notified by e-mail should these dates change.*

• *SBA expects to issue additional calls for Early Stage Fund Managers on an annual basis. SBA will announce these calls via a call notice in theFederal Register.*

ADDRESSES: Visit *www.sba.gov/inv/MAQ* to download a copy of the Management Assessment Questionnaire (the ''MAQ''). You must submit via express or next day delivery service (i) the relevant MAQ signature pages and (ii) the completed MAQ on a CD–ROM in *Word* and *Excel* format to the following: Scott Schaefer, Senior Investment Officer, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd St. SW., Suite #6300, Washington, DC 20416.

SBA will not accept MAQs in .pdf format or MAQs delivered via (i) regular mail due to irradiation requirements, or (ii) hand delivery or courier service.

SUPPLEMENTARY INFORMATION: The Early Stage SBIC Initiative is part of President Obama's ''Start-Up America Initiative'' to promote American innovation and job creation by encouraging private sector investment in job-creating startups and small firms, accelerating research, and addressing barriers to success for entrepreneurs and small businesses. By licensing and providing SBA guaranteed leverage to Early Stage SBICs, SBA seeks to expand entrepreneurs' access to capital and encourage innovation. More information on the Early Stage SBIC Initiative and the regulations governing these SBICs may be found at *www.sba.gov/inv/earlystage*.

For further information, refer to the Call for Early Stage Fund Managers, published in the **Federal Register** at 79 FR 6664 (February 4, 2014).

Pravina Raghavan,

Deputy Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2014–07303 Filed 4–2–14; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2013–0060]

Social Security Ruling, SSR 14–1p; Titles II and XVI: Evaluating Claims Involving Chronic Fatigue Syndrome (CFS)

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 14–1p. This SSR provides guidance on how we develop evidence to establish that a person has a medically determinable impairment of chronic fatigue syndrome and how we evaluate chronic fatigue syndrome in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act.

DATES: *Effective Date:* April 3, 2014.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public, precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: March 27, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

TITLES II AND XVI: EVALUATING CASES INVOLVING CHRONIC FATIGUE SYNDROME (CFS)

This Social Security Ruling (SSR) rescinds and replaces SSR 99–2p: ''Titles II and XVI: Evaluating Cases Involving Chronic Fatigue Syndrome (CFS).''

PURPOSE: This SSR clarifies our policy on how we develop evidence to establish that a person has a medically determinable impairment (MDI) of CFS and how we evaluate this impairment in disability claims and continuing disability reviews under titles II and XVI the Social Security Act (Act).[1]

CITATIONS: Sections 216(i), 223(d), 223(f), 1614(a)(3) and 1614(a)(4) of the Social Security Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1505, 404.1508–404.1513, 404.1519a, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1526–404.1529, 404.1545, 404.1560–404.1569a, 404.1593, 404.1594, appendices 1 and 2; and Regulations No. 16, subpart I, sections 416.902, 416.905, 416.906, 416.908–416.913, 416.919a, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.924a, 416.926, 416.926a, 416.927–416.929, 416.945, 416.960–416–969a, 416.987, 416.993, 416.994, and 416.994a.

INTRODUCTION:

CFS is a systemic disorder consisting of a complex of symptoms that may vary in frequency, duration, and severity. In 1994, an international panel convened by the Centers for Disease Control and Prevention (CDC) developed a case definition for CFS that serves as an identification tool and research definition.[2] In 2003, an expert subcommittee of Health Canada, the Canadian health agency, convened a consensus workshop that developed a clinical case definition for CFS, known as the Canadian Consensus Criteria (CCC).[3] In 2011, a private international group developed guidelines, known as the International Consensus Criteria (ICC),[4] for diagnosing myalgic encephalomyelitis (ME).[5] Members of this international group and other medical experts consider ME to be a subtype of CFS.[6] We adapted the CDC criteria, and to some extent the CCC and ICC, when we formulated the criteria in this SSR.[7]

We consider a person to be ''disabled'' [8] if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) [9] which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. We require that an MDI result from anatomical, physiological, or psychological abnormalities, as shown by medically acceptable clinical and laboratory diagnostic techniques.[10] The Act and our regulations further require that the impairment be established by medical evidence that consists of signs, symptoms, and laboratory findings; therefore, a claimant may not be found disabled on the basis of a person's statement of symptoms alone.[11] In this SSR, we explain that CFS, when accompanied by appropriate medical signs or laboratory findings, is an MDI that can be the basis for a finding of ''disability.'' We also explain how we evaluate CFS claims.

POLICY INTERPRETATION

CFS constitutes an MDI when accompanied by medical signs or laboratory findings, as discussed below. CFS may be a disabling impairment. This policy interpretation clarifies how our adjudicators should apply our regulations in determining whether a person claiming benefits based on CFS is disabled under titles II and XVI the Act. Adults and children may claim these benefits. As mentioned, we include ME as a subtype of CFS. When we refer to CFS in this SSR, we include ME.

I. What is CFS?

CFS is a systemic disorder that may vary in frequency, duration, and severity. CFS can occur in children,[12] particularly adolescents, as well as in adults.

The CDC and other medical experts characterize CFS, in part, as a syndrome that causes prolonged fatigue lasting 6 months or more, resulting in a substantial reduction in previous levels of occupational, educational, social, or personal activities. In accordance with the CDC case definition of CFS, a physician should make a diagnosis of CFS ''only after alternative medical and psychiatric causes of chronic fatiguing illness have been excluded.'' [13]

A. *General.* Under the CDC case definition, the hallmark of CFS is the presence of clinically evaluated, persistent or relapsing chronic fatigue that:

1. Is of new or definite onset (that is, has not been lifelong);

2. Cannot be explained by another physical or mental disorder;

3. Is not the result of ongoing exertion;

4. Is not substantially alleviated by rest; and

5. Results in substantial reduction in previous levels of occupational, educational, social, or personal activities.

B. *Additional indications of CFS.* CFS results in additional symptoms, some more common than others.

1. *Diagnostic Symptoms.* The CDC case definition requires the concurrence of 4 or more specific symptoms that persisted or recurred during 6 or more consecutive months of illness and did not pre-date the fatigue:

- Postexertional malaise lasting more than 24 hours (which may be the most common secondary symptom);
- Self-reported impairment(s) in short-term memory or concentration severe enough to cause substantial reduction in previous

[1] For simplicity, we refer in this SSR only to initial adult claims for disability benefits under titles II and XVI of the Act and to the steps of the sequential evaluation process we use to determine disability in those claims. 20 CFR 404.1520 and 416.920. The policy interpretations in this SSR apply to all cases in which we must make determinations about disability, including claims of children (that is, people who have not attained age 18) who apply for benefits based on disability under title XVI of the Act, disability redeterminations for children who became eligible for Supplemental Security Income under title XVI as a child and who were eligible for such benefits for the month before the month in which they attained age 18, and to continuing disability reviews of adults and children under titles II and XVI of the Act. 20 CFR 404.1594, 416.924, 416.987, 416.994, and 416.994a.

[2] See Center for Disease Control and Prevention, ''Chronic Fatigue Syndrome (CFS),'' available at: *http://www.cdc.gov/cfs.*

[3] See Carruthers, B.M., et al. Myalgic Encephalomyelitis/Chronic Fatigue Syndrome: Clinical Working Case Definition, Diagnostic and Treatment Protocols, *Journal of Chronic Fatigue Syndrome,* Jan; 11(1), 7–36 (2003); see also, *Myalgic Encephalomyelitis/Chronic Fatigue Syndrome: A Clinical Case Definition and Guidelines for Medical Practitioners,* Canada: Carruthers & van de Sande, 2005 (available at: *http://sacfs.asn.au/download/consensus_overview_me_cfs.pdf).*

[4] See Carruthers, B.M., et al. Myalgic Encephalomyelitis: International Consensus Criteria, *Journal of Internal Medicine,* Apr; 270(4), 327–338 (2011); also, Carruthers, B.M. & van de Sande, M.I.,eds., *Myalgic Encephalomyelitis—Adult & Pediatric: International Consensus Primer for Medical Practitioners,* Canada: Carruthers & van de Sande, 2012 (available at: *http://sacfs.asn.au/download/me_international_consensus_primer_for_medical_practitioners.pdf).*

[5] Although the panel that developed the ICC considers its criteria appropriate for diagnosing only ME, we consider the ICC helpful in establishing an MDI of CFS because of the similarities between CFS and ME. For example, ME also is a systemic disorder that manifests many of the same symptoms as CFS, including prolonged fatigue.

[6] Medical experts who consider ME to be a subtype of CFS may use hybrid terms to describe the syndrome, such as CFS/ME and ME/CFS.

[7] We adapted the CDC criteria, CCC, and ICC because the Act and our regulations require a claimant to establish by objective medical evidence that he or she has a medically determinable impairment. See 223(d)(5)(A) and 1614(a)(3)(D) of the Act, 20 CFR 404.1058 and 416.908, and SSR 96–4p: Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations, 61 FR 34488 (1996) (also available at *http://www.ba.ssa.gov/OP_Home/rulings/di/01/SSR96–04-di-01.html.*

[8] Except for statutory blindness.

[9] We use the term ''impairment(s)'' in this SSR to refer to an ''impairment or a combination of impairments.''

[10] See sections 223(d)(3) and 1614(a)(3)(D) of the Act, and 20 CFR 404.1508 and 416.908.

[11] See sections 223(d)(5)(A) and 1614(a)(3)(D) of the Act; 20 CFR 404.1508 and 416.908; and SSR 96–4p.

[12] In children, symptoms may progress more gradually than in adolescents or adults.

[13] See Fukuda, K. et al. The Chronic Fatigue Syndrome: A Comprehensive Approach to a Definition and Study, *Annals of Internal Medicine,* Dec. 121(12), 953–9596 (1994).

levels of occupational, educational, social, or personal activities; [14]

- Sore throat;
- Tender cervical or axillary lymph nodes;
- Muscle pain;
- Multi-joint pain without joint swelling or redness;
- Headaches of a new type, pattern, or severity; and
- Waking unrefreshed.[15]

2. *Other Symptoms.* Within these parameters, the CDC case definition, CCC, and ICC describe a wide range of other symptoms a person with CFS may exhibit: [16]

- Muscle weakness;
- Disturbed sleep patterns (for example, insomnia, prolonged sleeping, frequent awakenings, or vivid dreams or nightmares);
- Visual difficulties (for example, trouble focusing, impaired depth perception, severe photosensitivity, or eye pain);
- Orthostatic intolerance (for example, lightheadedness, fainting, dizziness, or increased fatigue with prolonged standing);
- Respiratory difficulties (for example, labored breathing or sudden breathlessness);
- Cardiovascular abnormalities (for example, palpitations with or without cardiac arrhythmias);
- Gastrointestinal discomfort (for example, nausea, bloating, or abdominal pain); and
- Urinary or bladder problems (for example, urinary frequency, nocturia, dysuria, or pain in the bladder region).

3. *Co-occurring Conditions.* People with CFS may have co-occurring conditions, such as fibromyalgia (FM),[17] myofascial pain syndrome, temporomandibular joint syndrome, irritable bowel syndrome, interstitial cystitis,[18] Raynaud's phenomenon, migraines, chronic lymphocytic thyroiditis, or Sjogren's syndrome. Co-occurring conditions may also include new allergies or sensitivities to foods, odors, chemicals, medications, noise, vibrations, or touch, or the loss of thermostatic stability (for example, chills, night sweats, or intolerance of extreme temperatures).

II. How does a person establish an MDI of CFS?

A. General.

1. A person can establish that he or she has an MDI of CFS by providing appropriate evidence from an acceptable medical source.[19] A licensed physician (a medical or osteopathic doctor) is the only acceptable medical source who can provide such evidence. We cannot rely upon the physician's diagnosis alone. The evidence must document that the physician reviewed the person's medical history and conducted a physical exam. We will review the physician's treatment notes to see if they are consistent with the diagnosis of CFS; determine whether the person's symptoms have improved, worsened, or remained stable; and establish the physician's assessment of the person's physical strength and functional abilities.

2. We will find that a person has an MDI of CFS if a licensed physician diagnosed CFS, and this diagnosis is not inconsistent with the other evidence in the person's case record. Under the CDC case definition, a physician can make the diagnosis of CFS based on a person's reported symptoms alone after ruling out other possible causes for the person's symptoms.[20] However, as mentioned, statutory and regulatory provisions require that, for evaluation of claims of disability under the Act, there must also be medical signs or laboratory findings before we may find that a person has an MDI of CFS. If we cannot find that the person has an MDI of CFS but there is evidence of another MDI, we will not evaluate the impairment under this SSR. Instead, we will evaluate it under the rules that apply for that impairment.

B. *Medical signs.* For the purposes of Social Security disability evaluation, one or more of the following medical signs clinically documented over a period of at least 6 consecutive months help establish the existence of an MDI of CFS:

- Palpably swollen or tender lymph nodes on physical examination;
- Nonexudative pharyngitis;
- Persistent, reproducible muscle tenderness on repeated examinations, including the presence of positive tender points; [21] or
- Any other medical signs that are consistent with medically accepted clinical practice and are consistent with the other evidence in the case record. For example, the CCC and ICC explain that an acute infectious inflammatory event may precede the onset of CFS, and that other medical signs may be present, including the following:
  - Frequent viral infections with prolonged recovery;
  - Sinusitis;
  - Ataxia;
  - Extreme pallor; and
  - Pronounced weight change.

C. *Laboratory findings.* At this time, we cannot identify specific laboratory findings that are widely accepted as being associated with CFS. However, the absence of a definitive test does not preclude our reliance upon certain laboratory findings to establish the existence of an MDI in people with CFS. While standard laboratory test results in the normal range are characteristic for many people with CFS, and they should not be relied upon to the exclusion of all other clinical evidence in decisions regarding the presence and severity of an MDI, the following laboratory findings establish the existence of an MDI in people with CFS:

- An elevated antibody titer to Epstein-Barr virus (EBV) capsid antigen equal to or greater than 1:5120, or early antigen equal to or greater than 1:640;
- An abnormal magnetic resonance imaging (MRI) brain scan;
- Neurally mediated hypotension as shown by tilt table testing or another clinically accepted form of testing; or
- Any other laboratory findings that are consistent with medically accepted clinical practice and are consistent with the other evidence in the case record (for example, an abnormal exercise stress test or abnormal sleep studies, appropriately evaluated and consistent with the other evidence in the case record).

D. *Additional signs and laboratory findings.* Because of the ongoing research into the etiology and manifestations of CFS, the medical criteria discussed above are only examples of physical and mental signs and laboratory findings that can help us establish the existence of an MDI; they are not all-inclusive. As medical research advances regarding CFS, we may discover additional signs and laboratory findings to establish that people have an MDI of CFS. For example, scientific studies now suggest there may be subsets of CFS with different causes, including viruses such as Human Herpesvirus 6. Thus, we may document the existence of CFS with medical signs and laboratory findings other than those listed above provided such evidence is consistent with medically accepted clinical practice, and is consistent with the other evidence in the case record.

E. *Mental limitations.* Some people with CFS report ongoing problems with short-term memory, information processing, visual-spatial difficulties, comprehension, concentration, speech, word-finding, calculation, and other symptoms suggesting persistent neurocognitive impairment. When ongoing deficits in these areas have been documented by mental status examination or

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[14] We may consider self-reported impairments in short-term memory or concentration to be symptoms of CFS. As we explain in section IIE, when these impairments are documented by mental status examination or psychological testing, we may also consider them to be medical signs or laboratory findings.

[15] ''Waking unrefreshed'' may be shown in the case record by a person's reports that describe a history of non-restorative sleep, such as statements about waking up tired or having difficulty remaining awake during the day, or other statements or evidence in the record reflecting that the person has a history of non-restorative sleep.

[16] In addition, generalized pain and neurological symptoms (for example, headaches, cognitive impairments, sleep disturbance, and dyslexia evident when fatigued) may be common in children and adolescents. Episodes of intense postexertional weakness may occur, eventually causing a previously active child to reduce or avoid physical activity.

[17] See SSR 12–2p: Titles II and XVI: Evaluation of Fibromyalgia, 77 FR 43640(2012)(also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR2012–02-di-01.html).*

[18] See SSR 02–2p: Titles II and XVI: Evaluation of Interstitial Cystitis, 67 FR 67436 (2002) (also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR2002–02-di-01.html).*

[19] See 20 CFR 404.1513(a) and 416.913(a).

[20] Some examples of other disorders that may have symptoms that are the same or similar to those resulting from CFS include Addison's disease, Cushing's syndrome, hypothyroidism, iron deficiency, B12 deficiency, iron overload syndrome, diabetes mellitus, cancer, upper airway resistance syndrome, sleep apnea, rheumatologic disorders, multiple sclerosis, Parkinsonism, myasthenia gravis, Lyme disease, and chronic hepatitis.

[21] There is considerable overlap of symptoms between CFS and FM, but people with CFS who also have tender points have an MDI. People with impairments that fulfill the American College of Rheumatology criteria for FM (which includes a minimum number of tender points) may also fulfill the criteria for CFS. See SSR 12–2p. However, we may still find that a person with CFS has an MDI if he or she does not have the specified number of tender points to establish FM.

psychological testing, such findings may constitute medical signs or (in the case of psychological testing) laboratory findings that establish the presence of an MDI.[22] When medical signs or laboratory findings suggest a persistent neurological impairment or other mental problems, and these signs or findings are appropriately documented in the medical record, we may find that the person has an MDI.

III. How do we document CFS?

A. *General.* In cases in which CFS is alleged, we generally need longitudinal evidence because medical signs, symptoms, and laboratory findings of CFS fluctuate in frequency and severity and often continue over a period of many months or years.

1. Longitudinal clinical records reflecting ongoing medical evaluation and treatment from the person's medical sources, especially treating sources, are extremely helpful in documenting the presence of any medical signs or laboratory findings, as well as the person's functional status over time. The longitudinal record should contain detailed medical observations, information about treatment, the person's response to treatment, and a detailed description of how the impairment limits the person's ability to function.

2. In addition to obtaining evidence from a physician, we may request evidence from other acceptable medical sources, such as psychologists, both to determine whether the person has another MDI(s) and to evaluate the severity and functional effects of CFS or any of the person's other impairments. Under our regulations and SSR 06–03p, we also may consider evidence from medical sources we do not consider ''acceptable medical sources'' to help us evaluate the severity and functional effects of the impairment(s).[23]

3. We may also consider information from nonmedical sources.[24] This information may also help us assess the person's ability to function day-to-day and over time. It may also assist us in assessing the person's allegations about symptoms and their effects (see section IV below). Examples of nonmedical sources include:

- Spouses, parents, siblings, other relatives, neighbors, friends, and clergy;
- Past employers, rehabilitation counselors, and teachers; and
- Statements from SSA personnel who interviewed the person.

4. Before we make a determination that you are not disabled, we will make every reasonable effort to develop your complete medical history and help you get medical reports from your own medical sources. Generally, we will request evidence from your medical sources for the 12-month period preceding the month of application unless there is reason to believe that development of an earlier period is necessary, or unless the alleged onset of disability is less than 12 months before the date of application.[25]

5. When the alleged onset of disability secondary to CFS occurred less than 12 months before adjudication, we must evaluate the medical evidence and project the degree of impairment severity that is likely to exist at the end of 12 months.[26] Information about the person's treatment and response to treatment, as well as any medical source opinions about the person's prognosis at the end of 12 months, helps us decide whether to expect the MDI to be of disabling severity for at least 12 consecutive months.

B. *How do we consider medical opinions about a person's impairment?* We consider the nature of the treatment relationship between the medical source[27] and the claimant when we evaluate the source's medical opinions about a person's impairment(s). If we find that a treating source's medical opinion regarding the nature and severity of a person's impairment(s) is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and the opinion is not inconsistent with the other substantial evidence in the case record, we will give it controlling weight.[28] If a medical source states that a person is ''disabled'' or ''unable to work,'' or provides an opinion on issues such as whether an impairment(s) meets or is equivalent in severity to the requirements of a listing, a person's residual functional capacity (RFC), or the application of vocational factors, we consider these statements to be opinions on issues reserved to the Commissioner. We must still consider such opinions in adjudicating a disability claim; however, we will not give any special significance to such an opinion because of its source.[29]

C. *Resolving conflicts.* Conflicting evidence in the medical record is not unusual in cases of CFS due to the complicated diagnostic process involved. We may seek clarification of any such conflicts in the medical evidence first from the person's treating or other medical sources, in accordance with our rules.

D. *What do we do if there is insufficient evidence to determine whether the person has an MDI of CFS or is disabled?*

1. When there is insufficient evidence for us to determine whether the person has an MDI of CFS or is disabled, we may take one or more actions to try to resolve the insufficiency: [30]

- We may recontact the person's treating or other source(s) to see if the information we need is available;
- We may request additional existing records;
- We may ask the person or others for more information; or
- We may purchase a consultative examination (CE) at our expense.[31]

2. When we are unable to resolve an insufficiency in the evidence, and we need to determine whether the person has an MDI of CFS or is disabled, we may make a determination or decision based on the evidence we have.[32]

IV. *How do we evaluate a person's statements about his or her symptoms and functional limitations?*

Generally, we follow a two-step process:

A. *First step of the symptom-evaluation process.* There must be medical signs and findings that show the person has an MDI(s) which we could reasonably expect to produce the fatigue or other symptoms alleged.[33] If we find that a person has an MDI that we could reasonably expect to produce the alleged symptoms, the first step of our two-step process for evaluating symptoms is satisfied.

B. *Second step of the symptom-evaluation process.* After finding that the MDI could reasonably be expected to produce the alleged symptoms, we evaluate the intensity and persistence of the person's symptoms and determine the extent to which they limit the person's capacity for work. If objective medical evidence does not substantiate the person's statements about the intensity, persistence, and functionally limiting effects of symptoms, we consider all of the evidence in the case record, including the person's daily activities; medications or other treatments the person uses, or has used, to alleviate symptoms; the nature and frequency of the person's attempts to obtain medical treatment for symptoms; and statements by other people about the person's symptoms. We will make a finding about the credibility of the person's statements regarding the effects of his or her symptoms on functioning.[34] When we need additional

[22] See 20 CFR 404.1528 and 416.928.

[23] See 20 CFR 404.1513(d)(4), 416.913(d)(4); and SSR 06–03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not ''Acceptable Medical Sources'' in Disability Claims, 71 FR 45593 (2006) (also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR2006-03-di-01.html).*

[24] See SSR 06–03p.

[25] See 20 CFR 404.1512(d)(2) and 416.912(d) concerning situations in which we would develop an earlier period.

[26] To meet the statutory requirement for ''disability,'' a person must have been unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which is expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 42 U.S.C. 423(d)(1) and 1382c(a)(3)(A). Thus, the existence of an impairment(s) for 12 continuous months is not controlling; rather, it is the existence of a disabling impairment which has lasted or can be expected to last for at least 12 months that meets the duration requirement of the Act.

[27] See 20 CFR 404.1502 and 416.902 for the definitions of ''medical source'' and ''treating source.''

[28] See 20 CFR 404.1527(c)(2) and 416.927(c)(2); SSR 96–2p, Titles II and XVI: Giving Controlling Weight to Treating Source/Medical Opinions, 61 FR 34492 (2006) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-02-di-01.html)*

[29] See SSR 96–5p, Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner, 61 FR 34471 (1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-05-di-01.html).*

[30] See 20 CFR 404.1520b(c) and 416.920b(c).

[31] See 20 CFR 404.1520b(c)(3) and 416.920b(c)(3). The type of CE we purchase will depend on the nature of the person's symptoms and the extent of the evidence already in the case record. We may purchase a CE without recontacting a person's treating or other source if the source cannot provide the necessary information, or the information is not available from the source. See 20 CFR 404.1519a(b) and 416.919a(b).

[32] See 20 CFR 404.1520b(d) and 416.920b(d).

[33] See 20 CFR 404.1529(b) and 416.929(b).

[34] See SSR 96–7p: Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the

Continued

information to assess the credibility of the individual's statements about symptoms and their effects, we will make every reasonable effort to obtain available information that could shed light on the credibility of the person's statements.

V. How do we find a person disabled based on an MDI of CFS?

Once we establish that a person has an MDI of CFS, we will consider this MDI in the sequential evaluation process to determine whether the person is disabled.[35] As we explain in section VI below, we consider the severity of the impairment, whether the impairment medically equals the requirements of a listed impairment, and whether the impairment prevents the person from doing his or her past relevant work or other work that exists in significant numbers in the national economy.

VI. How do we consider CFS in the sequential evaluation process?

We adjudicate claims involving CFS using the sequential evaluation process, just as we do for any impairment. Once we find that an MDI(s) exists (see section II), we must establish the severity of the impairment(s). We determine the severity of a person's impairment(s) based on the totality of medical signs, symptoms, and laboratory findings, and the effects of the impairment(s), including any related symptoms, on the person's ability to function. Additionally, several other disorders (including, but not limited to FM, multiple chemical sensitivity, and Gulf War Syndrome, as well as various forms of depression, and some neurological and psychological disorders) may share characteristics similar to those of CFS. When there is evidence of the potential presence of another disorder that may adequately explain the person's symptoms, it may be necessary to pursue additional medical or other development. As mentioned, if we cannot find that the person has an MDI of CFS but there is evidence of another MDI, we will not evaluate the impairment under this SSR. Instead, we will evaluate it under the rules that apply for that impairment.

A. *Step 1.* We consider the person's work activity. If a person with CFS is doing substantial gainful activity, we find that he or she is not disabled.

B. *Step 2.* If we establish that a person has an MDI that meets the duration requirement,[36] and the person alleges fatigue, pain, symptoms of neurocognitive problems, or other symptoms consistent with CFS, we must consider these symptoms in deciding whether the person's impairment is ''severe'' in step 2 of the sequential evaluation process, and at any later steps reached in the sequential evaluation process. If we find fatigue, pain, neurocognitive symptoms, or other symptoms cause a limitation or restriction, and they have more than a minimal effect on a person's ability to perform basic work activities, we must find that the person has a ''severe'' impairment.[37]

C. *Step 3.* When we find that a person has a severe MDI, we must proceed with the sequential evaluation process and next consider whether the person's impairment is of the severity contemplated by the Listing of Impairments.[38] CFS is not a listed impairment; therefore, we cannot find that a person with CFS alone has an impairment that meets the requirements of a listed impairment. However, we will compare the specific findings in each case to any pertinent listing (for example, listing 14.06B in the listing for repeated manifestations of undifferentiated or mixed connective tissue disease) to determine whether medical equivalence may exist.[39] Further, in cases in which a person with CFS has psychological manifestations related to CFS, we must consider whether the person's impairment meets or equals the severity of any impairment in the mental disorders listings.[40]

D. *Steps 4 and 5.* For those impairments that do not meet or equal the severity of a listing, we must make an assessment of the person's RFC. After we make our RFC assessment, our evaluation must proceed to the fourth step of the sequential evaluation process, if we do not use an expedited process.[41] If necessary, we then proceed to the fifth step of the sequential evaluation process.[42] In assessing RFC, we must consider all of the person's impairment-related symptoms in deciding how such symptoms may affect functional capacities.[43] The RFC assessment must be based on all the relevant evidence in the record.[44] If we do not use an expedited process, we must determine that the person's impairment(s) precludes the performance of past relevant work (or if there was no past relevant work). If we determine that the person's impairment precludes performance of past relevant work, we must make a finding about the person's ability to perform other work.[45] We must apply the usual vocational considerations in determining the person's ability to perform other work.[46]

E. *Continuing disability reviews.* In those cases in which we find that a person is disabled based on CFS, we will schedule an appropriate continuing disability review.[47] For this review, we take into account relevant individual case facts, such as the combined severity of other chronic or static impairments and the person's vocational factors.

EFFECTIVE DATE: This SSR is effective on April 3, 2014.

CROSS-REFERENCES: SSR 82–63: Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work; SSR 83–12: Title II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work; SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments; SSR 85–15: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments; SSR 96–2p, Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions; SSR 96–3p, Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe; SSR 96–4p, Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations; SSR 96–5p, Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner; SSR 96–7p, Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements; SSR 96–8p, Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims; SSR 96–9p, Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work; SSR 02–2p, Titles II and XVI: Evaluation of Interstitial Cystitis; SSR 06–03p, Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not ''Acceptable Medical Sources'' in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies; SSR 11–2p, Titles II and XVI: Documenting and Evaluating Disability in Young Adults; SSR 12–2p, Titles II and XVI: Evaluation of Fibromyalgia; and Program Operations Manual System (POMS) DI 22505.001, DI 22505.003, DI 24505.003, DI 24510.057, DI 24515.012, DI 24515.061–DI 24515.063, DI 24515.066–DI 24515.067, DI 24515.075, DI 24555.001, DI 25010.001, and DI 25025.001.

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Credibility of an Individual's Statements, 61 FR 34483 (1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-07-di-01.html).*

[35] See 20 CFR 404.1520, 416.920 and 416.924.

[36] See 20 CFR 404.1509 and 416.909.

[37] See SSR 96–3p: Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment Is Severe, 61 FR 34468 (1996) (also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR96-03-di-01.html).*

[38] See 20 CFR 404, subpart P, appendix 1.

[39] In evaluating title XVI claims for disability benefits for people under age 18, we will consider whether the impairment(s) functionally equals the listings. See 20 CFR 416.926a.

[40] See sections 12.00 and 112.00 of 20 CFR part 404, subpart P, appendix 1.

[41] See 404.1520(h) and 416.920(h).

[42] The fourth and fifth steps of the sequential evaluation process are not applicable to claims for benefits under title XVI for people under age 18. See 20 CFR 416.924.

[43] See 404.1529(d) and 416.929(d), and SSR 96–7p.

[44] See 20 CFR 404.1545(a) and 416.945(a).

[45] See SSR 96–8p: Titles II and XVI: Assessing Residual Functional Capacity in Initial claims, 61 FR 34474 (1996) (also available at *http://www.ba.ssa.gov/OP_Home/rulings/di/01/SSR96-08-di-01.html.*

[46] See 20 CFR 404.1560–404.1569a and 416.960–416.969a, and SSR 11–2p: Titles II and XVI: Documenting and Evaluating Disability in Young Adults, 76 FR 56263 (2011) (also available at *http://www.ba.ssa.gov/OP_Home/rulings/di/01/SSR2011-02-di-01.html).*

[47] See 20 CFR 404.1593, 404.1594, 404.1579, 416.993, 416.994 and 416.994a.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2014–0210]

Airport Improvement Program (AIP) Grant Assurances

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of modification of Airport Improvement Program (AIP) grant assurances.

SUMMARY: Changes have been made to the AIP grant assurances to conform the list of General Federal Requirements to the correct numbering of some of the documents that recently changed, to add recent legislation, to revise Assurance 10 to conform to current statute, to clarify that Assurance 25, Airport Revenues, applies when an airport sponsor takes a grant for airport planning, and to note that Assurance 37 applies to airport concession disadvantaged business enterprises. Assurance 20 of the Non-Airport Sponsor Assurances for Non-Airport Sponsors Undertaking Noise Compatibility Program Projects is also revised to delete paragraphs which discussed land purchased for airport development.

In addition, on April 24, 2013, the Secretary of Transportation signed the DOT Standard Title VI Assurances and Non-Discrimination Provisions, Order 1050.2A (Title VI Assurances). The Title VI Assurances were incorporated into the FAA Office of Civil Rights Order 1400.11, the ''Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration Order,'' which was published on August 27, 2013. The changes to the AIP grant assurances in this Notice incorporate the Title VI Assurances.

DATES: The FAA is modifying several grant assurances in order to (1) conform the list of General Federal Requirements to the correct numbering of some of the documents that were recently changed by the Office of Management and Budget; (2) update and conform with statute; and (3) incorporate the DOT Title VI Assurances. The FAA will implement these modified grant assurances upon publication of this notice to expedite processing fiscal year 2014 grants under the Airport Improvement Program. The FAA will accept public comments concerning these modified grant assurances for 30 days. Comments must be submitted on or before May 5, 2014. If necessary, in response to comments received, the FAA would adopt any appropriate revisions to these grant assurance modifications through publication of a future notice in the **Federal Register**.

ADDRESSES: You may send comments [identified by Docket Number FAA–2014–XXXX] using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Fax: 1–202–493–2251.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank J. San Martin, Manager, Airports Financial Assistance Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3831; facsimile: (202) 267–5302.

Authority for Grant Assurance Modifications

This notice is published under the authority described in Subtitle VII, Part B, Chapter 471, Sections 47107 and 47122 of Title 49 United States Code.

SUPPLEMENTARY INFORMATION: A sponsor (applicant) seeking financial assistance in the form of an AIP grant for airport planning, airport development, noise compatibility planning or noise mitigation under 49 U.S.C., as amended, must agree to comply with certain assurances. These grant assurances are incorporated in, and become part of a sponsor's grant agreement for federal assistance. As need dictates, the FAA modifies these assurances to reflect new Federal requirements. Notice of such modifications is published in the **Federal Register**, and an opportunity for public comment is provided.

The assurances that apply to a sponsor depend on the type of sponsor. The three types of sponsor assurances are Airport Sponsor Assurances, Non-Airport Sponsors Undertaking Noise Compatibility Program Projects, and Planning Agency Sponsors.

The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; on August 18, 1999, at 64 FR 45008; on March 29, 2005 at 70 FR 15980; on March 18, 2011, at 76 FR 15028; and on April 13, 2012 at 77 FR 22376.

A complete list of the current grant assurances can be viewed at: *http://www.faa.gov/airports/aip/grant_assurances/*.

Discussion of AIP Grant Assurance Modifications

The FAA is making four changes to the AIP grant assurances. These changes will be in effect for grants issued in fiscal year 2014 and beyond.

The changes to the AIP grant assurances are as follows:

1. Technical Non-Substantive Changes To Correct Some Minor Typographical Errors

Because these have no change on the substance of the assurances, these changes have not been specifically called out.

2. Addition of Assurance 25 to the List of Assurances That Apply to Airport Planning Undertaken by a Sponsor

As stated in FAA's *Policy and Procedures Concerning the Use of Airport Revenue,* 64 FR 7696 (February 16, 1999), 49 U.S.C. 47133 applies the airport revenue-use requirements of § 47107(b) to any airport that has received ''Federal assistance.'' The FAA considers the term ''Federal assistance'' to include airport planning grants that relate to a specific airport. Many airport sponsors take grants for airport planning projects. For a planning project, not all of the airport sponsor grant assurances apply, some project-specific assurances apply while the planning project is going on, and others continue to apply after the planning project is over. The previous version of the airport sponsor assurances did not list the revenue use provision (Assurance 25) as one of the assurances that apply for a planning project. Assurance 25 has been added to the list of assurances that continue past the completion of the planning projects. This change eliminates confusion by clarifying that if a sponsor is undertaking a planning project, it is subject to the published requirements for revenue use.

Section B Duration and Applicability, (3) Airport Planning Undertaken by a Sponsor, now reads,

''Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the

duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.''

3. Administrative Changes to Assurance No. 1, General Federal Requirements

In 2008, the drug-free workplace requirements were included in 49 CFR part 32, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance). Also, in 2008, the Department of Transportation moved its nonprocurement suspension and debarment regulations from 49 CFR part 29 to a new 2 CFR part 1200, and adopted the government-wide guidance on nonprocurement suspension and debarment in 2 CFR part 180 (73 FR 24139, May 2, 2008).

In 2013, the Office of Management and Budget (OMB) compiled a number of Circulars in 2 CFR part 200, including Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments,'' and Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

a. In Assurance No. 1, General Federal Requirements, Federal Regulations section, make the following changes:

1. Delete the entry for: 49 CFR part 29, Government wide debarment and suspension (nonprocurement) and government wide requirements for drug-free workplace (grants);

2. Add a new entry for: 2 CFR part 1200—Nonprocurement Suspension and Debarment;

3. Add a new entry for: 2 CFR part 180—OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement);

4. Add a new entry for: 49 CFR part 32—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance);

5. Add a new entry for: 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

b. In Assurance No. 1, General Federal Requirements, delete the Office of Management and Budget Circulars and its two entries.

c. In Assurance No. 1, General Federal Requirements—Federal Legislation, add the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Pub. L. 110–252).

d. Reorder the entries of Assurance 1 General Federal Requirements—Federal Regulations and Office of Management Budget Circulars into numerical order.

4. Revision of Assurance 10. Air and Water Quality Standards

The 2003 FAA reauthorization bill, the Vision 100—Century of Aviation Reauthorization Act, removed the specific statutory language requiring the chief executive officer of a state to certify that the airport development project will be designed, constructed, and operated in compliance with applicable air and water quality standards. The Act added in a requirement for a sponsor to provide a copy of a proposed amendment to the airport layout plan to a Metropolitan Planning Organization upon request. The Assurance has been revised to reflect these statutory changes.

5. Incorporation of DOT Standard Title VI Assurances and Non-Discrimination Provisions (Title VI Assurances)

The FAA modified the AIP grant assurances to incorporate the DOT Standard Title VI Assurances and Non-Discrimination Provisions, Order 1050.2A (Title VI Assurances) that were signed by the Secretary of Transportation on April 24, 2013. These Title VI Assurances, which have since been incorporated into FAA Order 1400.11, amend and augment FAA's AIP grant assurances related to Title VI of the Civil Rights Act of 1964.

To incorporate the Title VI Assurances, changes were made in the AIP Grant Assurances to Assurance 1 and the Assurance 30, the Civil Rights Assurance.

a. In Assurance No. 1, General Federal Requirements, Federal Legislation, the following changes are made to incorporate the Title VI Assurances:

1. Add a new entry for: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.,* 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin); and

2. Add a new entry for: Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12101 *et seq.*), prohibits discrimination on the basis of disability).

b. In Assurance No. 1, General Federal Requirements, Federal Regulations, the following changes are made to incorporate the Title VI Assurances:

1. Add a new entry for: 28 CFR 50.3—U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.

2. Add a new entry for: 28 CFR part 35—Discrimination on the Basis of disability in State and Local Government Services.

3. Add a new entry for: 49 CFR part 28—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.

4. Add a new entry for: 49 CFR part 37—Transportation Services for Individuals with Disabilities (ADA).

The AIP Grant Assurances previously required a sponsor to comply with rules preventing persons from being excluded on the grounds of race, creed, color, national origin, sex, age, or disability from participating in any activity conducted with or benefitting from the funds received from AIP grants. This requirement continues unchanged, but the protections are being extended to the programs, facilities and activities of the sponsor, so long as any portion of the program is grant funded or otherwise is federally-assisted. The Title VI Assurances require that sponsors insert specific civil rights language into all contracting documents including bids, Requests for Proposals, and proposals. Specific contract provisions are also required for the acquisition or transfer of real property, whether or not these projects include federal assistance. The revised Civil Rights Assurance specifies when specific contract clauses are required.

Identical changes are made to Assurance 17, Civil Rights, in the Non-Airport Sponsors Undertaking Noise Compatibility Program Projects Assurances and Assurance 9, Civil Rights, in the Planning Agency Sponsor Assurances. The Civil Rights Assurance language is replaced with the following:

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

a. Using the definitions of activity, facility and program as found in as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR part 21, it will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.

b. Applicability

(1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.

(2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

(3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

(1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or

(2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements including airport concessions, regardless of funding source:

''The *(Name of Sponsor),* in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d to 2000d–4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.''

e. Required Contract Provisions.

(1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporate the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.

(2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts, statutes, and regulations.

(3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.

(4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, creed, sex, age, disability, color, or national origin as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:

(a) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

(b) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program, will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.

f. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

6. Modification of Assurance 37

Assurance 37, the Disadvantaged Business Enterprises assurance has been modified to specifically note that the assurance applies to airport concession disadvantaged business enterprises.

7. Modification of Assurance 20 for Non-Airport Sponsors Undertaking Noise Compatibility Program Projects

Paragraphs b and c of Assurance 20, Disposal of Land, have been deleted because these two paragraphs deal expressly about land that is acquired for airport development. Non-Airport Sponsors undertaking noise compatibility projects cannot undertake airport development projects and these two paragraphs were deleted. Paragraph d has been renumbered paragraph b.

* * * * *

Issued in Washington, DC, on: March 28, 2014.

Elliott Black,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 2014–07462 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS) are inviting interested persons to apply to fill one existing opening and one upcoming opening on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC) to represent environmental concerns. Selected members will each serve 3-year terms.

DATES: Persons interested in applying for the NPOAG openings representing environmental concerns need to apply by May 15, 2014.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, 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 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of 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.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

The current NPOAG consists of Heidi Williams representing general aviation; Alan Stephen, Mark Francis, and Matthew Zuccaro representing commercial air tour operators; Greg

Miller, Michael Sutton, and Dick Hingson representing environmental interests with one open seat; and Rory Majenty and Martin Begaye representing Native American tribes. Mr. Hingson's 3-year membership expires on May 30, 2014.

Selection

In order to retain balance within the NPOAG ARC, the FAA and NPS are seeking candidates interested in filling the current open seat and Mr. Hingson's soon to be expiring seat, both representing environmental concerns. The FAA and NPS invite persons interested in representing environmental concerns for these two seats on the ARC to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Lusk in writing and postmarked or emailed on or before May 15, 2014. The request should indicate whether or not you are a member of an association or group related to environmental issues or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to these issues and concerns. The term of service for NPOAG ARC members is 3 years. Current members may re-apply for another term.

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Dated: Issued in Hawthorne, CA, on March 26, 2014.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2014–07289 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land; Terre Haute International Airport; Terre Haute, Indiana.

SUMMARY: The FAA is considering a proposal to change a portion of airport land from aeronautical use to non-aeronautical use and to authorize the transfer of airport property (as a part of a land swap) located at Terre Haute International Airport, Terre Haute, Indiana. The aforementioned land is not needed for aeronautical use.

The proposal consists of 6.374 acres located in the northeastern section of airport property that is not being used by the airport presently, to be transferred to the Indiana Department of Transportation (INDOT) in exchange for the section of State Road 342 (2.05 acres) that is within the Runway 23 Runway Protection Zone (RPZ). SR342 is the primary access to the Indiana Air National Guard Base at the airport and is the connector road between Frye Road and SR42. INDOT will use the parcel for the construction of Swalls Road, making it the connector to SR 42 from Frye Road maintaining access to the Indiana Air National Guard Base. A larger parcel is required to keep the connection intact between Frye Road and SR 42.

DATES: Comments must be received on or before May 5, 2014.

ADDRESSES: Documents are available for review by appointment at the FAA Airports District Office, Azra Hussain, Program Manager, 2300 E. Devon Avenue, Des Plaines, Illinois 60018 Telephone: (847) 294–8252/Fax: (847) 294–7046 and Kara McIntosh, Deputy Director, Terre Haute International Airport, Terre Haute, Indiana, Telephone: 812–877–2524.

Written comments on the Sponsor's request must be delivered or mailed to: Azra Hussain, Program Manager, Federal Aviation Administration, Airports District Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018. Fax Number (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Azra Hussain, Program Manager, Federal Aviation Administration, Airports District Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018. Telephone Number: (847) 294–8252/FAX Number: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The subject land consists of a section of land running through a larger parcel (approx. 128.168 acres) that was acquired by Terre Haute International Airport Authority, dated May 01, 2002 for the sum of $350,305.50 using airport funds. While the land was not obtained with federal grant funds, the airport intends to seek reimbursement for the purchase with future entitlement funds. The Terre Haute International Airport Authority intends to swap the property for the section of State Road 342 (2.3 acres) which is owned by the Indiana Department of Transportation that is located in the Runway 23, Runway Protection Zone (RPZ) to allow for the construction of Swalls Road (6.374 acres). While the size of parcels is not identical, 6.374 acres is required to construct Swalls road connecting SR 42 with Frye Road, resulting in the closure of State Road 342 in the RPZ. The aforementioned land is not needed for aeronautical use, as shown on the Airport Layout Plan. There are no impacts to the airport by allowing the airport to dispose of the property.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at Terre Haute International Airport, Terre Haute, Indiana, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16.Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

Dated: Issued in Des Plaines, Illinois on March 28, 2014.

James Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2014–07463 Filed 4–2–14; 8:45 am]

BILLING CODE 4910–13–P

UNITED STATES INSTITUTE OF PEACE

Board of Directors Meeting

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: Board of Directors meeting.

DATES: Friday, April 25, 2014 (9 a.m.–4 p.m.).

ADDRESSES: 2301 Constitution Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Denson Staples, Board Liaison, Email: *dstaples@usip.org.*

SUPPLEMENTARY INFORMATION:

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: April 25, 2014 Board Meeting; Approval of Minutes of the One Hundred Fiftieth Meeting (January 24, 2014) of the Board of Directors; Chairman's Report; Vice Chairman's Report; Acting President's Report; Updates on Organizational Developments Since One Hundred Fiftieth Meeting; Learning & Evaluation; 30th Anniversary Plans; Governance, Law and Society Briefing; Board Executive Session; Other Organizational Topics.

Contact: Denson Staples, Board Liaison, Email: *dstaples@usip.org.*

Dated: March 28, 2014.

Michael B. Graham,

Senior Vice President for Management and Chief Financial Officer, United States Institute of Peace.

[FR Doc. 2014–07446 Filed 4–2–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on April 28 and 29, 2014, in room 230 at VA Central Office, 810 Vermont Avenue NW., Washington, DC. The meeting will start at 8:00 a.m. each day and will adjourn at 5:00 p.m. on April 28 and at 12:30 p.m. on April 29. All sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War Veterans' illnesses, and updates on relevant scientific research published since the last Committee meeting. Presentations on April 28 will include updates on the VA Gulf War Research Program, followed by research presentations on Gulf War animal studies. The Committee will devote the remainder of April 28 and all of April 29 to a discussion of Committee business and activities.

The meeting will include time reserved for public comments on both days in the afternoon. A sign-up sheet for 5-minute comments will be available at the meeting. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Roberta White at *rwhite@bu.edu*.

Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as part of the clearance process. Therefore, any person attending should allow an additional 15 minutes before the meeting begins. Any member of the public seeking additional information should contact Dr. White, Scientific Director, at (617) 638–4620 or Dr. Victor Kalasinsky, Designated Federal Officer, at (202) 443–5682.

Dated: March 31, 2014.

Rebecca Schiller,

Committee Management Officer.

[FR Doc. 2014–07427 Filed 4–2–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 64 April 3, 2014

Part II

The President

Proclamation 9092—Cesar Chavez Day, 2014

Federal Register
Vol. 79, No. 64
Thursday, April 3, 2014

Presidential Documents

Title 3—

The President

Proclamation 9092 of March 28, 2014

Cesar Chavez Day, 2014

By the President of the United States of America

A Proclamation

On Cesar Chavez Day, we celebrate one of America's greatest champions for social justice. Raised into the life of a migrant farm worker, he toiled alongside men, women, and children who performed daily, backbreaking labor for meager pay and in deplorable conditions. They were exposed to dangerous pesticides and denied the most basic protections, including minimum wages, health care, and access to drinking water. Cesar Chavez devoted his life to correcting these injustices, to reminding us that every job has dignity, every life has value, and everyone—no matter who you are, what you look like, or where you come from—should have the chance to get ahead.

After returning from naval service during World War II, Cesar Chavez fought for freedom in American agricultural fields. Alongside Dolores Huerta, he founded the United Farm Workers, and through decades of tireless organizing, even in the face of intractable opposition, he grew a movement to advance ''La Causa'' across the country. In 1966, he led a march that began in Delano, California, with a handful of activists and ended in Sacramento with a crowd 10,000 strong. A grape boycott eventually drew 17 million supporters nationwide, forcing growers to accept some of the first farm worker contracts in history. A generation of organizers rose to carry that legacy forward.

The values Cesar Chavez lived by guide us still. As we push to fix a broken immigration system, protect the right to unionize, advance social justice for young men of color, and build ladders of opportunity for every American to climb, we recall his resilience through setbacks, his refusal to scale back his dreams. When we organize against income inequality and fight to raise the minimum wage—because no one who works full time should have to live in poverty—we draw strength from his vision and example.

Throughout his lifelong struggle, Cesar Chavez never forgot who he was fighting for. ''What [the growers] don't know,'' he said, ''is that it's not bananas or grapes or lettuce. It's people.'' Today, let us honor Cesar Chavez and those who marched with him by meeting our obligations to one another. I encourage Americans to make this a national day of service and education by speaking out, organizing, and participating in service projects to improve lives in their communities. Let us remember that when we lift each other up, when we speak with one voice, we have the power to build a better world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 31, 2014, as Cesar Chavez Day. I call upon all Americans to observe this day with appropriate service, community, and education programs to honor Cesar Chavez's enduring legacy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–07644
Filed 4–2–14; 11:15 am]
Billing code 3295–F4

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