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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AM11

Absence and Leave; Qualifying Exigency Leave

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to amend the Family and Medical Leave Act (FMLA) regulations to provide eligible Federal employees up to 12 administrative workweeks of unpaid leave under the FMLA for qualifying exigency purposes. Qualifying exigencies arise when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces, or has been notified of an impending call or order to covered active duty status. These regulations will help employees manage family affairs when their family members are on covered active duty.

DATES: This rule is effective October 31, 2011.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing final regulations to implement section 565(b)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111–84, October 28, 2009). Section 565(b)(1) amended 5 U.S.C. 6382(a)(1) by inserting a new subparagraph (E) that adds qualifying exigencies to the circumstances or events that entitle Federal employees to up to 12 administrative workweeks of unpaid leave under the Family and Medical Leave Act (FMLA) during any 12-month period. The regulations amend OPM's current regulations at 5 CFR part 630, subpart L, to cover qualifying exigencies that arise when the spouse, son, daughter, or parent of an employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. As required by 5 U.S.C. 6387, the final regulations are, to the extent appropriate, consistent with the regulations prescribed by the Secretary of Labor to carry out the family medical leave entitlement for employers covered under title I of the FMLA, which primarily applies to employers in the private sector, but also includes some Federal entities, such as the U.S. Postal Service. Similar to the Department of Labor (DOL) regulations, OPM provides for eight categories of qualifying exigencies in its regulations: short-notice deployments, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities not encompassed in the other categories when the agency and employee agree they qualify as exigencies and agree to the timing and duration of the leave.

OPM published proposed regulations on the qualifying exigency leave entitlement for Federal employees for public comment on November 19, 2010, at 75 FR 70845 (*http://www.gpo.gov/fdsys/pkg/FR-2010-11-19/pdf/2010-29275.pdf*). We received comments from three Federal labor organizations and two agencies that are addressed below.

Counseling

One agency asked for clarification of the proposed regulations at § 630.1204(a)(5), which provide that employees may take qualifying exigency leave to attend counseling provided by someone other than a healthcare provider for the employee him or herself, for the covered military member, or for a child, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member. The agency recommended including examples of other types of counseling that might be provided by someone other than a healthcare provider.

OPM expects that most counseling will be provided by a healthcare provider and fall under the existing FMLA provisions, but recognizes that there may be circumstances where counseling that is non-medical in nature will be provided by someone other than a healthcare provider. For example, this could include counseling provided by a military chaplain, pastor, or minister, or counseling offered by the military or a military service organization. We believe that providing these examples in this supplementary information portion of the regulations is sufficient and do not believe it is necessary to add these examples to the regulatory text.

Certification

One labor organization said it supported the regulations, but recommended that OPM clarify certain provisions pertaining to the certification requirements under the regulations. The union referred to proposed § 630.1209(b) published November 19, 2010, at 75 FR 70850.

The commenter stated that § 630.1209 requires a substantial amount of information to certify exigencies, some of which involve sensitive and privileged subjects such as legal services, counseling, child care, and education. For example, the labor organization stated that the regulations ''would require a Federal employee who needs time off to attend a parent-teacher conference to submit a signed statement of the need for the exigency leave, along with a signed document from the school confirming the meeting, in addition the name of the parties met with, their titles, their organizations, addresses, phone numbers, fax numbers and e-mail addresses.'' The commenter noted obstacles to obtaining this information, such as a school prohibition on documenting these conferences, schools not having appropriate letterhead, or school staff not having time to fill out the certification. The commenter also expressed concern regarding an employee's ability to gather and, where necessary, pay for the documentation needed to comply with certification requirements when the employee is otherwise burdened as a result of the deployment or death of a family member. The union said employees in these circumstances might not have time to pursue documentation for the number of exigencies for which they are now solely responsible.

To address these concerns, the commenter recommended that OPM permit employees to provide a statement of facts regarding the qualifying exigency along with either the supporting documentation described under § 630.1209(b)(1) or the third party contact information described under § 630.1209(b)(5), but not require both. The labor organization feels this will give Federal employees some flexibility in dealing with sensitive issues or uncooperative service providers.

OPM modeled its regulations on qualifying exigency leave to be consistent, to the extent appropriate, with DOL's regulations. Section 630.1209 of OPM's regulations corresponds to 29 CFR 825.309 of DOL's regulations. DOL addressed this issue in its final regulations. (See discussion at 73 FR 68023–68025.) DOL strove to achieve an appropriate balance between providing employers with a reasonable amount of information to demonstrate the validity of the qualifying exigency and ensuring that employees are not overburdened with unnecessary steps that do not enhance the utility of the certification. They also stated that for certification purposes, ''[w]here applicable, this information should be readily available to the employee and should not impose a significant obstacle.'' (73 FR 68024.)

We believe that the certification requirements for qualifying exigency leave under the regulations do not overly burden employees. Section 630.1209(b)(1) states only that the certification statement include ''any available written documentation'' that supports the leave request, and provides such examples as a meeting announcement, an appointment confirmation, or a copy of a bill for legal or financial services. The regulations do not require the employee to obtain a letter or signature from a school, sponsoring organization, or other party, or provide any documentation that would be prepared at a cost to the employee. The employee's statement of facts regarding the qualifying exigency should include, whenever possible, only documentation that is already on hand or is easily obtainable.

Under section 630.1209(b)(5), agencies may require employees to provide contact information for individuals or entities with whom the employee is meeting so that agencies may verify, as necessary, the information described under section 630.1209(c). We believe it is important that agencies have discretion to require that employees provide this contact information even when the statement of facts is complete, sufficient, and fully documented. Agencies must have the option to verify the information described in paragraphs (c)(1) and (2) in order to prevent abuse of the qualifying exigency leave entitlement. However, in most cases, we do not anticipate that agencies will contact third parties to verify the information under paragraph (c) if the employee provides sufficient documentation of the qualifying exigency with his or her statement of facts. We also note that the contact information listed in parentheses in paragraph (b)(5) is illustrative; employees need provide only the information appropriate for the contact (*e.g.,* in many cases, address and fax number may not be necessary). Therefore, OPM has not adopted this recommendation and has made no changes to the regulations in this section.

Another labor organization expressed concerns about the potential privacy implications of the certification requirement, citing as an example a meeting with a bankruptcy counselor. As noted previously, employers must be provided a reasonable amount of information to demonstrate the validity of the qualifying exigency; however, that information may be described in general terms on the certification.

Verification

In regard to the verification provisions in § 630.1209(c), the same labor organization recommended that agencies not be permitted to request that third parties describe the nature of employee visits. The labor organization also recommended that the verification be conducted and kept confidential by agency human resources staff, not by the direct supervisor of the employee. Another labor organization commented on the verification provisions, recommending that OPM address management access to an employee's medical records in regard to the Privacy Act. This labor organization also said that agencies should inform an employee before a verification contact so that the employee can alert the third party as to the importance of the contact to the employee's qualifying exigency leave entitlement.

Based on the comments received by the labor organizations, it is apparent that the verification provisions in § 630.1209(c) of the proposed regulations did not clearly describe the information an agency may verify. Specifically, where the proposed regulations state that an agency may verify the nature of a meeting, the intent was not to permit an agency to ask for detailed information about an employee's medical circumstances or other personal matters, but to permit the agency to verify the information the employee already provided in his or her statement under § 630.1209(b)(1) regarding the nature of the qualifying exigency. As an example of a verification contact (paraphrased from DOL's discussion in its November 17, 2008, regulations), an agency might call a school to confirm that a meeting took place between the employee and the teacher of a child of a covered military member. Therefore, we have clarified in § 630.1209(c) of the final regulations that agencies may verify only the information provided by the employee in his or her statement and may not request additional information.

In light of this clarification, we believe the recommendation from the labor organizations that the verification be conducted and kept confidential by agency human resources staff and not by the direct supervisor of the employee should no longer be an issue. The employee's direct supervisor must be able to manage the workload for his or her workgroup, which includes the approval of leave requests. The verification of information regarding the employee's qualifying exigency leave entitlement is therefore pertinent to decisions the supervisor must make in scheduling work and approving leave requests. Therefore, we believe it is appropriate for the employee's direct supervisor to conduct the verification of the information in the employee's request or at least be fully apprised of the results of the verification.

Regarding the comment on addressing management access to an employee's medical records under the Privacy Act, the qualifying exigency leave regulations do not require any collection of medical records. (We note, however, that access to medical records is subject to the provisions of 5 CFR part 293. See 5 CFR 630.1208(k) of these final regulations.) Regarding the comment stating that agencies should inform an employee before making a verification contact, we believe that the requirement for an employee to provide third party contact information is sufficient notice to the employee that the agency may contact the third party.

One agency expressed concern with the verification provisions in § 630.1209(c) of the proposed regulations which provide that an agency may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty or a call to covered active duty status. The agency suggested that before the regulations are implemented, it would be helpful for OPM and DOD to agree

on a procedure for agencies to obtain this information and share these procedures. The agency further stated that its experience has been that DOD will not provide information on an employee's military service without written consent from the employee, and under the regulations, the covered military member is likely not an employee of the agency.

When the Department of Labor was developing the military portions of its FMLA regulations (i.e, the qualifying exigency and leave to care for a covered servicemember entitlements) it consulted with the Department of Defense (DOD), the Department of Veterans Affairs (VA), and a number of military service organizations to provide regulations that would both meet the intent of Congress and not place an undue burden on employees seeking to use these entitlements. OPM therefore believes that the verification process outlined in 5 CFR 630.1209(c)(1), which is the same procedure as in the DOL FMLA regulations, should function appropriately. We understand that the covered military member may have to provide written consent for release of this information, but that may also be the case when an employee seeks FMLA leave to care for a family member who has a serious health condition. We also believe that in most circumstances, an agency will find the covered servicemember's active duty orders sufficient proof that a covered military member is on covered active duty or call to covered active duty status and will not feel a need to verify the certification. However, if an agency has any doubt about the active duty orders, we believe the verification process will provide a useful tool for agencies to use to verify the certification information given to them.

Application

One labor organization asked if any distinctions exist between District of Columbia (DC) employees and other employees under OPM's qualifying exigency leave regulations. There are no distinctions made between Federal employees working in DC compared to those who work outside of the District. OPM's qualifying exigency FMLA regulations apply to any employees covered under title II of the FMLA (5 U.S.C. 6381). Employees who work for the District of Columbia government are not covered by title II of FMLA.

Certification Form

For employees covered by DOL's FMLA regulations, DOL has developed an optional form (Form WH–384) for employees' use in obtaining a certification that meets the qualifying exigency certification requirements. (See *http://www.dol.gov/whd/forms/WH-384.pdf.*) On March 5, 2010, OPM issued CPM 2010–06 to Heads of Executive Departments and Agencies regarding ''Recent Changes to the Family and Medical Leave Act'' to reflect the changes made by the FY 2010 NDAA. As part of this memorandum, we provided Federal agencies the option to choose to use this form as a guide in administering FMLA leave for qualifying exigencies for their employees. This optional form reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. At that time, we stated that employing agencies could use Form WH–384 or another document containing the same basic information for qualifying exigency purposes. In our proposed regulations, we requested comments on whether OPM should develop a certification form similar to DOL's WH–384 for use by Federal employees covered by title II of the FMLA.

We received one comment outside of the public comment period in support of developing an OPM form. The commenting agency felt that an OPM form would provide more specific information to Federal employees, including applicable regulatory citations. Currently the WH–384 references the DOL citations for title I employees, who are primarily employed in the private sector.

We have considered developing a separate form for Federal agencies to use with specific citations to OPM's FMLA regulations. The DOL form is optional and reflects certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave because of a qualifying exigency. Currently, we state that employing agencies could use Form WH–384 or another document containing the same basic information for qualifying exigency purposes. Absent any comments or concerns raised by agencies, we have concluded that there is little to be gained by creating another optional form that would mostly duplicate the DOL form.

As mentioned in our previous guidance, it should be noted that Form WH–384 contains citations to DOL's regulations, which are not the applicable authority for Federal employees governed by OPM's FMLA authorities. It should also be noted that since WH–384 was issued, the NDAA for FY 2010 added a definition of ''covered active duty'' at 5 U.S.C. 6381(7) to mean duty of a member of a regular component of the Armed Forces during deployment to a foreign country, and duty of a member of a reserve component of the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. 101(a)(13)(B). Currently the WH–384 requests documentation to confirm that a covered servicemember's active duty (or call to active duty) is in support of a contingency operation. Federal agencies should continue to use the WH–384 as a tool; however, agencies do not need to document that the covered service member's active duty is in support of a contingency operation, but instead may request information to ensure that the active duty is to a foreign country.

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget has reviewed this rule in accordance with E.O. 13563 and E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is amending 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat. 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat. 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

■ 2. In § 630.1202, add the definitions of ''Covered active duty or call to covered active duty status,'' ''Covered military member,'' and ''Son or daughter on covered active duty or call to covered active duty status'' alphabetically to read as follows:

§ 630.1202 Definitions.

* * * * *

Covered active duty or *call to covered active duty status* means—

(1) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty); and

(2) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to any of the following sections of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress:

(i) Section 688, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the Retired Reserve retired after 20 years for length of service, and members of the Fleet Reserve or Fleet Marine Corps Reserve;

(ii) Section 12301(a), which authorizes ordering all reserve component members to active duty in the case of war or national emergency declared by Congress, or when otherwise authorized by law;

(iii) Section 12302, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law;

(iv) Section 12304, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;

(v) Section 12305, which authorizes the suspension of promotion, retirement, or separation rules for certain Reserve components;

(vi) Section 12406, which authorizes calling the National Guard into Federal service in certain circumstances; or

(vii) Chapter 15, which authorizes calling the National Guard and State militia into Federal service in the case of insurrections and national emergencies.

Covered military member means the employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status.

* * * * *

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

* * * * *

■ 3. In § 630.1203, add a new paragraph (a)(5), revise the first sentence of paragraph (b), and revise the last sentence of paragraph (h) to read as follows:

§ 630.1203 Leave entitlement.

(a) * * *

(5) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1207 and 630.1208. * * *

* * * * *

(h) * * * An employee's notice of his or her intent to take leave under § 630.1207 may suffice as the employee's confirmation.

■ 4. Redesignate §§ 630.1204 through 630.1211 as §§ 630.1205 through 630.1212, respectively, and add a new § 630.1204 to read as follows:

§ 630.1204 Qualifying exigency leave.

(a) An employee may take FMLA leave while the employee's spouse, son, daughter, or parent (the ''covered military member'') is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty 7 or fewer calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of up to 7 calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member.

(3) *Childcare and school activities.* (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child;

(ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a child;

(iii) To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member.

(v) For purposes of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, ''child'' means a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence.

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and health care powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status.

(5) *Counseling.* To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child as defined in paragraph (a)(3)(v) of this section, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member.

(6) *Rest and recuperation.* To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to 5 days of leave for each instance of rest and recuperation.

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; and

(ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) *Additional activities.* To address other events that arise out of the covered military member's covered active duty or call to covered active duty status, provided that the agency and employee agree that such leave qualifies as an exigency, and that they agree to both the timing and duration of such leave.

(b) An employee is eligible to take FMLA leave because of a qualifying exigency when the covered military member is on covered active duty or call to covered active duty status as a member of a regular component of the Armed Forces, or when the covered military member is on covered active duty or call to covered active duty status in support of a contingency operation pursuant to one of the provisions of law identified in the definition of *covered active duty or call to covered active duty status* as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve.

(c) For those called to covered active duty status in support of a contingency operation—

(1) A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b) of this section in support of a contingency operation.

(2) For such members, the active duty orders of a covered military member will generally specify whether the servicemember is serving in support of a contingency operation by citation to the relevant section of title 10 of the United States Code or by reference to the specific name of the contingency operation, or both. A military operation qualifies as a contingency operation if it:

(i) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(ii) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406, or chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13).)

■ 5. In redesignated § 630.1205, revise paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 630.1205 Intermittent leave or reduced leave schedule.

* * * * *

(b) Leave under § 630.1203(a)(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1207 and 630.1208 (b)(6). Leave under § 630.1203(a)(5) may be taken on an intermittent or reduced leave schedule basis, subject to §§ 630.1207 and 630.1209.

(c) * * * Upon returning from leave, the employee is entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1210(a) of this part.

* * * * *

■ 6. In redesignated § 630.1207, redesignate paragraphs (c) through (f) as (d) through (g), respectively, and add a new paragraph (c) to read as follows:

§ 630.1207 Notice of leave.

* * * * *

(c) If the need for leave taken under § 630.1203(a)(5) is foreseeable, the employee must provide notice as soon as practicable, regardless of how far in advance the leave is being requested.

* * * * *

■ 7. In redesignated § 630.1208, revise paragraph (k) to read as follows:

§ 630.1208 Medical certification.

* * * * *

(k) To ensure the security and confidentiality of any written medical certification under § 630.1208 or 630.1210(h) of this part, the medical certification is subject to the provisions for safeguarding information about individuals under subpart A of part 293 of this chapter.

■ 8. Further redesignate §§ 630.1209 through 630.1212 as §§ 630.1210 through 630.1213, respectively, and add new § 630.1209 to read as follows:

§ 630.1209 Certification for leave taken because of a qualifying exigency.

(a) *Active duty orders.* The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status of a covered military member, an agency may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's active duty service. This information need only be provided to the agency once. A copy of new active duty orders or other documentation issued by the military must be provided to the agency if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

(b) *Required information.* An agency may require that leave for any qualifying exigency specified in § 630.1204 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts include the type of qualifying exigency for which leave is requested and any available written documentation that supports the request for leave, such as a copy of a

meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency; and

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.

(c) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the agency may not request additional information from the employee. However, the agency may verify the information described in paragraphs (c)(1) and (c)(2) of this section and does not need the employee's permission to do so.

(1) If the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and verifying the information provided in the employee's statement under paragraph (b)(1) of this section regarding the meeting between the employee and the specified individual or entity. No additional information may be requested by the agency.

(2) An agency may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty or call to covered active duty status. No additional information may be requested by the agency.

■ 9. In § 630.1210 as redesignated, revise the last three sentences in paragraph (h) and all of paragraph (l) to read as follows:

§ 630.1210 Protection of employment and benefits.

* * * * *

(h) * * * The same conditions for verifying the adequacy of a medical certification in § 630.1208(c) apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1205.

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1207 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1208(b) is not entitled to family and medical leave.

■ 10. In redesignated § 630.1213, revise paragraph (b)(3) to read as follows:

§ 630.1213 Records and reports.

* * * * *

(b) * * *

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1206(b); and

* * * * *

[FR Doc. 2011–25310 Filed 9–29–11; 8:45 am]

BILLING CODE 6325–39–P

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to clarify procedures regarding the issuance and citation of nonprecedential Orders.

DATES: This Final Rule is effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington DC 20419; (202) 653–7200, *fax:* (202) 653–7130, or *e-mail: mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2010, the MSPB published an interim rule amending 5 CFR 1201.117. (75 FR 61321) The interim rule amended 5 CFR 1201.117(c) to make clear that the Board may, in its discretion, include discussion of issues raised in an appeal in a nonprecedential Order and amended 5 CFR 1201.117(b) to make clear that the Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

The Board received comments concerning this interim rule from two individuals. The first commenter expressed unease with 5 CFR 1201.117(a)(5) and feared that this provision could be used to ''scuttle'' cases and asked that this provision be amended to state clearly that it would not be used to the detriment of employees and applicants for Federal positions. The interim rule did not amend 5 CFR 1201.117(a)(5). The Board has considered this comment and declines to amend this section.

A second commenter offered several observations. First, this commenter noted that there was no need for a separate class of nonprecedential Orders because the Board has in the past used footnotes to provide additional information in cases summarily denying petitions for review. The Board has considered this comment, but has determined that the goal of giving parties greater insight into the Board's reasoning in a particular case, without requiring the Board to issue a precedential decision, is best served by the issuance of nonprecedential Orders. This commenter also expressed the concern that if the Board's purpose was to avoid publication of nonprecedential Orders on the Board's Web site or by other reporting services, this goal would likely be thwarted by commercial reporting services with the result that two classifications of Board decisions would be published and ultimately cited by parties. The Board's goal was not to avoid publication of nonprecedential Orders. The Board will post nonprecedential Orders on its Web site. In addition, this final rule contains specific guidelines for the citation of nonprecedential Orders. Finally, this commenter opined that issuance and publication of nonprecedential Orders would complicate legal research, lead to confusion, and not serve the goal of open government. As noted above, the Board has included specific guidelines for the citation of nonprecedential Orders. Further, the Board is convinced that the issuance and publication of nonprecedential Orders will serve the goal of openness in the Board's decision-making by giving parties greater insight into the Board's reasoning.

The amendments in this final rule affect only 5 CFR 1201.117(c) and include updated procedures for the issuance of Opinions and Orders and

nonprecedential Orders, explain that parties may cite nonprecedential Orders, and also explain that the Board is not bound by nonprecedential Orders in its future decisions.

The Board believes that issuing and publishing nonprecedential Orders that include a substantive review of issues presented in an appeal will serve the useful purpose of informing parties of the Board's reasoning in a particular appeal. In addition, the new regulation should ensure the maximum degree of transparency in the Board's decision-making to the greatest extent possible.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for 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. Revise § 1201.117 to read as follows:

§ 1201.117 Board decisions; procedures for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

(1) Issue a single decision that denies or grants a petition for review, reopens an appeal, and decides the case;

(2) Hear oral arguments;

(3) Require that briefs be filed;

(4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, or vacate the initial decision of the judge, in whole or in part. The Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

(c) The Board may issue a decision in the form of a precedential Opinion and Order or a nonprecedential Order.

(1) *Opinion and Order.* An Opinion and Order is a precedential decision of the Board and may be appropriately cited or referred to by any party.

(2) *Nonprecedential Orders.* A nonprecedential Order is one that the Board has determined does not add significantly to the body of MSPB case law. The Board may, in its discretion, include in nonprecedential Orders a discussion of the issue(s) to assist the parties in understanding the reason(s) for the Board's disposition in a particular appeal. Nonprecedential Orders are not binding on the Board or its administrative judges in any future appeals except when it is determined they have a preclusive effect on parties under the doctrines of res judicata (claim preclusion), collateral estoppel (issue preclusion), judicial estoppel, or law of the case. Parties may cite nonprecedential Orders, but such orders have no precedential value; the Board and its administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–25174 Filed 9–29–11; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF THE TREASURY

Office of Financial Research

12 CFR Chapter XVI

RIN 1505–AC38

Supplemental Standards for Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Office of Financial Research, Treasury.

ACTION: Interim rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Director of the Office of Government Ethics (OGE), is establishing a new chapter in Title 12 of the Code of Federal Regulations to incorporate certain post-employment prohibitions that apply to employees of the Office of Financial Research (OFR). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) provides for certain post-employment prohibitions if OFR employees have had access to transaction or position data or other business confidential information about financial entities required to report to OFR.

DATES: *Effective date:* September 30, 2011. *Comment due date:* November 29, 2011.

ADDRESSES: Interested persons are invited to submit comments on all aspects of the interim rule through one of these methods:

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Mail: Department of the Treasury, Office of Financial Research, Attention: Post-Employment Interim Rule, Room 1334, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Fax and e-mail comments will not be accepted.

Instructions: In general, the Department will enter all comments received into the docket and make them available, without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

You may personally inspect comments at the Department of the Treasury Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. You can make an appointment to inspect comments by calling (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Horton, Deputy Assistant General Counsel (Ethics) at (202) 622–0450 or *Ethics@treasury.gov.*

SUPPLEMENTARY INFORMATION: Dodd-Frank (Pub. L. 111–203), sets forth rules that apply to employees of the OFR. This interim rule establishes 12 CFR chapter XVI, consisting of part 1600, which generally prohibits the Director of the OFR and any employee of the OFR who has had access to the transaction or position data maintained by OFR's Data Center or other business confidential information about financial entities required to report to the OFR from being employed by or providing advice or consulting services to a financial company, for a period of one year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the OFR.

The OFR was established by section 152 of Dodd-Frank (Public Law 111–203). Section 152(g) of Dodd-Frank provides that:

> The Secretary [of the Treasury], with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the [OFR] Director and any employee of the Office [OFR] who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office [OFR] from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office [OFR]. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

As authorized in section 152(g) of Dodd-Frank, the regulations include an exception to the general post-employment prohibitions that apply to employees of the OFR. Under certain circumstances and on a case-by-case basis, employees whose access to business confidential information was limited may request a waiver from the post-employment prohibitions.

Standards of Ethical Conduct for Employees of the Office of Financial Research

The Department is adding this regulation to explain the circumstances under which an OFR employee, who has had access to the transaction or position data maintained by OFR's Data Center or other business confidential information about financial entities required to report to the OFR, is prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether the financial company is required to report to the OFR, for a period of one year after last having had access in the course of official duties to transaction or position data or business confidential information maintained by the Data Center.

The new rule permits all OFR employees whose access to business confidential information was limited to seek a waiver from the Designated Agency Ethics Official.

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the proposed rulemaking requirements of the Administrative Procedure Act (APA). As set forth in the description of the interim rule, this rule affects only the OFR and its personnel. Nonetheless, the Department is issuing this interim rule for comment and welcomes comments from the public on all aspects of the rule. Even if this rulemaking were subject to APA proposed rulemaking procedures, the Department finds good cause, pursuant to 5 U.S.C. 553(b) and (d), to waive the requirements for notice and comment and 30-day delayed effective date because the rule affects only the OFR and its employees. It is in the public interest that this rule, which concerns matters of agency management, personnel, organization, practice and procedure, and in part relieves certain restrictions placed on OFR employees, become effective on the date of publication.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This interim rule is not a ''significant regulatory action'' for the purposes of Executive Order 12866.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This rule addresses restrictions on OFR employees regarding certain post-employment activities. The Department therefore has determined that the rule will not result in expenditures by State, local or Tribal governments or by the private sector of $100 million or more. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Lists of Subjects in 12 CFR Part 1600

Post employment, Ethics, employees.

For the reasons set forth in the preamble, the Department, with the concurrence of OGE, establishes 12 CFR chapter XVI, consisting of part 1600, to read as follows:

CHAPTER XVI—OFFICE OF FINANCIAL RESEARCH

PART 1600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF FINANCIAL RESEARCH

Sec.
1600.1 Standards of ethical conduct.

Authority: 5 U.S.C. 301, 7301, 31 U.S.C. 321, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) (Pub. L. 111–203); E.O. 12674, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 3 CFR, 1990 Comp., p. 306.

§ 1600.1 Standards of ethical conduct.

This section applies to the employees of the Office of Financial Research and is in addition to 5 CFR 3101.101–104, and 31 CFR part 0:

(a) *Definitions*—For purposes of this subpart:

(1) ''Business confidential information'' shall include trade secret or other formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers. This shall include non-public position and transaction data, as well as data provided to supervisors or regulators that is unpublished.

(2) ''Position data'' is defined as:

(i) Data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(ii) Includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position.

(3) ''Transaction data'' is defined as the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation.

(4) ''Micro-level data'' is defined as information specific to an individual transaction or position.

(5) ''Masked data'' is defined as data that has been altered to prevent attribution to a particular financial company.

(6) ''Financial company'' has the same meaning given to such term in title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301 *et seq.* (2010), and includes an insured depository institution and an insurance company.

(b) *One-year post-employment restriction.* (1) A current or former employee of the Office of Financial Research who has had access to the transaction or position data or business confidential information maintained by the Data Center about financial entities required to report to the Office may not, within one year after last having had access in the course of official duties to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(2) A current or former employee of the Office of Financial Research who has had limited access to the transaction or position data or business confidential information maintained by the Data Center about financial entities required to report to the Office may request a written waiver pursuant to paragraph (c) of this section from the Designated Agency Ethics Official to be employed by or provide advice or consulting services to a financial company, provided that the issuance of the waiver would not compromise any data or business confidential information.

(c) *Waivers*—The post-employment restrictions set forth in section 152(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act may be waived in whole or in part for an employee with limited access to the transaction or position data or business confidential information maintained by the Data Center if—

(1) The Designated Agency Ethics Official, in consultation with the Director of the Office of Financial Research or the Department's General Counsel in instances where consultation with the Director poses a conflict or the Director's position is vacant, determines in writing that such waiver is unlikely to compromise any financial company's business confidential information, unfairly advantage or disadvantage any financial company, or affect the integrity or effectiveness of the Office of Financial Research.

(2) Relevant factors to be considered by the Designated Agency Ethics Official and the Director or General Counsel include—

(i) The nature and importance of the employee's position and the degree to which the employee had access to non-public or business confidential data for the purpose of analysis, standardization, or performing applied research or essential long-term research;

(ii) Whether the information to which the employee had access revealed positions or transactions of an individual financial company;

(iii) Whether the data, especially position data, remains sensitive considering changing circumstances or the passage of time;

(iv) Whether the employee had access to micro-level data, as compared to aggregated information;

(v) If the employee had access to micro-level data, whether it was sufficiently masked or coded to protect the identity of the provider or the subject financial company;

(vi) Whether the information to which the employee had access would provide a financial company employer with a competitive commercial advantage;

(vii) Whether the financial company employer has made a satisfactory representation that it has adopted screening measures which will effectively prevent a potential employee from sharing any transaction or position data or business confidential information acquired at the Office of Financial Research one year prior to accepting employment with the company;

(viii) Whether granting the waiver would affect the willingness of a financial company to continue to provide transaction or position data or business confidential information to the Office; and

(ix) Whether the proposed employment would create an appearance of impropriety or would otherwise adversely affect the interests of the government or compromise the integrity of the office.

(d) The following examples are illustrative of how the OFR post-employment prohibitions would apply under certain circumstances:

(1) *Example 1.* (i) Fact pattern: OFR employs a business data manager and such employee has no access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(2) *Example 2.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data across all sectors maintained by the Data Center or other business confidential information about specific financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(3) *Example 3.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data across all sectors maintained by the Data Center or other business confidential information about specific financial entities required to report to OFR. Employee last had access to such data six months before termination of her employment at OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR, such employee would be prohibited, for a period of six months immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(4) *Example 4.* (i) Fact pattern: OFR employs a researcher and such employee has access only to ''aggregated'' or ''masked'' transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(5) *Example 5.* (i) Fact pattern: OFR employs a data analyst and such employee has access to transaction or position data maintained by the Data Center or other business confidential information *relating to a particular sector (i.e. banking).*

(ii) Designated Agency Ethics Official's Determination: Upon termination of employment by OFR, such employee would be prohibited, for a period of one year immediately after leaving OFR, from being employed by or providing advice or consulting services to a financial company *in that particular sector (i.e. banking)* where such employment or services involves employment or advice or consulting services, regardless of whether that financial company is required to report to the Office. Such employee would be

granted a waiver to work in other designated sectors immediately after leaving OFR.

(6) *Example 6.* (i) Fact pattern: OFR employs a data analyst and such employee has access to business confidential information in an area where data, such as equity mutual fund holdings, changes frequently. Employee last had access to such data six months before termination of her employment at OFR and, because of portfolio turnover, there is no risk of compromising business confidential information.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

(7) *Example 7.* (i) Fact pattern: OFR employs an information technology specialist and such employee has access only to ''masked'' transaction or position data maintained by the Data Center or other ''masked'' business confidential information about specific financial entities required to report to OFR.

(ii) Designated Agency Ethics Official's Determination: Upon termination of their employment by OFR, such employee would not be prohibited from being employed by or providing advice or consulting services to a financial company, regardless of whether that financial company is required to report to the Office.

Dated: September 19, 2011.

George W. Madison,

General Counsel, Department of the Treasury.

[FR Doc. 2011–25105 Filed 9–29–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1199; Directorate Identifier 2010–NM–225–AD; Amendment 39–16818; AD 2011–20–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires replacement of the power control relays in the P91 and P92 power distribution panels for the fuel boost and override pumps with new, improved relays having a ground fault interrupter (GFI) feature, or installation and maintenance of universal fault interrupters (UFIs) using a certain supplemental type certificate. This new AD continues to require the actions of the existing AD and also specifies which relays may be replaced by GFIs or UFIs. This AD was prompted by a need to clarify which relays may be replaced by installation of UFIs. We are issuing this AD to prevent pump housing burn-through due to electrical arcing, which could create a potential ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective November 4, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 22, 2010 (75 FR 50859, August 18, 2010).

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For TDG Aerospace information identified in this AD, contact TDG Aerospace, Inc., 545 Corporate Drive, Escondido, California 92029; telephone 760–466–1040; fax 760–466–1038; Internet *http://www.tdgaerospace.com;* e-mail *info@tdgaerospace.com.* You may review copies of the referenced 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* 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 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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6482; fax: 425–917–6590; e-mail: *georgios.roussos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2010–17–05, Amendment 39–16395 (75 FR 50859, August 18, 2010). That AD applies to the specified products. The NPRM published in the **Federal Register** on December 20, 2010 (75 FR 79317). That NPRM proposed to continue to require replacement of the power control relays in the P91 and P92 power distribution panels for the fuel boost and override pumps with new, improved relays having a ground fault interrupter (GFI) feature, or installation and maintenance of universal fault interrupters (UFIs) using a certain supplemental type certificate. That NPRM also proposed to specify which relays may be replaced by GFIs or UFIs.

Actions Since NPRM Was Issued

We have been informed that referring to TDG Aerospace UFIs, as provided in paragraph (g)(2)(ii) of the NPRM (75 FR 79317, December 20, 2010), violates Office of the Federal Register (OFR) regulations (1 CFR part 51) for approval of optional materials ''incorporated by reference'' in rules. We have revised paragraph (g)(2)(ii) of this AD to specify that installation of TDG Aerospace UFIs, as provided in that paragraph, must be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. We have also added Note 2 to this AD to specify that additional guidance on installing TDG Aerospace UFIs can be found in TDG Aerospace Supplemental Type Certificate (STC) ST02076LA.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Allow Credit for Accomplishment of STC

Continental Airlines (CAL) requested that paragraph (h) of the proposed AD

(75 FR 79317, December 20, 2010) be revised to add credit for work done according to STC ST02076LA prior to the effective date of the AD. CAL claimed that operators who accomplished that STC before the effective date of the AD would be required to request an AMOC to show compliance with the proposed AD and get credit for those actions. CAL pointed out that paragraph (h) of the proposed AD provides credit for accomplishment of Boeing Alert Service Bulletin 737–28A1201, dated February 19, 2007.

We agree to provide clarification. Paragraph (h) of the proposed AD (75 FR 79317, December 20, 2010) (paragraph (j) in this final rule) provided credit for an earlier revision of the service information required in paragraph (g) of this AD. There is no earlier version of STC ST02076LA, which was issued on October 26, 2007, that operators might have used to accomplish actions required by this AD. Paragraph (f) of this AD provides relief to operators that might have accomplished the actions required in this AD before the effective date of this AD (*i.e.,* used Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, before the effective date of the AD). However, because STC ST02076LA is no longer provided as a means of compliance within the text of the AD, operators are required to apply for an AMOC if they want credit for work done according to that STC. We have not changed the AD in this regard.

Request To Revise Previous AD Instead of Supersede

All Nippon Airways (ANA) suggested that we revise AD 2010–17–05, Amendment 39–16395 (75 FR 50859, August 18, 2010), instead of issuing a new AD. ANA believed that correcting the STC number from STC ST02079LA to STC ST02076LA did not require issuing a new AD.

We agree to provide clarification. The incorrect STC number was not the primary reason to issue a new AD to supersede AD 2010–17–05, Amendment 39–16395 (75 FR 50859, August 18, 2010). Paragraph (f) of AD 2010–17–05 allowed actions accomplished according to STC ST02079LA to be acceptable for all power control relays. However, installation and maintenance of UFIs using STC ST02076LA may be an acceptable method of compliance for the center tank override pumps only. Such a change to paragraph (f) of AD 2010–17–05 to restrict the use of STC ST02076LA to installation and maintenance of UFIs on only the center tank override fuel pumps requires a new AD. We have not changed this AD in this regard.

Request To Modify Panels While the Panels Are Off the Airplane

American Airlines (AA) requested that the proposed AD be revised to allow modification of the P91 and P92 panels (replacing the power control relays for the fuel boost pumps and override pumps) while the panels are removed and reworked outside the airplane. AA noted that the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, specify accomplishing the modification of the panels while the panels are still installed on the airplane. AA explained that allowing the panels to be modified or reworked outside the airplane will allow better access to the relay installation locations.

We agree. The P91 and P92 power distribution panels are ''line replaceable units,'' and reworking those panels in a shop environment instead of on the airplane may provide better access to the panels and control of the applicable modifications. We have added paragraph (h) to this AD to provide this alternative.

Request To Allow Alternative Means To Identify Modified Panels

AA requested that we allow use of a locally manufactured label that includes an indelible means of marking the modified P91 and P92 panels in lieu of the part marking process specified in Note (a) in Figures 1 and 2 of Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009. AA explained that the note describes a process to use laser-etched identification labels, which involves submitting a digital photograph of the existing identification label and ordering a new label from Honeywell.

We agree. The intent of this AD is to provide procedures to verify the changes to the panels, not to specify the part marking method. While part marking of the panels is needed for configuration control, the AD was not intended to specify the exact method of part marking. We have added paragraph (i) to this AD to specify that any industry-accepted method of marking the part number is acceptable for compliance.

Request To Clarify Note 1

Delta Air Lines (DAL) requested that the Note specified in the proposed AD (75 FR 79317, December 20, 2010) be revised to clarify that the Honeywell service bulletins have no bearing on the installation of the TDG Aerospace UFI relays. DAL noted that the note is not applicable if an operator complies with paragraph (g)(2)(ii) of the proposed AD. DAL suggested that the following phrase be added to the end of the sentence: ''as given in paragraphs (g)(1) and (g)(2)(i).''

We agree that Note 1 of this AD does not apply to the TDG Aerospace installation of UFI relays using STC ST02076LA referenced in paragraph (g)(2)(ii) of the proposed AD (75 FR 79317, December 20, 2010) (referenced in Note 2 of this AD). However, we do not agree to revise Note 1 of this AD as suggested. As it is written, Note 1 of this AD already states that Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, references Honeywell Service Bulletins 1151932–24–61 and 1151934–24–62, both Revision 5, both dated May 25, 2009, as additional sources of guidance for replacing the power control relays in the P91 and P92 panels. There is no mention of STC ST02076LA in that note. Because that STC is not referenced in that note, that STC does not provide for Honeywell Service Bulletins 1151932–24–61 and 1151934–24–62, both Revision 5, both dated May 25, 2009, to be used as additional sources of guidance, and Note 1 of this AD does not apply to paragraph (g)(2)(ii) of this AD. We have not revised this AD in this regard.

Request To Provide Contact Information for STC Holder

DAL requested that the contact information for TDG Aerospace be included in paragraph (k) of the proposed AD (75 FR 79317, December 20, 2010) because STC ST02076LA is an acceptable method of compliance for certain requirements of this AD. DAL noted that paragraph (k) of the proposed AD provides contact information for Boeing service information, but did not provide contact information for the TDG Aerospace STC ST02076LA.

We agree partially. We do not agree to revise paragraph (k) of the proposed AD (75 FR 79317, December 20, 2010), because that paragraph is not restated in this final rule. However, we do agree to provide contact information for TDG Aerospace. We have revised the **ADDRESSES** section of this AD to include this contact information.

Request To Revise a Word

Boeing requested a change to a word in paragraph (h) of the proposed AD (75 FR 79317, December 20, 2010) (paragraph (j) in this final rule) from ''is'' to ''were'' in the phrase '' is used as an additional * * *.''

We agree. We revised paragraph (j) of this AD as requested.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (75 FR 79317, December 20, 2010) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 754 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
Installation of GFI relays (retained actions from existing AD).	8 work-hours × $85 per hour = $680	$11,010	$11,690	$8,814,260

The new requirements of this AD add no additional economic burden.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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, 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 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) 2010–17–05, Amendment 39–16395 (75 FR 50859, August 18, 2010), and adding the following new AD:

2011–20–07 The Boeing Company: Amendment 39–16818; Docket No. FAA–2010–1199; Directorate Identifier 2010–NM–225–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 4, 2011.

Affected ADs

(b) This AD supersedes AD 2010–17–05, Amendment 39–16395 (75 FR 50859, August 18, 2010).

Applicability

(c) This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent pump housing burn-through due to electrical arcing, which could create a potential ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Replacement or Installation

(g) Within 60 months after the effective date of this AD, do the actions required in paragraphs (g)(1) and (g)(2) of this AD.

(1) Replace the power control relays that are located in the R18, R19, R20, and R21 positions in the P91 and P92 power distribution panels for the fuel boost pumps with new, improved relays, part number KDAG–X4F–001, having a ground fault interrupter (GFI) feature, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, except as provided in paragraphs (h) and (i) of this AD.

(2) Replace the power control relays that are located in the R54 and R55 positions in the P91 and P92 power distribution panels for the fuel override pumps, in accordance with the actions required in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Replace with new, improved relays, part number KDAG–X4F–001, having a GFI feature, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, except as provided in paragraphs (h) and (i) of this AD.

(ii) Install and maintain TDG Aerospace universal fault interrupters (UFIs) in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA.

Note 1: Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, refers to Honeywell Service Bulletin 1151932–24–61 and Honeywell Service Bulletin 1151934–24–62, both Revision 5, both dated May 25, 2009, as additional sources of guidance for replacement of the

power control relays in the P91 and P92 power distribution panels.

Note 2: Guidance on installing TDG Aerospace universal fault interrupters (UFIs) can be found in Supplemental Type Certificate ST02076LA.

(h) Where Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, specifies accomplishing actions in the P91 and P92 power distribution panels while those panels are installed on the airplane, this AD does not require that the panels are on the airplane while the actions are accomplished. This AD allows the actions on the P91 and P92 panels to be accomplished while those panels are removed from the airplane.

Note 3: Section 24–21–21, ''Power Distribution Panel,'' of the Practices and Procedures section of the Boeing 737–600–700–800–900 Aircraft Maintenance Manual may be used as an additional source of guidance on removing and reinstalling the P91 and P92 power distribution panels.

(i) Where Note (a) in Figures 1 and 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, specifies procedures for marking the part numbers of the panels, this AD does not require a specific method for marking. Operators are allowed to use any industry-accepted method.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1201, dated February 19, 2007, are acceptable for compliance with the requirements of paragraphs (g)(1) and (g)(2)(i) of this AD, provided that Revision 5 of Honeywell Service Bulletins 1151932–24–61 and 1151934–24–62, both dated May 25, 2009, were used as an additional source of guidance.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(l) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: 425–917–6482; fax: 425–917–6590; e-mail: *georgios.roussos@faa.gov.*

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 737–28A1201, Revision 1, dated May 28, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved the incorporation by reference of this service information on September 22, 2010 (75 FR 50859, August 18, 2010).

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington on September 20, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–24746 Filed 9–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0377; Airspace Docket No. 11–AEA–10]

Establishment of Class E Airspace; Bumpass, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E Airspace at Bumpass, VA, to accommodate the new Standard Instrument Approach Procedures serving Lake Anna Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 29,2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace at Bumpass, VA (76 FR 45479) Docket No. FAA–2011–0377. Interested parties were invited to 2 participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface at Bumpass, VA, to provide the controlled airspace required to support the new RNA V GPS standard instrument approach procedures developed for Lake Anna Airport. This action is necessary for the safety and management of IFR operations at the airport.

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

number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Lake Anna Airport, Bumpass, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Bumpass, VA [New]

Lake Anna Airport, VA
(Lat. 37°57′57″ N., long. 77°44′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7mile radius of Lake Anna Airport.

Issued in College Park, Georgia, on September 19, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–25249 Filed 9–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0758; Airspace Docket No. 11–AAL–11]

Revision of Class E Airspace; Northway, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Northway, AK, to accommodate the amendment of one Standard Instrument Approach Procedure at the Northway Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Northway Airport. This action adjusts the geographic coordinates for the Northway Airport.

DATES: Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; *e-mail: Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Friday, July 29, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Northway, AK (76 FR 45475).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received that the Northway VORTAC and coordinates should not be referred to in the E5 airspace designation. The FAA found merit in that and removes reference to the Northway VORTAC and its coordinates from the E5 airspace description in this rule. Subesequent to publication, the FAA found that the geographic coordinates of the airports needed to be adjusted. This action makes the adjustment.

The Class E airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Northway Airport, Northway, AK, to accommodate the amendment of a standard instrument approach procedure. This Class E surface airspace and Class E airspace extending upward from 700 and 1,200 feet above the surface is necessary for the safety and management of IFR operations at the airport. The rule also adjusts the coordinates for the Northway Airport to bring them in concert with those on record in the FAA's aeronautical database.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is

within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Northway Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, *Airspace Designations and Reporting Points,* signed September 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Northway, AK [Revised]

Northway Airport, AK
(Lat. 62°57′40″ N., long. 141°55′41″ W.)
Northway VORTAC
(Lat. 62°56′50″N., long. 141°54′46″W.)

Within a 4-mile radius of the Northway Airport, AK and within 2 miles each side of the 077° radial from the Northway Airport, AK extending from the 4-mile radius to 12.7 miles east of the Northway Airport, AK and within 3.1 miles each side of the 312° radial from the Northway VORTAC extending from the 4-mile radius to 11.4 miles northwest of the Northway Airport AK.

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Northway, AK [Revised]

Northway Airport, AK
(Lat. 62°57′40″ N., long. 141°55′41″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Northway Airport, AK and within 2 miles each side of the 077° radial from Northway Airport, AK extending from the 8-mile radius to 13.7 miles east of Northway Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 66-mile radius of Northway Airport, AK excluding the airspace east of 141°00′00″ West longitude.

Issued in Anchorage, AK on September 23, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–25150 Filed 9–29–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 435

Mail or Telephone Order Merchandise Rule

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Final rule amendments.

SUMMARY: The FTC announces it is retaining the Mail or Telephone Order Merchandise Rule (''MTOR'' or ''Rule''). Based on previous Rule proceedings and after reviewing public comments received regarding the Rule's overall costs, benefits, and regulatory and economic impact, the Commission concludes that the Rule continues to benefit consumers and the Rule's benefits outweigh its costs. For clarity, the Commission is reorganizing the Rule by alphabetizing the definitions at the beginning of the Rule.

DATES: *Effective Date:* September 30, 2011.

ADDRESSES: Requests for copies of the Final MTOR should be sent to: Public Reference Branch, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 130, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of this proceeding, including the public comments received in response to the Advance Notice of Proposed Rulemaking are available at: *http://www.ftc.gov/os/comments/mailortelephoneorder/index.shtm* and the related News Release is available at: *http://www.ftc.gov/opa/2007/09/fyi07262.shtm.*

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326–2984, or Gregory Madden, (202) 326–2426, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., M–8102B,Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The MTOR prohibits sellers from soliciting mail or telephone order sales unless the sellers have a reasonable basis to expect that they will be able to ship the ordered merchandise within the time stated on the solicitation, or, if no time is stated, within 30 days of receipt of an order. The MTOR further requires a seller to seek the buyer's consent to the delayed shipment when the seller learns that it cannot ship within the time stated or, if no time is stated, within 30 days. If the buyer does not consent, the seller must promptly refund all money paid for the unshipped merchandise.

The Commission originally promulgated the Mail Order Rule (as the Rule was originally known) in 1975 in response to complaints that many mail order sellers failed to ship ordered merchandise, failed to ship merchandise on time, or failed to provide prompt refunds for unshipped merchandise. The Commission issued the Rule pursuant to its authority under sections 5 and 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45 and 57a, to proscribe these deceptive and unfair acts or practices.[1]

A second proceeding, ending in 1993, demonstrated that consumers who ordered merchandise by telephone experienced the same shipment and refund problems. Accordingly, the Commission amended the Rule to cover merchandise ordered by telephone and renamed the Rule the ''Mail or Telephone Order Merchandise Rule.''[2]

The Commission reviews all its rules and guides periodically to obtain information about their costs and benefits and their economic and regulatory impact. As part of this review process, the Commission published a request seeking public comments on the costs and benefits of the Rule and the continuing need for the Rule.[3] In

[1] *Federal Trade Commission: Part 435—Mail Order Merchandise: Promulgation of Trade Regulation Rule,* 40 FR 49492–94 (Oct. 22, 1975); *Federal Trade Commission: Part 435—Mail Order Merchandise: Promulgation of Trade Regulation Rule: Correction,* 40 FR 51582–597 (Nov. 5, 1975) (''*Promulgation of Rule: Correction*''), The Commission initiated the rulemaking in 1971 under section 6(g) of the FTC Act, 15 U.S.C. 46(g), and had substantially completed the rulemaking when Congress amended the FTC Act by adopting section 18, 15 U.S.C. 57a. By operation of law, the Mail Order Rule was then treated as having been promulgated under authority of section 18. *See United States* v. *JS&A Group, Inc.,* 547 F. Supp. 20, 23 (N.D. Ill. 1982); *United States* v. *Braswell, Inc.,* 1981 U.S. Dist. LEXIS 15444 at *8 (N.D. Ga. 1981). The Mail Order Rule took effect February 2, 1976.

[2] *Federal Trade Commission: Trade Regulation Rule; Mail or Telephone Order Merchandise: Final Trade Regulation Rule,* 58 FR 49096, 49097 (Sept. 21, 1993).

[3] *Federal Trade Commission: Mail or Telephone Order Merchandise: Request For Public Comment,* 72 FR 51728 (Sept. 11, 2007). The Commission also sought public comments, assuming the Commission retained the Rule, on how it might change the Rule to reflect changes in technology and commercial

Continued

addition, the Commission suggested technical revisions reversing the order of MTOR sections 435.1 and 435.2 and organizing the Rule's definitions alphabetically. *Id.*

II. Retention of the MTOR

The Commission received four comments, all identifying a continuing need for the Rule.[4] Two major trade associations representing direct marketers affected by the Rule, the National Retail Federation (''NRF'')[5] and the Direct Marketing Association (''DMA''),[6] supported retaining the MTOR. According to NRF, the MTOR ''creates explicit competition among retailers to minimize and validate shipping times for consumers' benefit.'' NRF at 2. NRF further stated that ''[i]n short, the Rule is a well designed balance of competitive incentives that benefits retailers and their customers alike.'' *Id.* DMA strongly supported ''the continued uniform FTC regulation of merchandise orders by mail, telephone, fax, computer, and the Internet.'' DMA at 2. DMA commented that the Rule has ''been effective in enhancing consumer confidence in the growth of distance selling, which is critical to the development of electronic commerce,'' and that the Rule's requirements ''make good business sense and are well-integrated into the business practices of our members.'' *Id.*

The Commission also received comments supporting the Rule from two individuals, Paul T. Dearing (''Dearing'') and Oriyomi Nwokeji (''Nwokeji''). Dearing commented that the Rule provides buyers with ''basic rights and expectations regarding the receipt of their merchandise'' ordered by mail, telephone, or the Internet. Dearing at 1. Similarly, Nwokeji commented that the Rule ''safeguards the rights of * * * customers'' and is a ''cautionary restraint against * * * overzealous merchants.'' Nwokeji at 1. He also commented that ''[c]onsumers need [the] MTOR'' because it provides for prompt refunds and ascertainable shipment dates, thereby enhancing easy, fast, affordable, varied, and convenient shopping by mail or telephone. *Id.*

The Commission requested comments on the costs associated with the Rule, but none of the commenters identified any specific costs or burdens associated with complying with the Rule's requirements. This absence of comments identifying specific costs or burdens, coupled with the support for the Rule voiced by two major trade associations representing industry members, suggests that the Rule's benefits to industry members significantly outweigh its costs.[7] The Commission thus concludes there is a continuing need for the Rule.

III. Reorganizing the MTOR

The Commission also invited comments regarding reorganizing the Rule by: (1) Alphabetizing the definitions, and (2) placing the definitions before the Rule's substantive provisions. DMA stated that such a change would make the Rule easier to navigate, DMA at 4, and no commenters opposed the proposed reorganization. The Commission therefore amends the Rule as proposed.[8]

Pursuant to the Administrative Procedure Act (''APA''), the Commission finds ''good cause'' for foregoing public comment because the rule amendments are technical and public comment is ''unnecessary.'' 5 U.S.C. 553(b)(3)(B). In addition, because the rule revisions do not change the obligations of entities subject to the Rule, there is ''good cause'' for the revisions to take effect immediately. *See* 5 U.S.C. 553(d)(3).

IV. The Commission Declines To Propose Changes Suggested by NRF

In its request for public comments, the Commission invited the public to suggest Rule changes. In response, NRF proposed amending the Rule to: (1) Allow sellers to substitute materially different merchandise from what the buyer ordered in certain circumstances, and (2) exempt sellers of custom-made or occasionally produced merchandise from the Rule's requirements. In the absence of any evidence supporting the need for NRF's suggested changes, and because the Commission has previously determined that these practices cause buyer injury, the Commission is not proposing the changes advocated by NRF.

A. Unilateral Substitution of Materially Different Merchandise

NRF suggested that the Commission amend the Rule to permit sellers to substitute, without buyers' consent, merchandise that materially differs from what buyers ordered for: (1) ''seasonal substitutions,'' and (2) ''gifts with purchase'' (''GWPs'').

1. Seasonal Substitutions

NRF suggested that the Commission amend the Rule to allow sellers to ship substitute merchandise without the buyer's prior express agreement to the substitution when there is: (1) Unanticipated demand during ''a particular season for certain goods,'' and (2) ''it may be too late for a customer who receives a delay notice to select another item.'' NRF at 6.

Substitution of materially different merchandise is a unilateral alteration of a material term of the sale.[9] In fact, the

practices. *Id.* In a separate Notice of Proposed Rulemaking (''NPRM''), the Commission proposes amending the MTOR by: (1) Expressly covering all Internet merchandise orders; (2) allowing sellers to provide refunds and refund notices by any means at least as fast and reliable as first class mail; (3) clarifying sellers' obligations under the Rule for sales made using payment methods not specifically enumerated in the Rule, such as debit cards; and (4) requiring sellers to provide refunds within seven working days where the buyer uses a third party credit card, such as Visa or MasterCard.

[4] All comments are available at: *http://www.ftc.gov/os/comments/mailortelephoneorder/index.shtm.* This document cites to these comments by indicating the short form for the commenter, *e.g.,* ''DMA'' for the Direct Marketing Association, and the page of the comment.

[5] NRF identifies itself as the world's largest retail trade association with membership from all retailing formats and distribution channels (*e.g.,* catalog, Internet). NRF at 1. NRF's membership comprises more than 1.6 million U.S. retail establishments with 2006 sales of $4.7 trillion. *Id.*

[6] DMA is a global trade association representing business and nonprofit organizations engaged in direct marketing. DMA at 1. DMA represents more than 3,600 companies in the U.S. and abroad, along with more than 200 nonprofit organizations. *Id.*

[7] Similarly, in 2009 and 2010, the Commission published its most recent estimates of the information collection burdens the Rule imposes on industry under the Paperwork Reduction Act, 44 U.S.C. secs. 3501–3521. *See Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 74 FR 53500 (Oct. 19, 2009) and *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 75 FR 2142 (Jan. 14, 2010). The Commission did not receive any public comments on its MTOR cost estimates of annual labor costs of $47,108,000 and annual non-labor costs of $0 during 2010–2012. On February 16, 2010, OMB approved the Commission's estimates without change and authorized extension of the Rule's information collection requirements to February 28, 2013.

[8] The Commission is also correcting internal inconsistencies in the Rule language and punctuation at renumbered 435.1(c), (c)(1)–(2), (d)(1), (d)(2)(iii), (g)(1)–(2); 435.2(a)(1)(ii), (a)(3), (a)(3)(i), (b)(1)(iv), (b)(2), (b)(2)(ii), (c)(2); and 435.3(a)(1)–(3) (*e.g.,* numbering the subordinate paragraphs for the definition of ''Receipt of a properly completed order'' as ''(1),'' ''(2),'' and ''(3)'') to conform the numbering with the other subordinate Rule paragraphs. These are technical corrections and do not change the Rule's substantive requirements. Although neither previously proposed by the Commission nor suggested by commenters, the Commission has also determined to delete 435.4, reciting the prior effective dates of the rule and its 1994 amendment, as unnecessary. Likewise, the Commission is deleting the Freedom of Information Act, 5 U.S.C. 552, from the authority citation for the rules, as that statute does not authorize the rules, but merely requires generally that agencies publish their binding substantive regulations in the **Federal Register**.

[9] *See* A Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule, *http://business.ftc.gov/documents/bus02-business-guide-mail-and-telephone-order-merchandise-rule.pdf,* and DMA, January 2002.

Commission previously brought an action identifying substitution as violating the Rule. *See United States* v. *Smith d/b/a Salesco,* No. 01–10962 (C.D. Cal. 2001). Nothing in the record supports changing the Commission's approach. Thus, the Commission does not propose amending the Rule as NRF suggests.

2. Substitute Gifts With Purchase

NRF also suggested that the Rule permit unilateral substitutions when a seller: (1) Offers a specific GWP, (2) clearly discloses that the GWP supply is ''limited,'' (3) has exhausted its GWP supply, and (4) wants to provide buyers with a GWP of equal or greater value than what it initially offered. NRF at 6.

Where buyers order merchandise with a GWP, the GWP is a material part of the merchandise order. Indeed, in 1975 the Commission identified many complaints about unsent GWPs worth less than $10 and rejected a suggestion that the Rule exempt such GWPs. *Promulgation of Rule: Correction,* 40 FR at 51594. Since then, the Commission has enforced the Rule against sellers for violations related to GWPs. *United States* v. *Iomega Corp.,* No. 98–00141C (D. Utah 1998); *United States* v. *Ralston Purina Co.,* No. 92–01088 (E.D. Mo. 1992); and *United States* v. *Del Monte Corp.,* No. 85–5213 (N.D. Calif. 1985).

The unilateral substitution of GWP merchandise violates the Rule. Nothing in the record indicates that prohibiting unilateral substitutions creates burdens on sellers that are not outweighed by the benefits to buyers. Thus, the Commission does not propose amending the Rule to permit sellers to substitute GWPs without buyers' prior express consent.

B. Custom-Made Merchandise

NRF also suggested that the Commission amend the Rule to permit indefinite shipment representations for: (1) Custom-made or handcrafted merchandise; or (2) merchandise produced by the supplier occasionally within a given year. NRF at 7. NRF said that marketers of these items find it difficult to determine accurate shipment times and risk either overstating shipment time and unnecessarily discouraging sales, or understating shipment time and running afoul of the Rule. *Id.* NRF suggested distinguishing these products from other merchandise by identifying them as ''artisanal, custom, or infrequently produced.'' *Id.*

Manufacturers of made-to-order and customized merchandise made similar arguments while seeking exemption from the Rule during the original 1975 rulemaking proceeding. *Promulgation of Rule: Correction,* 40 FR at 51595. The Commission rejected their request, finding that ''no industry spokesman explained persuasively why such merchandisers cannot affirmatively disclose the estimated shipping time in their solicitations.'' *Id.* NRF has not presented evidence of changed circumstances, and the Commission therefore does not propose such an exemption now.[10]

V. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

As explained above, these final amendments are purely technical and non-substantive in nature. They do not expand or otherwise substantively alter the Rule's requirements, and thus do not require notice and comment under section 18 of the FTC Act or the APA. *See* section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B) (prescribing procedures for ''substantive'' amendments); APA, 5 U.S.C. 553(b)(B) (notice and comment not required where impracticable, unnecessary, or contrary to the public interest). Further, the Commission believes the amendments will have no economic or other impact on the economy, prices, or regulated entities or consumers. For these reasons, no regulatory analysis is required by section 22 of the FTC Act. *See* 15 U.S.C. 57b–3. For the same reasons, no regulatory flexibility analysis is required by the Regulatory Flexibility Act (''RFA''). *See* 5 U.S.C. 601(2), 604(a).

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more, (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services, or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. Because the Commission retains the MTOR as previously promulgated without making any substantive change, it has determined that the amendments to the Rule will not have such effects on the national economy, on the cost of ordering merchandise by mail or telephone, or on covered parties or consumers.

The RFA, 5 U.S.C. 601–612, also does not require that the Commission conduct an analysis of the anticipated economic impact of the amendments on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that the agency need not perform the analysis normally required under the Act if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities, or where public notice and comment on the amendments is not required under the APA, *see* 5 U.S.C. 601(2), 604(a). The Commission certifies that amending the MTOR will not have a significant economic impact on a substantial number of small businesses, because the technical reorganization of the rules' provisions, as explained earlier, imposes no significant economic impact, if any, on small entities. As noted earlier, public notice is not required under the APA because the Commission has found ''good cause'' to forego that requirement. Accordingly, for these reasons, no regulatory analysis under the RFA is required.

VI. Paperwork Reduction Act

The MTOR contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.* (see note 6). As discussed above, the Commission amends the Rule by reorganizing it. The amendments do not impose any additional ''collection of information'' requirements. Consequently, the amendments will not affect the PRA burden associated with the Rule's requirements.

VII. Rule Language

List of Subjects in 16 CFR Part 435

Mail order merchandise, Telephone order merchandise, Trade practices.

For the reasons set out in the preamble, the Commission is revising 16 CFR part 435 to read as follows:

PART 435—MAIL OR TELEPHONE ORDER MERCHANDISE

Sec.
435.1 Definitions.
435.2 Mail or telephone order sales.
435.3 Limited applicability.

Authority: 15 U.S.C. 57a.

§ 435.1 Definitions.

For purposes of this part:

The Business Guide also says:

For backorders, the Rule provides only two [alternatives]: obtain the customer's agreement to delayed shipment or provide a full and prompt refund. Unless the customer expressly agrees to the substitution beforehand, you do not have the option of substituting merchandise that is materially different from your advertised merchandise. *Id.*

[10] Moreover, creating an exemption based on the seller's designation of the product as ''artisanal, custom, or infrequently produced'' would invite evasion of the Rule.

(a) *Mail or telephone order sales* shall mean sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

(b) *Prompt refund* shall mean:

(1) Where a refund is made pursuant to paragraph (d)(1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (d)(2)(i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(c) *Receipt of a properly completed order* shall mean, where the buyer tenders full or partial payment in the proper amount in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account, the time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order. Provided, however, that where the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, *receipt of a properly completed order* shall mean the time at which:

(1) The seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored;

(2) The buyer tenders cash in the proper amount; or

(3) The seller receives notice that the buyer qualifies for a credit sale.

(d) *Refund* shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order.

(e) *Shipment* shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(f) *Telephone* refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.

(g) The *time of solicitation* of an order shall mean that time when the seller has:

(1) Mailed or otherwise disseminated the solicitation to a prospective purchaser;

(2) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense; or

(3) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

§ 435.2 Mail or telephone order sales.

In connection with mail or telephone order sales in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act or practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the buyer through the mail or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

(i) Within that time clearly and conspicuously stated in any such solicitation; or

(ii) If no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer, Provided, however, where, at the time the merchandise is ordered the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have fifty (50) days, rather than thirty (30) days, to perform the actions required in this paragraph (a)(1)(ii).

(2) To provide any buyer with any revised shipping date, as provided in paragraph (b) of this section, unless, at the time any such revised shipping date is provided, the seller has a reasonable basis for making such representation regarding a definite revised shipping date.

(3) To inform any buyer that it is unable to make any representation regarding the length of any delay unless:

(i) The seller has a reasonable basis for so informing the buyer, and

(ii) The seller informs the buyer of the reason or reasons for the delay.

(4) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time set forth in this part will create a rebuttable presumption that the seller lacked a reasonable basis for any expectation of shipment within said applicable time.

(b)(1) Where a seller is unable to ship merchandise within the applicable time set forth in paragraph (a)(1) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the buyer's order and receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of its inability to ship within the applicable time set forth in paragraph (a)(1) of this section, but in no event later than said applicable time.

(i) Any offer to the buyer of such an option shall fully inform the buyer regarding the buyer's right to cancel the order and to obtain a prompt refund and shall provide a definite revised shipping date, but where the seller lacks a reasonable basis for providing a definite revised shipping date the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the delay.

(ii) Where the seller has provided a definite revised shipping date which is thirty (30) days or less later than the applicable time set forth in paragraph (a)(1) of this section, the offer of said option shall expressly inform the buyer that, unless the seller receives, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and cancelling the order, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.

(iii) Where the seller has provided a definite revised shipping date which is

more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or where the seller is unable to provide a definite revised shipping date and therefore informs the buyer that it is unable to make any representation regarding the length of the delay, the offer of said option shall also expressly inform the buyer that the buyer's order will automatically be deemed to have been cancelled unless:

(A) The seller has shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and has received no cancellation prior to shipment; or

(B) The seller has received from the buyer within thirty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the seller informs the buyer that it is unable to make any representation regarding the length of the delay, the buyer shall be expressly informed that, should the buyer consent to an indefinite delay, the buyer will have a continuing right to cancel the buyer's order at any time after the applicable time set forth in paragraph (a)(1) of this section by so notifying the seller prior to actual shipment.

(iv) Nothing in this paragraph shall prohibit a seller who furnishes a definite revised shipping date pursuant to paragraph (b)(1)(i) of this section, from requesting, simultaneously with or at any time subsequent to the offer of an option pursuant to paragraph (b)(1) of this section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from the buyer specifically consenting to said further delay. Provided, however, that where the seller solicits consent to an unanticipated indefinite delay the solicitation shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the definite revised shipping date by so notifying the seller prior to actual shipment.

(2) Where a seller is unable to ship merchandise on or before the definite revised shipping date provided under paragraph (b)(1)(i) of this section and consented to by the buyer pursuant to paragraph (b)(1)(ii) or (iii) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, a renewed option either to consent to a further delay or to cancel the order and to receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of its inability to ship before the said definite revised date, but in no event later than the expiration of the definite revised shipping date. Provided, however, that where the seller previously has obtained the buyer's express consent to an unanticipated delay until a specific date beyond the definite revised shipping date, pursuant to paragraph (b)(1)(iv) of this section or to a further delay until a specific date beyond the definite revised shipping date pursuant to paragraph (b)(2) of this section, that date to which the buyer has expressly consented shall supersede the definite revised shipping date for purposes of paragraph (b)(2) of this section.

(i) Any offer to the buyer of said renewed option shall provide the buyer with a new definite revised shipping date, but where the seller lacks a reasonable basis for providing a new definite revised shipping date, the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the further delay.

(ii) The offer of a renewed option shall expressly inform the buyer that, unless the seller receives, prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date, notification from the buyer specifically consenting to the further delay, the buyer will be deemed to have rejected any further delay, and to have cancelled the order if the seller is in fact unable to ship prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date. Provided, however, that where the seller offers the buyer the option to consent to an indefinite delay the offer shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the old definite revised shipping date or any date superseding the old definite revised shipping date.

(iii) Paragraph (b)(2) of this section shall not apply to any situation where a seller, pursuant to the provisions of paragraph (b)(1)(iv) of this section, has previously obtained consent from the buyer to an indefinite extension beyond the first revised shipping date.

(3) Wherever a buyer has the right to exercise any option under this part or to cancel an order by so notifying the seller prior to shipment, to fail to furnish the buyer with adequate means, at the seller's expense, to exercise such option or to notify the seller regarding cancellation.

(4) Nothing in paragraph (b) of this section shall prevent a seller, where it is unable to make shipment within the time set forth in paragraph (a)(1) of this section or within a delay period consented to by the buyer, from deciding to consider the order cancelled and providing the buyer with notice of said decision within a reasonable time after it becomes aware of said inability to ship, together with a prompt refund.

(c) To fail to deem an order cancelled and to make a prompt refund to the buyer whenever:

(1) The seller receives, prior to the time of shipment, notification from the buyer cancelling the order pursuant to any option, renewed option or continuing option under this part;

(2) The seller has, pursuant to paragraph (b)(1)(iii) of this section, provided the buyer with a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or has notified the buyer that it is unable to make any representation regarding the length of the delay and the seller:

(i) Has not shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and

(ii) Has not received the buyer's express consent to said shipping delay within said thirty (30) days;

(3) The seller is unable to ship within the applicable time set forth in paragraph (b)(2) of this section, and has not received, within the said applicable time, the buyer's consent to any further delay;

(4) The seller has notified the buyer of its inability to make shipment and has indicated its decision not to ship the merchandise;

(5) The seller fails to offer the option prescribed in paragraph (b)(1) of this section and has not shipped the merchandise within the applicable time set forth in paragraph (a)(1) of this section.

(d) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure compliance, in the ordinary course of business, with any requirement of paragraph (b) or (c) of this section will create a rebuttable presumption that the seller failed to comply with said requirement.

§ 435.3 Limited applicability.

(a) This part shall not apply to:

(1) Subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made in compliance with this part;

(2) Orders of seeds and growing plants;

(3) Orders made on a collect-on-delivery (C.O.D.) basis;

(4) Transactions governed by the Federal Trade Commission's Trade Regulation Rule entitled ''Use of Negative Option Plans by Sellers in Commerce,'' 16 CFR part 425.

(b) By taking action in this area:

(1) The Federal Trade Commission does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government. This part does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part. In addition, this part does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith.

(2) This part does supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part. This part also supersedes those provisions of any State law, municipal ordinance, or other local regulation requiring that a buyer be notified of a right which is the same as a right provided by this part but requiring that a buyer be given notice of this right in a language, form, or manner which is different in any way from that required by this part. In those instances where any State law, municipal ordinance, or other local regulation contains provisions, some but not all of which are partially or completely superseded by this part, the provisions or portions of those provisions which have not been superseded retain their full force and effect.

(c) If any provision of this part, or its application to any person, partnership, corporation, act or practice is held invalid, the remainder of this part or the application of the provision to any other person, partnership, corporation, act or practice shall not be affected thereby.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–24352 Filed 9–29–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Postponement of Effective Date; Impact on Prevailing Wage Determinations

AGENCY: Employment and Training Administration, Wage and Hour Division.

ACTION: Guidance.

SUMMARY: The Department of Labor (Department) recently postponed the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program Final Rule, January 19, 2011 (the Wage Rule), to November 30, 2011, due to pending legal challenges, pursuant to the Administrative Procedure Act. This document provides guidance to the employers who have received supplemental wage determinations based on the new prevailing wage methodology set forth in the Wage Rule, as to the prevailing wages that would apply before and after the new effective date of November 30, 2011.

DATES: This guidance is effective September 30, 2011.

FOR FURTHER INFORMATION CONTACT: For further information contact William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). For further information on Wage and Hour, contact Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3510, Washington, DC 20210; Telephone (202) 693–0071 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department published the Wage Rule on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which we calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification used in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. However, due to a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,[1] we issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, which proposed that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686, June 28, 2011. After a period of public comment, we published a Final Rule on August 1, 2011, which set the new effective date for the Wage Rule of September 30, 2011 (the Effective Date Rule).

Both the Wage Rule and the Effective Date Rule recently were challenged in two separate lawsuits[2] seeking to bar their implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation will be transferred to another court,[3] the Department issued a final rule published in the **Federal Register** on September 28, 2011, postponing the effective date of the rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705.

In anticipation of the September 30, 2011 effective date, the Office of Foreign Labor Certification issued supplemental wage determinations based on the new prevailing wage methodology set forth in the Wage Rule for approximately 3,500 previously certified H–2B applications. However, in light of our recent decision to postpone the effective date of the Wage Rule until November 30, 2011, any employer who has received a supplemental H–2B prevailing wage determination in anticipation of the September 30, 2011 effective date is not required to pay, and the Department's Wage and Hour Division will not enforce, the wage provided in that supplemental prevailing wage determination for any work performed beginning September 30, 2011 through November 29, 2011 by H–2B workers or U.S. workers recruited in connection with the H–2B

[1] *CATA* v. *Solis,* Dkt. No. 119, 2011 WL 2414555.

[2] See *Louisiana Forestry Association, Inc., et al. (LFA)* v. *Solis, et al.,* Civil Docket No. 11–1623 (WD LA, Alexandria Division); and *Bayou Lawn & Landscape Services, et al. (Bayou)* v. *Solis, et al.,* Civil Docket No. 11–445 (ND FL, Pensacola Division).

[3] On September 19, 2011, the plaintiffs in the *CATA* litigation moved to intervene in the *LFA* litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending.

application process. The employer is expected to continue to pay at least the prevailing wage as promised in the employer's labor certification (ETA Form 9142) for any work performed before November 30, 2011. However, employers who received a supplemental H–2B prevailing wage determination must pay at least that wage to any H–2B worker and any U.S. worker recruited in connection with the labor certification for work performed on or after November 30, 2011.

Signed at Washington, DC, this 27th of September 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

Nancy J. Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2011–25302 Filed 9–28–11; 11:15 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2011–N–0003]

New Animal Drugs for Use in Animal Feeds; Melengestrol; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for use of increased dose levels of melengestrol acetate and monensin in two-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective September 30, 2011.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200–422 for use of HEIFERMAX 500 (melengestrol acetate) and RUMENSIN (monensin, USP) single-ingredient Type A medicated articles to make two-way, combination drug Type C medicated feeds for heifers fed in confinement for slaughter. The supplemental ANADA provides for use of increased dose levels of melengestrol acetate and monensin. The supplemental application is approved as of July 1, 2011, and the regulations in 21 CFR 558.342 are amended to reflect the approval and minor revisions.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.342, in the table in paragraph (e)(1), remove and reserve paragraphs (e)(1)(v) and (e)(1)(vi); in paragraph (e)(1)(x), in the ''Sponsor'' column, add ''021641''; and revise paragraph (d)(2) to read as follows:

§ 558.342 Melengestrol.

* * * * *

(d) * * *

(2) A physically stable melengestrol acetate liquid Type B or C feed will not be subject to the requirements for mixing directions prescribed in paragraph (d)(1) of this section provided it has a pH of 4.0 to 8.0 and contains a suspending agent(s) sufficient to maintain a viscosity of not less than 300 centipoises per second for 3 months.

* * * * *

Dated: September 20, 2011.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2011–25220 Filed 9–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9551]

RIN 1545–BF94

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to deductions for the costs of producing qualified film and television productions. These final regulations reflect changes to the law made by the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005, and affect persons that produce film and television productions within the United States.

DATES: *Effective Date:* These regulations are effective on September 29, 2011.

Applicability Dates: For dates of applicability, see § 1.181–6.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2059. The collection of information in these final regulations is in §§ 1.181–1, 1.181–2, and 1.181–3. This information is required to enable the IRS to verify that a taxpayer is entitled to the deduction.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and records relating to a collection of information must be

retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 permits the deduction of certain production costs by the producer of a qualified film or television production.

Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (October 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577) (December 21, 2005).

On February 9, 2007, the IRS and the Treasury Department published in the **Federal Register** (TD 9312, 72 FR 6155) temporary regulations relating to deductions for the costs of producing film and television productions under section 181. On the same date, the IRS published a notice of proposed rulemaking related to this topic in the **Federal Register** (REG–115403–05, 72 FR 6190). No public hearing was requested or held. Several written comments were received. All comments are available at *http://www.regulations.gov* or upon request. After consideration of all the comments received, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions to the proposed regulations are discussed in this preamble. Unless otherwise specifically stated, references to the temporary regulations are to TD 9312.

Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law 110–343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (December 17, 2010). The IRS and the Treasury Department intend to publish in the **Federal Register** proposed and temporary regulations pertaining to film and television productions commencing after December 31, 2007.

Explanation and Summary of Comments

General Overview

Congress enacted section 181 to promote film and television production in the United States. For a qualified film or television production commenced before January 1, 2008 (a ''pre-amendment production''), section 181 permits an owner to elect to deduct production costs paid or incurred by that owner in the taxable year the costs are paid or incurred, in lieu of capitalizing the costs and recovering them through depreciation allowances, if the aggregate production costs do not exceed $15 million ($20 million if a significant amount of the aggregate production costs are paid or incurred in certain designated areas) for each qualifying production (the ''aggregate production costs limit''). A film or television production (a ''production'') is a qualified film or television production if 75 percent of the total compensation for the production is compensation for services performed in the United States by actors, directors, producers, and other production personnel.

The final regulations use the term ''pre-amendment production'' to distinguish productions that are subject to the maximum aggregate production costs limit in section 181 as added by the American Jobs Creation Act of 2004 and modified by the Gulf Opportunity Zone Act of 2005 from productions that are subject to the maximum production costs deduction limit in the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. Several provisions of the final regulations are specific to pre-amendment productions and are designated accordingly.

Deduction for Qualified Film and Television Production Costs

In response to a comment, the final regulations use the term ''aggregate production costs'' as the total production costs paid or incurred by any person without regard to whether that person deducted (or was an owner entitled to deduct) those costs under section 181. As suggested by the same comment, the final regulations clarify that costs paid on behalf of an owner (for example, participations and residuals paid by a distributor) are included in aggregate production costs, notwithstanding that such costs are not deductible production costs for the owner. Thus, the amount of an owner's deductible costs under section 181 may be less than the aggregate production costs. Further, costs are not deductible under section 181 for a pre-amendment production with aggregate production costs in excess of the aggregate production costs limit of $15 million (or, if applicable, $20 million), even if the owner's production costs are less than the aggregate production costs limit.

In response to a comment, the final regulations clarify that, for purposes of the aggregate production costs limit, participations and residuals are calculated based on amounts actually paid or incurred rather than upon the amount the owner would include in basis under section 167(g)(7)(A) based on the estimated income from the production. This clarification is consistent with the limitation that the owner may claim as a deduction only participations and residuals actually paid or incurred.

Several commentators suggested that requiring owners to include participations and residuals in aggregate production costs in determining whether the aggregate production costs limit is exceeded creates uncertainty concerning whether the election is available for the production (and whether recapture may ultimately apply), and that this uncertainty will discourage persons interested in the benefits of section 181 from investing in potential qualified productions. This issue is addressed prospectively by section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which replaces the aggregate production costs limit with a deduction limit for productions commencing on or after January 1, 2008. However, absent a specific statutory directive to the contrary, all costs required to be capitalized to cost basis under section 263A, including participations and residuals, must be included in the aggregate production costs of pre-amendment productions for purposes of determining if the aggregate production costs limit is exceeded.

In response to a comment, the final regulations provide that, solely for purposes of determining if the higher aggregate production costs limit for productions in certain areas is available for a production, all compensation costs for actors, directors, producers, and other production personnel, are allocated entirely to first-unit principal photography rather than allocating a portion of these costs to rehearsal and other preproduction activities.

The deduction under section 181 is subject to the passive loss limitations imposed by section 469 and the at-risk rules imposed by section 465. An owner

may claim the section 181 deduction against ordinary income under the rules of section 469 only if that owner materially participates in the production process; otherwise, the deduction is available only against passive income. Furthermore, an owner may only claim the section 181 deduction to the extent that the owner is at-risk within the meaning of section 465. Several commentators suggested that the final regulations exempt the deduction under section 181 from the passive loss and at-risk limitations, or that the final regulations otherwise determine that these limitations do not apply for section 181. Because there is no specific statutory direction specifying that these limitations do not apply, the section 181 deduction continues to be subject to the passive loss and at-risk limitations.

Election

To ensure that multiple persons do not claim aggregate deductions in excess of the deduction limit, the final regulations retain language from the temporary regulations recognizing that some productions are produced by multiple persons that have not entered into a partnership agreement and do not file as a partnership. However, the IRS is not bound by the reporting position of these persons; whether the activities of these persons rise to the level of a partnership will be determined in accordance with § 301.7701–3 of this chapter.

Commentators asked whether there is a time limit between when a production is set for production and the time expected for commencement of principal photography and whether a minimum budget for production costs is required. Neither section 181 nor the final regulations impose such a time limit or minimum budget requirement.

Qualified Film or Television Production (Definitions)

Generally, a motion picture film or video tape (including digital video) for which the production costs are subject to capitalization under section 263A, or would be subject to capitalization if section 263A applied to the owner of the production, is a production for purposes of section 181. Thus, in response to a comment, the final regulations provide that a motion picture film or video tape (including digital video) acquired after ''initial release or broadcast'' is not a production. The final regulations define ''initial release or broadcast'' as the first commercial exhibition or broadcast to an audience. The object of this provision is to maximize the availability of the election under section 181 to advance the goal of the statute (to promote film and television production in the United States) while preventing the use of section 181 in cases that do not advance the goal of the statute, such as the purchase of an existing film library. Under the final regulation, the term ''initial release or broadcast'' does not include certain limited exhibitions primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production. This exception is added to permit producers to exhibit productions at film festivals to interested buyers without compromising the ability of those buyers to use section 181, as well as to permit producers to test audience reaction to the production in order to determine if further production activities are needed. A person acquiring a completed motion picture film or video tape (including digital video) prior to its initial release or broadcast is considered an owner for purposes of section 181 and may treat the acquired asset as a production, even if the acquiring person does not pay or incur costs that are subject to section 263A.

A commentator asked whether video games or computer games are productions for purposes of section 181. They are not because they are not motion picture films or video tapes. However, to the extent that a game producer produces or acquires (prior to initial release or broadcast) a motion picture film or video tape (including digital video) the production costs of which are subject to capitalization under section 263A (or that would be subject to capitalization if section 263A applied to the owner of the production) for inclusion in a game (for example, as a cinematic within the game), then the cost of producing that motion picture film or video tape may be eligible for section 181.

The IRS and the Treasury Department rejected a suggestion that, rather than allocating the cost of production services to the place where the principal photography occurs for purposes of determining whether the production is a qualified production, the final regulations should instead require that the majority of principal photography occur in the United States. The statute defines the term ''qualified film or television production'' with reference to ''qualified compensation,'' defined as the amount of compensation for services paid to certain persons. The final regulations use the same definition, and require the owner to allocate compensation for services to those persons to the place where principal photography occurs in determining the amount of qualified compensation for the production. This approach is consistent with the statute and simplifies the calculation for the owner and prevents uncertainty that would otherwise arise from allocations to rehearsal and other preproduction activities.

Special Rules

The final regulations clarify that an owner must recapture the entire amount of any section 181 deduction when the owner sells a production prior to the initial release or broadcast in order to preserve the buyer's ability to deduct the acquisition cost of the production under section 181.

Effective/Applicability Date

These final regulations apply to qualified film and television productions for which principal photography or, for an animated production, in-between animation, commenced on or after September 29, 2011. The owner of a qualified film or television production for which principal photography or, for an animated production, in-between animation, commenced on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, may apply the proposed regulations published on February 9, 2007, or, in the alternative, may apply these final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The final regulations impose a collection of information on small entities in order to demonstrate eligibility for tax benefits under the statute, and this collection of information will require recordkeeping. This collection of information is discussed elsewhere in this preamble. However, the recordkeeping required by this collection of information does not differ significantly from the recordkeeping that a taxpayer must perform in order to determine whether the taxpayer is eligible to claim a deduction under the statute. Consequently, the economic impact on

small entities resulting from the recordkeeping required under this regulation is de minimis. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.181–0 is added to read as follows:

§ 1.181–0 Table of contents.

This section lists the table of contents for §§ 1.181–1 through 1.181–6.

§ 1.181–1 Deduction for qualified film and television production costs.

(a) Deduction.
(1) In general.
(2) Owner.
(3) Production costs.
(4) Aggregate production costs.
(5) Pre-amendment production.
(6) [Reserved].
(7) Initial release or broadcast.
(8) Special rule.
(b) Limit on amount of aggregate production costs and amount of deduction.
(1) In general.
(i) Pre-amendment production.
(ii) [Reserved].
(iii) Special rules.
(2) Higher limit for productions in certain areas.
(i) In general.
(ii) Significantly paid or incurred for live action productions.
(iii) Significantly paid or incurred for animated productions.
(iv) Significantly paid or incurred for productions incorporating both live action and animation.
(v) Establishing qualification.
(vi) Allocation.
(c) Effect on depreciation or amortization of a qualified film or television production.
(1) Pre-amendment production.
(2) [Reserved].

§ 1.181–2 Election to deduct production costs.

(a) Election.
(1) In general.
(2) Exception.
(b) Time of making election.
(1) In general.
(2) Special rule.
(3) Six-month extension.
(c) Manner of making election.
(1) In general.
(2) Information required.
(i) Initial election.
(ii) Subsequent taxable years.
(3) Deductions by more than one person.
(d) Revocation of election.
(1) In general.
(2) Consent granted.

§ 1.181–3 Qualified film or television production.

(a) In general.
(b) Production.
(1) In general.
(2) Special rules for television productions.
(3) Exception for certain sexually explicit productions.
(c) Compensation.
(d) Qualified compensation.
(e) Special rule for acquired productions.
(f) Other definitions.
(1) Actors.
(2) Production personnel.
(3) United States.

§ 1.181–4 Special rules.

(a) Recapture.
(1) Applicability.
(i) In general.
(ii) Special rule.
(2) Principal photography not commencing prior to the date of expiration of section 181.
(3) Amount of recapture.
(b) Recapture under section 1245.

§ 1.181–5 Examples.

§ 1.181–6 Effective/applicability date.

(a) In general.
(b) Application of proposed regulations to pre-effective date productions.
(c) Application of §§ 1.181–1 through 1.181–5 to certain pre-effective date productions.

§ 1.181–0T [Removed]

■ **Par. 3.** Section 1.181–0T is removed.

■ **Par. 4.** Section 1.181–1 is added to read as follows:

§ 1.181–1 Deduction for qualified film and television production costs.

(a) *Deduction*—(1) *In general.* (i) An owner (as defined in paragraph (a)(2) of this section) of any film or television production (production, as defined in § 1.181–3(b)) that the owner reasonably expects will be, upon completion, a qualified film or television production (as defined in § 1.181–3(a)) may elect to treat production costs paid or incurred by that owner (subject to the limits imposed under paragraph (b) of this section) as an expense that is deductible for the taxable year in which the costs are paid (for an owner who uses the cash receipts and disbursements method of accounting) or incurred (for an owner who uses an accrual method of accounting). The deduction under section 181 is subject to recapture if the owner's expectations are later determined to be inaccurate.

(ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), and the maximum amount of aggregate production costs (as defined in paragraph (a)(4) of this section) that may be paid or incurred for a pre-amendment production (as defined in paragraph (a)(5) of this section) for which the owner makes an election under section 181. Section 1.181–2 provides rules for making the election under section 181. Section 1.181–3 provides definitions and rules concerning qualified film and television productions. Section 1.181–4 provides special rules, including rules for recapture of the deduction. Section 1.181–5 provides examples of the application of §§ 1.181–1 through 1.181–4, while § 1.181–6 provides the effective date of §§ 1.181–1 through 1.181–5.

(2) *Owner.* (i) For purposes of this section and §§ 1.181–2 through 1.181–6, an owner of a production is any person that is required under section 263A to capitalize the costs of producing the production into the cost basis of the production, or that would be required to do so if section 263A applied to that person.

(ii) Further, a person that acquires a finished or partially-finished production is treated as an owner of that production for purposes of this section and

§§ 1.181–2 through 1.181–6, but only if the production is acquired prior to its initial release or broadcast (as defined in paragraph (a)(7) of this section). Moreover, a person that acquires only a limited license or right to exploit a production, or receives an interest or profit participation in a production, as compensation for services, is not an owner of the production for purposes of this section and §§ 1.181–2 through 1.181–6.

(3) *Production costs.* (i) For purposes of this section and §§ 1.181–2 through 1.181–6, the term *production costs* means all costs that are paid or incurred by an owner in producing a production that are required, absent the provisions of section 181, to be capitalized under section 263A, or that would be required to be capitalized if section 263A applied to the owner, and, if applicable, all costs that are paid or incurred by an owner in acquiring a production prior to its initial release or broadcast. Production costs include, but are not limited to, participations and residuals paid or incurred, compensation paid or incurred for services, compensation paid or incurred for property rights, non-compensation costs, and costs paid or incurred in connection with obtaining financing for the production (for example, premiums paid or incurred to obtain a completion bond for the production).

(ii) Production costs do not include costs paid or incurred to distribute or exploit a production (including advertising and print costs).

(iii) Production costs do not include the costs to prepare a new release or new broadcast of an existing production after the initial release or broadcast of the production (for example, the preparation of a DVD release of a theatrically-released film, or the preparation of an edited version of a theatrically-released film for television broadcast). Costs paid or incurred to prepare a new release or a new broadcast of a production after its initial release or broadcast, therefore, are not taken into account for purposes of paragraph (b)(1) of this section, and may not be deducted under this paragraph (a).

(iv) If a pre-amendment production is acquired from any person prior to its initial release or broadcast, the acquiring person must use as its initial aggregate costs the greater of—

(A) The cost of acquisition; or

(B) The seller's aggregate production costs.

(v) Production costs do not include costs that the owner has deducted or begun to amortize prior to the taxable year the owner makes an election under § 1.181–2 for the production (for example, costs described in § 1.181–2(a)(2)). These costs, however, are included in aggregate production costs to the extent they would have been treated as production costs by the owner notwithstanding this paragraph (a)(3)(v).

(4) *Aggregate production costs.* The term *aggregate production costs* means all production costs described in paragraph (a)(3) of this section paid or incurred by any person, whether paid or incurred directly by an owner or indirectly on behalf of an owner.

(5) *Pre-amendment production.* The term *pre-amendment production* means a qualified film or television production commencing after October 22, 2004, and before January 1, 2008.

(6) [Reserved].

(7) *Initial release or broadcast.* Solely for purposes of this section and §§ 1.181–2 through 1.181–6, the term *initial release or broadcast* means the first commercial exhibition or broadcast of a production to an audience. However, the term ''initial release or broadcast'' does not include limited exhibition prior to commercial exhibition to general audiences if the limited exhibition is primarily for purposes of publicity, marketing to potential purchasers or distributors, determining the need for further production activity, or raising funds for the completion of production. For example, the term initial release or broadcast does not include exhibition to a test audience to determine the need for further production activity, or exhibition at a film festival for promotional purposes, if the exhibition precedes commercial exhibition to general audiences.

(8) *Special rule.* The provisions of this paragraph (a) apply notwithstanding the treatment of participations and residuals permitted under the income forecast method in section 167(g)(7)(D).

(b) *Limit on amount of aggregate production costs and amount of deduction*—(1) *In general*—(i) *Pre-amendment production.* Except as provided under paragraph (b)(2) of this section, no deduction is allowed under section 181 for any pre-amendment production, the aggregate production costs of which exceed $15,000,000. See also paragraph (a)(3)(iv) of this section. For a pre-amendment production for which the aggregate production costs do not exceed $15,000,000 (or, if applicable under paragraph (b)(2) of this section, $20,000,000), an owner may deduct under section 181 all of the production costs paid or incurred by that owner.

(ii) [Reserved].

(iii) *Special rules.* The owner's deduction under section 181 is limited to the owner's acquisition costs of the production plus any further production costs paid or incurred by the owner. The deduction under section 181 is not available for any portion of the acquisition costs, and any subsequent production costs, of a production with an initial release or broadcast that is prior to the date of acquisition.

(2) *Higher limit for productions in certain areas*—(i) *In general.* This section is applied by substituting $20,000,000 for $15,000,000 in paragraph (b)(1) of this section for any production the aggregate production costs of which are significantly paid or incurred in an area eligible for designation as—

(A) A low income community under section 45D; or

(B) A distressed county or isolated area of distress by the Delta Regional Authority established under 7 U.S.C. section 2009aa–1.

(ii) *Significantly paid or incurred for live action productions.* The aggregate production costs of a live action production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography for the production are paid or incurred in connection with first-unit principal photography that takes place in such areas; or

(B) At least 50 percent of the total number of days of first-unit principal photography for the production consists of days during which first-unit principal photography takes place in such areas.

(iii) *Significantly paid or incurred for animated productions.* For purposes of an animated production, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(iv) *Significantly paid or incurred for productions incorporating both live*

action and animation. For purposes of a production incorporating both live action and animation, the aggregate production costs of the production are significantly paid or incurred within one or more areas specified in paragraph (b)(2)(i) of this section if—

(A) At least 20 percent of the aggregate production costs paid or incurred in connection with first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production are paid or incurred in connection with such activities that take place in such areas; or

(B) At least 50 percent of the total number of days of first-unit principal photography, keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production consists of days during which such activities take place in such areas.

(v) *Establishing qualification.* An owner intending to utilize the higher aggregate production costs limit under this paragraph (b)(2) must establish qualification under this paragraph (b)(2).

(vi) *Allocation.* Solely for purposes of determining whether a production qualifies for the higher aggregate production costs limit provided under this paragraph (b)(2), compensation (as defined in § 1.181–3(c)) to actors (as defined in § 1.181–3(f)(1)), directors, producers, and other production personnel (as defined in § 1.181–3(f)(2)) is allocated entirely to first-unit principal photography.

(c) *Effect on depreciation or amortization of a qualified film or television production*—(1) *Pre-amendment production.* Except as provided in §§ 1.181–1(a)(3)(v) and 1.181–2(a)(2), an owner that elects to deduct production costs under section 181 for a pre-amendment production may not deduct production costs for that production under any provision of the Internal Revenue Code other than section 181 unless the recapture requirements of § 1.181–4(a) apply to the production.

(2) [Reserved].

§ 1.181–1T [Removed]

■ **Par. 5.** Section 1.181–1T is removed.

■ **Par. 6.** Section 1.181–2 is added to read as follows:

§ 1.181–2 Election to deduct production costs.

(a) *Election*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, an owner may make an election under section 181 to deduct production costs of a production only if that owner has not deducted in a previous taxable year any production costs for that production under any provision of the Internal Revenue Code (Code) other than section 181.

(2) *Exception.* An owner may make an election under section 181 despite prior deductions under any other provision of the Code for amortization of the costs of acquiring or developing screenplays, scripts, story outlines, motion picture production rights to books and plays, and other similar properties for purposes of potential future development or production of a production, if such costs were paid or incurred before the first taxable year for which an election may be made under § 1.181–2(b) and are included in aggregate production costs.

(b) *Time of making election*—(1) *In general.* The election to deduct production costs for a production under section 181 must be made by the due date (including any extension) for filing the owner's Federal income tax return for the first taxable year in which:

(i) Any aggregate production costs have been paid or incurred;

(ii) The owner reasonably expects (based on all of the facts and circumstances) that the production will be set for production and will, upon completion, be a qualified film or television production; and

(iii) For any pre-amendment production, the owner reasonably expects (based on all of the facts and circumstances) that the aggregate production costs paid or incurred for the pre-amendment production will, at no time, exceed the applicable aggregate production costs limit set forth under § 1.181–1(b)(1)(i) or (b)(2).

(2) *Special rule.* If paragraph (b)(1) of this section is not satisfied until a taxable year subsequent to the taxable year in which any aggregate production costs were first paid or incurred, the owner must make the election for the taxable year in which paragraph (b)(1) of this section is first satisfied, and any production costs paid or incurred prior to the taxable year in which the owner makes the election and not deducted in a prior taxable year are treated as production costs (except costs described in § 1.181–2(a)(2)) that are deductible under § 1.181–1(a)(1)(i) for the taxable year paragraph (b)(1) of this section is first satisfied and the election is made.

(3) *Six-month extension.* See § 301.9100–2 for a six-month extension of time to make the election in certain circumstances.

(c) *Manner of making election*—(1) *In general.* An owner must make the election under section 181 separately for each production. For a production owned by an entity, the election must be made by the entity. For example, if the production is owned by a partnership or S corporation, the partnership or S corporation must make the election.

(2) *Information required*—(i) *Initial election.* For each production to which the election applies, the owner must attach a statement to the owner's Federal income tax return for the taxable year of the election stating that the owner is making an election under section 181 and providing—

(A) The name (or other unique identifying designation) of the production;

(B) The date aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the taxable year (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2));

(D) The amount of qualified compensation (as defined in § 1.181–3(d)) paid or incurred for the production during the taxable year (including costs described in § 1.181–2(b)(2));

(E) The amount of compensation (as defined in § 1.181–3(c)) paid or incurred for the production during the taxable year (including costs described in § 1.181–2(b)(2));

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in § 1.181–1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in § 1.181–1(b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, that took place within such areas (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2)), and the aggregate production costs paid or incurred (or the total number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the taxable year (including costs described in §§ 1.181–1(a)(3)(v) and 1.181–2(b)(2));

(G) A declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) both that the production will be set for production (or has been set for production) and will be a qualified film or television production; and

(H) For any pre-amendment production, a declaration that the owner reasonably expects (based on all of the facts and circumstances at the time the election is made) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181–1(b)(1)(i) or (b)(2).

(ii) *Subsequent taxable years.* If the owner pays or incurs additional production costs in any taxable year subsequent to the taxable year for which production costs are first deducted under section 181, the owner must attach a statement to its Federal income tax return for that subsequent taxable year providing—

(A) The name (or other unique identifying designation) of the production that was used in the initial election, and any revised name (or unique identifying designation) subsequently used for the production;

(B) The date the aggregate production costs were first paid or incurred for the production;

(C) The amount of aggregate production costs paid or incurred for the production during the current taxable year;

(D) The amount of qualified compensation paid or incurred for the production during the current taxable year;

(E) The amount of compensation paid or incurred for the production during the current taxable year, and the aggregate amount of compensation paid or incurred for the production in all prior taxable years;

(F) If the owner expects that the aggregate production costs of the production will be significantly paid or incurred in (or, if applicable, if a significant portion of the total number of days of first-unit principal photography will occur in) one or more of the areas specified in § 1.181–1(b)(2)(i), the identity of the area or areas, the amount of aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for the applicable activities described in § 1.181–1(b)(2)(ii), (b)(2)(iii), or (b)(2)(iv), as applicable, that took place within such areas, and the aggregate production costs paid or incurred (or the number of days of first-unit principal photography engaged in) for such activities (whether or not they took place in such areas), for the current taxable year;

(G) A declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) both that the production will be set for production (or has been set for production) and will be a qualified film or television production; and

(H) For any pre-amendment production, a declaration that the owner continues to reasonably expect (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs paid or incurred for the pre-amendment production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181–1(b)(1)(i) or (b)(2).

(3) *Deductions by more than one person.* If more than one person will claim deductions under section 181 with respect to the production for the taxable year, each person claiming the deduction (but not the members of an entity who are issued a Schedule K–1 by the entity with respect to their interest in the production) must provide a list of the names and taxpayer identification numbers of all such persons, the dollar amount that each such person will deduct under section 181, and the information required by paragraph (c)(2) of this section for all such persons. Notwithstanding the preceding sentence, whether or not multiple persons form a partnership with respect to the production will be determined in accordance with § 301.7701–3 of this chapter.

(d) *Revocation of election*—(1) *In general.* An owner may revoke an election made under this section only with the consent of the Commissioner. Except as provided in paragraph (d)(2) of this section, an owner seeking consent to revoke an election made under this section must submit a letter ruling request, other than a Form 3115, ''Application for Change in Accounting Method,'' under the appropriate revenue procedure. See, for example, Rev. Proc. 2011–1, 2011–1 CB 1 (updated annually) (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(2) *Consent granted.* The Commissioner grants consent to an owner to revoke an election under this section for a particular production if the owner—

(i) Complies with the recapture provisions of § 1.181–4(a)(3) on a timely filed (including any extension) original Federal income tax return for the taxable year of the revocation; and

(ii) Attaches a statement to that Federal income tax return that includes the name of the production that was in the owner's original election statement, and any revised name (or other unique identifying designation) of the production, and a statement that the owner revokes the election under section 181 for that production, pursuant to § 1.181–2(d)(2).

§ 1.181–2T [Removed]

■ **Par. 7.** Section 1.181–2T is removed.

■ **Par. 8.** Section 1.181–3 is added to read as follows:

§ 1.181–3 Qualified film or television production.

(a) *In general.* The term *qualified film or television production* means any production (as defined in paragraph (b) of this section) for which not less than 75 percent of the aggregate amount of compensation (as defined in paragraph (c) of this section) paid or incurred for the production is qualified compensation (as defined in paragraph (d) of this section).

(b) *Production*—(1) *In general.* Except as provided in paragraph (b)(3) of this section, for purposes of this section and §§ 1.181–1, 1.181–2, 1.181–4, 1.181–5, and 1.181–6, the term *production* means any motion picture film or video tape (including digital video) production the production costs of which are subject to capitalization under section 263A, or that would be subject to capitalization if section 263A applied to the owner of the production. If, prior to its initial release or broadcast, a person acquires a completed motion picture film or video tape (including digital video) that the seller was entitled to treat as a production under this paragraph (b)(1), then the new owner may treat the acquired asset as a production within the meaning of this paragraph (b)(1).

(2) *Special rules for television productions.* Each episode of a television series is a separate production to which the rules, limits, and election requirements of this section and §§ 1.181–1, 1.181–2, 1.181–4, 1.181–5, and 1.181–6 apply. An owner may elect to deduct production costs under section 181 only for the first 44 episodes of a television series (including pilot episodes). A television series may include more than one season of programming.

(3) *Exception for certain sexually explicit productions.* A production does not include property for which records are required to be maintained under 18 U.S.C. 2257.

(c) *Compensation.* The term *compensation* means, for purposes of this section and § 1.181–2(c)(2), all amounts paid or incurred either directly by the owner or indirectly on the owner's behalf for services performed by actors (as defined in paragraph (f)(1) of this section), directors, producers, and other production personnel (as defined in paragraph (f)(2) of this section) for the production. Examples of indirect

payments paid or incurred on the owner's behalf are payments by a partner on behalf of an owner that is a partnership, payments by a shareholder on behalf of an owner that is a corporation, and payments by a contract producer on behalf of the owner. Payments for services are all elements of compensation as provided for in §§ 1.263A–1(e)(2)(i)(B) and (e)(3)(ii)(D). Compensation is not limited to wages reported on Form W–2, ''Wage and Tax Statement,'' and includes compensation paid or incurred to independent contractors. However, solely for purposes of paragraph (a) of this section, the term ''compensation'' does not include participations and residuals (as defined in section 167(g)(7)(B)). See § 1.181–1(a)(3) for additional rules concerning participations and residuals.

(d) *Qualified compensation.* The term *qualified compensation* means, for purposes of this section and § 1.181–2(c)(2), all compensation (as defined in paragraph (c) of this section) paid or incurred for services performed in the United States (as defined in paragraph (f)(3) of this section) by actors, directors, producers, and other production personnel for the production. A service is performed in the United States for purposes of this paragraph (d) if the principal photography to which the compensated service relates occurs within the United States and the person performing the service is physically present in the United States. For purposes of an animated film or animated television production, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances are performed is considered in lieu of the location of principal photography. For purposes of a production incorporating both live action and animation, the location where production activities such as keyframe animation, in-between animation, animation photography, and the recording of voice acting performances for the production is considered in addition to the location of principal photography.

(e) *Special rule for acquired productions.* A person who acquires a production from a prior owner must take into account all compensation paid or incurred by or on behalf of the seller and any previous owners in determining if the production is a qualified film or television production as defined in paragraph (a) of this section. Any owner that elects to deduct as production costs the costs of acquiring a production and any subsequent production costs must obtain from the seller detailed records concerning the compensation paid or incurred for the production and, for a pre-amendment production, concerning aggregate production costs, in order to demonstrate the eligibility of the production under section 181.

(f) *Other definitions.* The following definitions apply for purposes of this section and §§ 1.181–1, 1.181–2, 1.181–4, 1.181–5, and 1.181–6:

(1) *Actors.* The term *actors* means players, newscasters, or any other persons who are compensated for their performance or appearance in a production.

(2) *Production personnel.* The term *production personnel* means persons who are compensated for providing services directly related to the production, such as writers, choreographers, composers, casting agents, camera operators, set designers, lighting technicians, and make-up artists.

(3) *United States.* The term *United States* means the 50 states, the District of Columbia, the territorial waters of the continental United States, the airspace or space over the continental United States and its territorial waters, and the seabed and subsoil of those submarine areas that are adjacent to the territorial waters of the continental United States and over which the United States has exclusive rights, in accordance with international law, for the exploration and exploitation of natural resources. The term ''United States'' does not include possessions and territories of the United States (or the airspace or space over these areas).

§ 1.181–3T [Removed]

■ **Par. 9**. Section 1.181–3T is removed.

■ **Par. 10.** Section 1.181–4 is added to read as follows:

§ 1.181–4 Special rules.

(a) *Recapture*—(1) *Applicability*—(i) *In general.* The requirements of this paragraph (a) apply notwithstanding whether an owner has satisfied the revocation requirements of § 1.181–2(d). An owner that claimed a deduction under section 181 for a production in any taxable year in an amount in excess of the amount that would be allowable as a deduction for that year in the absence of section 181 must recapture the excess amount as provided for in paragraph (a)(3) of this section for the production in the first taxable year for which—

(A) For any pre-amendment production, the aggregate production costs of the production exceed the applicable aggregate production costs limit under § 1.181–1(b)(1)(i) or (b)(2);

(B) For any pre-amendment production, the owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) that the aggregate production costs of the production will not, at any time, exceed the applicable aggregate production costs limit set forth under § 1.181–1(b)(1)(i) or (b)(2);

(C) The owner no longer reasonably expects (based on all of the facts and circumstances at the end of the current taxable year) either that the production will be set for production or that the production will be a qualified film or television production; or

(D) The owner revokes the election pursuant to § 1.181–2(d).

(ii) *Special rule.* An owner that claimed a deduction under section 181 and disposes of the production prior to its initial release or broadcast must recapture the entire amount specified under paragraph (a)(3) of this section in the year the owner disposes of the production before computing gain or loss from the disposition.

(2) *Principal photography not commencing prior to the date of expiration of section 181.* If an owner claims a deduction under section 181 for a production for which principal photography does not commence prior to the date of expiration of section 181, the owner must recapture deductions as provided for in paragraph (a)(3) of this section in the owner's taxable year that includes the date of expiration of section 181.

(3) *Amount of recapture.* An owner subject to the recapture requirements under this section must, for the taxable year in which recapture is required, include in the owner's gross income as ordinary income and add to the owner's adjusted basis in the property—

(i) For a production that is placed in service in a taxable year prior to the taxable year for which recapture is required, the difference between the aggregate amount the owner claimed as a deduction under section 181 for the production for all such prior taxable years and the aggregate depreciation deductions that would have been allowable for the production for such prior taxable years (or that the owner could have elected to deduct in the taxable year that the production was placed in service) for the production under the owner's method of accounting; or

(ii) For a production that has not been placed in service, the aggregate amount claimed as a deduction under section 181 for the production for all such prior taxable years.

(b) *Recapture under section 1245.* For purposes of recapture under section

1245, any deduction allowed under section 181 is treated as a deduction allowable for amortization.

§ 1.181–4T [Removed]

■ **Par. 11.** Section 1.181–4T is removed.

■ **Par. 12.** Section 1.181–5 is added to read as follows:

§ 1.181–5 Examples.

The following examples illustrate the application of §§ 1.181–1 through 1.181–4:

Example 1. X, a corporation that uses an accrual method of accounting and files Federal income tax returns on a calendar-year basis, is a producer of films. X is the owner (within the meaning of § 1.181–1(a)(2)) of film ABC. X incurs production costs in year 1, but does not commence principal photography for film ABC until year 2. In year 1, X reasonably expects, based on all of the facts and circumstances, that film ABC will be set for production and will be a qualified film or television production. Provided that X satisfies all other requirements of §§ 1.181–1 through 1.181–4 and § 1.181–6, X may deduct in year 1 the production costs for film ABC that X incurred in year 1.

Example 2. The facts are the same as in *Example 1.* In year 2, X begins, but does not complete, principal photography for film ABC. Most of the scenes that X films in year 2 are shot outside the United States and, as of December 31, year 2, less than 75 percent of the total compensation paid for film ABC is qualified compensation. Nevertheless, X still reasonably expects, based on all of the facts and circumstances, that film ABC will be a qualified film or television production. Provided that X satisfies all other requirements of §§ 1.181–1 through 1.181–4 and § 1.181–6, X may deduct in year 2 the production costs for film ABC that X incurred in year 2.

Example 3. The facts are the same as in *Example 2.* In year 3, X continues, but does not complete, production of film ABC. Due to changes in the expected production costs of film ABC, X no longer expects film ABC to qualify under section 181. X files a statement with its return for year 3 identifying the film and stating that X revokes its election under section 181. X includes in income in year 3 the deductions claimed in year 1 and in year 2 as provided for in § 1.181–4(a)(3). X has successfully revoked its election pursuant to § 1.181–2(d).

§ 1.181–5T [Removed]

■ **Par. 13.** Section 1.181–5T is removed.

■ **Par. 14.** Section 1.181–6 is added to read as follows:

§ 1.181–6 Effective/applicability date.

(a) *In general.* Sections 1.181–1 through 1.181–5 apply to productions, the first day of principal photography for which occurs on or after September 29, 2011. For an animated production, this paragraph (a) applies by substituting ''in-between animation'' in place of ''principal photography''. Productions involving both animation and live-action photography may use either standard.

(b) *Application of proposed regulations to pre-effective date productions.* Except as provided in paragraph (c) of this section, an owner may apply 26 CFR 1.181.1T through 1.181–5T (as contained in 26 CFR part 1 revised April 1, 2008) to productions, the first day of principal photography (or in-between animation) for which occurs on or after October 22, 2004, and before February 9, 2007, or on or after January 1, 2009, and before September 29, 2011, provided that the owner applies all provisions of the proposed regulations to the productions.

(c) *Application of §§ 1.181–1 through 1.181–5 to certain pre-effective date productions.* An owner may apply §§ 1.181–1 through 1.181–5 to productions, the first day of principal photography (or in-between animation) for which occurs on or after February 9, 2007, and before September 29, 2011, provided that the owner applies all provisions of §§ 1.181–1 through 1.181–5 to the productions.

§ 1.181–6T [Removed]

■ **Par. 15.** Section 1.181–6T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 16.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 17.** In § 602.101, paragraph (b) is amended as follows:

1. The following entries to the table are removed:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.181–1T and 1.181–2T	1545–2059
* * * * *	

2. The following entries are added in numerical order to table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.181–1	1545–2059
1.181–2	1545–2059
1.181–3	1545–2059
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: September 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–24930 Filed 9–29–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0885]

RIN 1625–AA08

Special Local Regulations for Marine Events, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the swim portions of ''Beach 2 Battleship Full and Half Iron Distance Triathlon'', to be held on the waters adjacent to Wrightsville Beach, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on Banks, Motts, and Wrightsville Channels during the swimming portion of this event.

DATES: This rule is effective from 7 a.m. until 11 a.m. on October 29, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0885 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0885 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone (252) 247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying the rule for the purpose of publishing an NPRM would be contrary to the public interest. Immediate action is needed to minimize potential dangers to the participants by transiting vessels during the event. Approximately three thousand participants are expected be in the water during the event, which traverses land and sea. It is in the public interest to have these regulations in effect for the protection of participants and mariners, alike. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions. On scene Coast Guard and local law enforcement vessels will also provide actual notice to any mariners who might be unaware of this widely publicized event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The potential dangers posed to participants by transiting vessels make a regulatory action necessary, but the preparations for the event make rescheduling impractical. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the approximately three thousand event participants in the event area. However, the Coast Guard will provide advance notifications to users of the affected waterways via marine information broadcasts, local notice to mariners, along with sponsor event notifications using commercial radio stations and area newspapers.

Background and Purpose

Approximately three thousand persons are expected to participate in the Wilmington YMCA ''Beach 2 Battleship Full and Half Iron Distance Triathlon'', scheduled for October 29, 2011. Those participants will engage in a three-part race, including run, bike, and swim portions. During the swim portion of the event, two groups of 1600 swimmers will enter the waters of Banks Channel and swim northeast to Seapath Marina. Those swimmers will be in the path of potential mariners wishing to transit the area on October 29, 2011. Therefore, this regulation in intended to restrict vessel traffic in the race areas during the performance of the race. Restricting vessel traffic will ensure the safety of those persons participating in the event as well as those spectators and others transiting the *area.*

Discussion of Rule

On October 29, 2011, the Wilmington YMCA will sponsor the ''Beach 2 Battleship Full and Half Iron Distance Triathlon'' on the waters of Banks, Motts and Wrightsville Channels adjacent to Wrightsville Beach, North Carolina. The swim portion of the event will consist of two groups of 1600 swimmers entering Banks Channel southwest of the Coast Guard Station and swimming northeast along Wrightsville Channel and Motts Channel to Seapath Marina. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation prevents traffic from transiting a portion of Banks, Motts, and Wrightsville Channels during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast, area newspapers, local radio and television stations so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit this section of Banks, Motts and Wrightsville Channel, from 7 a.m. to 11 a.m. on October 29, 2011.

This rule will not have a significant economic impact on substantial number of small entities for the following reasons. Although the regulated area will apply to Banks, Motts and Wrightsville Channels, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area after all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h) of the Instruction. The special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with vessels. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T05–0885 to read as follows:

§ 100.35T05–0855 Wrightsville Channel, Wrightsville Beach, NC.

(a) *Regulated area.* The regulated area is established for the waters of Banks, Motts and Wrightsville Channels, adjacent to Wrightsville Beach, NC, from the southern tip of Wrightsville Beach approximate position latitude 34°11′15″ N, longitude 077°48′51″ W,

thence northeast to Seapath Marina, Wrightsville Beach, NC. Approximate position latitude 34°11′45″ N, longitude 077°48′27″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any person or vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all swimmers and support vessels participating in the ''Beach 2 Battleship Full and Half Iron Distance Triathlon'' under the auspices of the marine event permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander. No person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must: (i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Enforcement Period.* This section will be enforced from 7 a.m. to 11 a.m. on October 29, 2011.

Dated: September 13, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–25184 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0888]

Drawbridge Operation Regulation; Chickasaw Creek, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, issued a temporary deviation from the regulation governing the operation of the CSX Railroad Swing Span Bridge across Chickasaw Creek, mile 0.0, at Mobile, Alabama. The deviation is necessary to repair structural members of the bridge. This deviation allows the bridge to remain closed for ten consecutive hours for repairs to structural members of the bridge.

DATES: This deviation is effective from 7 a.m. until 5 p.m. on Sunday, October 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0888 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0888 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David Frank, Bridge Administration Branch; telephone 504–671–2128, e-mail *David.m.frank@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: CSX Transportation requested a temporary deviation from the operating schedule for the Swing Span Bridge across Chickasaw Creek, mile 0.0, in Mobile, Alabama. The bridge has a vertical clearance of 6 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the bridge to remain closed to navigation from 7 a.m. until 5 p.m. on Sunday, October, 30, 2011. At all other times, the bridge will open on signal for the passage of vessels.

The closure is necessary in order to effect repairs to structural members of the bridge. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists mainly of tugs with tows and ships. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. There are no alternate routes available to vessel traffic. The bridge will not be able to open for emergencies.

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

Dated: September 19, 2011.

David M. Frank,

Bridge Administrator.

[FR Doc. 2011–25181 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0625]

Drawbridge Operation Regulations; Navesink (Swimming) River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Oceanic Bridge at mile 4.5 across the Navesink (Swimming) River between Oceanic and Locust Point, New Jersey. The deviation is necessary to facilitate bridge rehabilitation. This deviation allows the bridge to open only one of the two moveable spans for the passage of vessel traffic.

DATES: This deviation is effective from October 31, 2011 through April 27, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0625 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0625 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Joe Arca, Project Officer, First Coast Guard District, *joe.m.arca@uscg.mil,* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Oceanic Bridge, across the Navesink (Swimming) River, mile 4.5, between Oceanic and Locust Point, New Jersey, has a vertical clearance in the closed position of 22 feet at mean high water and 24 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.734.

The vessel traffic that normally transits the bridge are seasonal recreational vessels.

The owner of the bridge, County of Monmouth New Jersey, requested a temporary deviation from the regulations to facilitate bridge rehabilitation repairs. During the bridge repairs only one moveable span can be opened for the passage of vessel traffic.

The navigation channel under the bridge provides 75 feet of horizontal clearance with unobstructed vertical clearance in the open position.

During this temporary deviation the horizontal clearance in the main channel will provide 37.5 feet of horizontal clearance keeping one moveable span in the closed position.

The Coast Guard believes that this temporary deviation meets the reasonable needs of navigation because the recreational users that normally use this bridge do not operate during the winter months when this deviation will be in effect and the 37.5 feet of horizontal clearance should be sufficient for the seasonal recreational vessel traffic that uses this waterway.

Under this temporary deviation the Oceanic Bridge may open only one of the two moveable spans for the passage of vessel traffic between October 31, 2011 and April 27, 2012.

Vessels that can pass under the bridge in the closed position may do so at any time.

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

Dated: September 19, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–25177 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0846]

Drawbridge Operation Regulations; Narrow Bay, Smith Point, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Smith Point Bridge, 6.1, across Narrow Bay, between Smith Point and Fire Island, New York. The deviation is necessary to facilitate bridge rehabilitation. This deviation allows the bridge to open only one of the two moveable spans for the passage of vessel traffic.

DATES: This deviation is effective from September 26, 2011 through December 21, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0846 and are available online at *http://www.regulations.gov,* inserting USCG–2011–0846 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leeung-Yee, Project Officer, First Coast Guard District, *judy.k.leung-yee@uscg.mil,* or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Smith Point Bridge, across Narrow Bay, mile 6.1, between Smith Point and Fire Island, New York, has a vertical clearance in the closed position of 16 feet at mean high water and 18 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(d).

The waterway users are recreational vessels of various sizes.

The owner of the bridge, Suffolk County Department of Public Works, requested a temporary deviation from the regulations to facilitate bridge rehabilitation, repairs to the bascule spans. During the bridge repairs only one moveable span will be opened for the passage of vessel traffic.

The main navigation channel provides 55 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

During this temporary deviation the main channel will only provide 27.5 feet of horizontal clearance with unobstructed vertical clearance during a bridge opening.

The Coast Guard believes that this temporary deviation should meet the reasonable needs of navigation because the recreational users that normally use this bridge are recreational vessels that can safely pass through a 27.5 foot horizontal clearance due to their relative small size. In addition, most of the above recreational vessels do not operate during the fall and winter months when this deviation will be in effect.

Under this temporary deviation the Smith Point Bridge may open only one of the two moveable spans for the passage of vessel traffic between September 26, 2011 and December 21, 2011.

Vessels that can pass under the bridge in the closed position may do so at any time.

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

Dated: September 13, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–25179 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0841]

RIN 1625–AA00

Safety Zone; Mississippi River, Mile Marker 230 to Mile Marker 234, in the Vicinity of Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Mississippi River beginning at mile marker 230 and

ending at mile marker 234, in the vicinity of Baton Rouge, Louisiana. The temporary safety zone is needed to protect persons and vessels from the potential safety hazards associated with a maritime salvage operation. Entry into this zone is prohibited unless vessels have met the specified instructions or are specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: *Effective Date:* This rule is effective in the CFR from September 30, 2011 until 7 a.m. CST on November 25, 2011. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. CST on August 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0841 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0841 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant (LT) Chris Norton, Marine Safety Unit Baton Rouge, at 225–298–5400, *Christopher.R.Norton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice on August 22, 2011 that McKinney Salvage and Heavy Lift Inc. would be continuing maritime salvage operations in the vicinity of Baton Rouge. Due to the salvage of three separate barges and two equipment failures, the operation and required safety zone will require more time and encompass two more river miles than provided in the safety zone previously implemented at docket USCG–2011–0747. Short notice for the original safety zone was based on the river levels falling to a required height enabling the salvage operation to take place and, since then, the operation incurred two equipment failures. Publishing a NPRM would be impracticable because it would delay the immediate action necessary to protect the salvage crew, vessels, and mariners from the hazards associated with ongoing maritime salvage operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received notice on August 22, 2011 that McKinney Salvage and Heavy Lift Inc. would be continuing maritime salvage operations in the vicinity of Baton Rouge. Due to the salvage of three separate barges and two equipment failures, the operation and required safety zone will require more time and encompass two more river miles than provided in the safety zone previously implemented at docket USCG–2011–0747. Short notice for the original safety zone was based on the river levels falling to a required height enabling the salvage operation to take place and, since then, the operation incurred two equipment failures. Providing 30 days notice is impracticable because immediate action is needed to protect the salvage crew, vessels, and mariners from the hazards associated with ongoing maritime salvage operations.

Basis and Purpose

The Captain of the Port New Orleans has implemented a safety zone from mile marker 230 to 234, Lower Mississippi River to protect those vessels and mariners from the hazards associated with ongoing maritime salvage operations.

Discussion of Rule

The Captain of the Port New Orleans will implement a temporary safety Zone on the Lower Mississippi River (LMR) extending the entire width of the river from Mile Marker (MM) 230 to MM 234. Mariners will be subject to requirements that will be listed in Marine Safety Information Bulletins from 7 a.m. August 28, 2011 and continue to 7 a.m. November 25, 2011. This operation will continue 24 hours a day. Mariners must request permission to transit through the area from Vessel Traffic Service Lower Mississippi River in New Orleans on VHF channel 12 or 67. The temporary check-in points are no lower than MM 239 for southbound vessels and no higher than MM 228 for northbound vessels.

The Safety Zone is needed due to McKinney Salvage and Heavy Lift Inc. conducting ongoing maritime salvage operations in the vicinity of MM 230 to MM 234 on the LMR. The operations that will be conducted are critical to maintaining safe navigation on the LMR. Any wake, beyond that created at minimum safe speed, or external force exerted on the salvage platform can compromise the safety of the salvage crew.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule establishes a temporary safety zone on the Mississippi River from mile marker 230 to mile marker 234, in the vicinity of Baton Rouge, Louisiana. The additional safety restrictions do not prevent safe transit through the area. Due to its duration and limited scope, it does not pose a significant regulatory impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small

entities: The owners or operators of vessels intending to transit the Mississippi River between mile markers 230 to 234 from 7 a.m. CST on August 28, 2011 until 7 a.m. CST on November 25, 2011. This temporary safety zone will not have a significant economic impact on a substantial number of small entities because vessels are still able to transit the area under the safety restrictions listed in Marine Safety Information Bulletins and this rule will be in effect for only a short period of time. If you are a small business entity, contact LT Chris Norton, Marine Safety Unit Baton Rouge, at (225) 298–5400 or *Christopher.R.Norton@uscg.mil.*

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a temporary safety zone on the Mississippi River to protect persons and vessels from the potential safety hazards associated with maritime salvage operations and are over one week in duration. Under figure 2–1, paragraph 34(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be prepared and submitted to the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T11–0841 is added to read as follows:

§ 165.T11–0841 Safety Zone; Mississippi River, Mile Marker 230 to Mile Marker 234, in the vicinity of Baton Rouge, LA.

(a) *Location.* The following area is a temporary safety zone: All waters of the Mississippi River beginning at mile marker 230 and ending at mile marker 234, extending the entire width of the river, in the vicinity of Baton Rouge.

(b) *Effective Date.* This section is effective from 7 a.m. CST on August 28, 2011 until 7 a.m. CST on November 25, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless vessels have met the specific instructions or are authorized by the Captain of the Port New Orleans or designated representative as further explained below.

(2) Persons or vessels requiring entry into or passage through must have met the specific instructions or request permission from the Captain of the Port New Orleans or a designated representative. They may be contacted via VHF Channel 12, 67, or via telephone at (504) 365–2514.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port New Orleans and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(4) The instructions of the Captain of the Port in are as follows:

(i) The Captain of the Port New Orleans has implemented a temporary safety Zone on the Lower Mississippi River (LMR) extending the entire width of the river from Mile Marker (MM) 230 to MM 234. The LMR will be open to one-way traffic from 7 a.m. CST, August 28, 2011 and continue through 7 a.m. CST, November 25, 2011. This operation will continue 24 hours a day.

(ii) Vessels must request permission to transit through the area from Vessel Traffic Service Lower Mississippi River in New Orleans on VHF channel 12 or 67. The temporary check-in points are no lower than MM 239 for southbound vessels and no higher than MM 228 for northbound vessels.

(d)*Informational Broadcasts.* The Captain of the Port, New Orleans or a designated representative will inform the public through broadcast notices to mariners (BNM) and/or marine safety information bulletins (MSIB) of the effective period for the safety zone, requirements, and of any changes in the effective period, requirements or size of the safety zone.

Dated: August 27, 2011.

P. W. Gautier,

Captain, U.S. Coast Guard, Captain of the Port, New Orleans.

[FR Doc. 2011–25182 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2008–0321; FRL–9473–5]

RIN 2060–AP92

Protection of Stratospheric Ozone: The 2011 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing uses that qualify for the 2011 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2011. EPA is taking this action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-First Meeting of the Parties.

DATES: *Effective Date:* September 30, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0321. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742).

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the methyl bromide section of the ozone layer protection Web site at *http://www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other stratospheric ozone protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2011. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is finalizing the uses that qualify for the 2011 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or sold from pre-phaseout inventory for proposed critical uses in 2011.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2011 critical use exemption including farmers of vegetable crops, fruits and nursery stock and owners of stored food commodities and structures such as grain mills and processors. This rulemaking does not affect applications for future control periods.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on the phaseout of methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by states under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to federal and state requirements governing their sale, distribution, and use. Nothing in this rule implementing the Clean Air Act is intended to derogate from provisions in any other federal, state, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected this rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The provisions in this action are intended only to implement the CAA Title VI restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. EPA initially published the regulatory program in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide with reduction steps leading to a 2005 phaseout in industrialized countries and a 2015 phaseout for developing countries.

IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act (CAA) to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated

and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the ''Framework Rule'') that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the control periods from 2006 to 2010. Under authority of section 604(d)(6) of the CAA, this action lists approved critical uses in 2011 and specifies the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This rule reflects Decision XXI/11, taken at the Twenty-First Meeting of the Parties in November 2009. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this action. In this rule on critical uses for 2011, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the critical use exemption process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties (1997) the criteria for the exemption appeared in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on May 2, 2008 (73 FR 24282), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives, and efforts to minimize use and emissions.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review the CUNs of the Parties and make recommendations to the Parties on the nominations. The Parties then take Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provides an opportunity for public comment on the amounts of methyl bromide that the Agency is proposing to exempt for critical uses and the uses that the Agency is proposing as approved critical uses.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America,'' contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 23, 2009, the U.S. Government (USG) submitted the seventh *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2011 critical uses. In February 2009, MBTOC sent two sets of questions to the USG concerning technical and economic issues in the 2011 nomination, one for post-harvest uses and one for pre-plant uses. The USG transmitted responses to MBTOC on April 10, 2009. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The critical uses and amounts in this rule reflect the analysis contained in those documents.

EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), and information regarding changes to the registration or use of alternatives that have transpired after the 2011 U.S. nomination was written. EPA did not propose to estimate uptake of Iodomethane in California in 2011 due to uncertainties created by the California label. Specifically, the California label has larger buffer zones and lower use rates than the Federal label. EPA does not have efficacy studies at the California label's lower use rates and is uncertain how widely it will be adopted without that data.

Two commenters agreed that the California label and other state regulations constrain the adoption of iodomethane in that state. The registrant of iodomethane stated that they are continuing to work with California Department of Pesticide Regulations to improve applicability of iodomethane in that state. The comment, however, did not include any data on which EPA could base an estimate of uptake of iodomethane in California in 2011. Therefore, EPA is not reducing the amount of new production for 2011 for the uptake of iodomethane in California.

EPA received a comment stating the difficulty pet food facilities have using alternatives including longer periods of downtime needed to effectively use those fumigants or the presence of electronics that may corrode if exposed to phosphene. The commenter also noted that the use of sulfuryl fluoride for pet food is low given that pet food is not listed on the sulfuryl fluoride label as a commodity that can be fumigated. EPA's critical use nomination for structures includes these specific concerns about these alternatives and they, in part, form the basis for pet food being recognized as a critical use in 2011.

One commenter stated that some growers are having problems with pre-plant alternatives, specifically the re-emergence of plant pests after several years of fumigating with alternatives. The commenter requested that a survey of Florida growers that had been submitted to EPA in June 2011 in support of the 2013 CUN be added to the docket for this rule. EPA received these data too late to consider them for the 2011 rule but EPA is reviewing the data in support of the 2013 CUN. The contents of the survey are claimed CBI and therefore will be added to the confidential portion of a future rulemaking docket.

B. How does this rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. See 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), 74 FR 19878 (calendar year 2009), and 75 FR 23167 (calendar year 2010).

C. Critical Uses

In Decision XXI/11, taken in November 2009, the Parties to the Protocol agreed ''to permit, for the agreed critical use categories for 2011 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex. I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2011 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *'' The following uses are those set forth in table C of the annex to Decision XXI/11 for the United States:

- Commodities
- NPMA food processing structures (cocoa beans removed) [1]
- Mills and processors
- Dried cured pork
- Cucurbits
- Eggplant—field
- Forest nursery seedlings
- Nursery stock—fruits, nuts, flowers
- Orchard replant
- Ornamentals
- Peppers—field
- Strawberries—field
- Strawberry runners
- Tomatoes—field
- Sweet potato slips

EPA is modifying the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XXI/11. The amendments to the table of critical uses is based in part on the technical analysis contained in the 2011 CUN that assesses data submitted by applicants to the CUE program. EPA is removing ornamental growers in New York. MBTOC did not recommend this use for 2011, concluding that alternatives are available for replacing methyl bromide use in *Anemone coronaria.* The Parties did not authorize this use. EPA agrees with the Parties' conclusion, and is not listing this use as critical for 2011. Second, EPA is removing Michigan cucurbit growers, Michigan eggplant growers, Michigan ornamental growers (specifically, herbaceous perennial growers), Michigan tomato growers, Michigan pepper growers, and members of the Western Raspberry Nursery Consortium operating in Washington State. These users did not submit applications and were not part of the CUN. The Parties have not authorized them as critical uses for 2011 and EPA is not listing these uses as critical for this control period.

EPA received one comment agreeing that the listed critical uses have a continuing need for access to methyl bromide under a 2011 CUE. EPA also received two comments that there should be no uses of methyl bromide given its toxicity and effect on the stratospheric ozone layer. EPA disagrees that all methyl bromide use should stop. EPA's CUN addresses the need for methyl bromide for the proposed critical uses. In addition, the proposed critical uses were reviewed by the technical bodies to the Ozone Secretariat and authorized by the Parties to the Montreal Protocol. Concerns about the toxicity of methyl bromide are addressed under FIFRA and other authorities and are beyond the scope of this rulemaking. EPA is finalizing the proposed changes to the table.

EPA repeats the following clarifications made in previous years for ease of reference. The ''local township limits prohibiting 1,3-dichloropropene'' are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. In addition, ''pet food'' under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, ''rapid fumigation'' for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

D. Critical Use Amounts

Table C of the annex to Decision XXI/11 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol in 2009 as critical uses for 2011. When added together, the total authorized critical use for 2011 is 2,055,200 kg, which is equivalent to 8.1% of the U.S. 1991 methyl bromide consumption baseline. The maximum amount of new production or import authorized by the Parties is 1,855,200 kg (7.3% of baseline) as set forth in Table D of the annex to Decision XXI/11. The difference between the total authorized amount and the authorized amount of new production is the minimum that the Parties expect the U.S. to use from pre-phaseout inventory. This difference is 200,000 kg (0.8% of baseline). EPA

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

proposed to allocate 482,333 kg (1.9% of baseline) in the form of Critical Stock Allowances (CSA) for sale of existing pre-phaseout inventory for critical uses in 2011. EPA also proposed to exempt limited amounts of new production and import of methyl bromide for critical uses for 2011 in the amount of 1,500,000 kg (5.9% of baseline). EPA is finalizing the amount of new production and import contained in the proposed rule. For the reasons discussed below, EPA is increasing the CSA allocation from 482,333 kg to 555,200 kg (2.2% of baseline). Thus the total allocation for 2011 is 2,055,200 (8.1% of baseline).

As discussed in the proposed rule, EPA calculated the allocation amounts differently than in past CUE allocation rulemakings. Initially, EPA used the methodology established in the 2008 CUE Rule to determine the level of ''available stocks,'' from which the CSA and CUA allowances are calculated. As described in previous CUE allocation rules, one input to this methodology is the previous year's inventory drawdown. Consistent with past practice, EPA prepared an estimate of the pre-phaseout inventory on December 31, 2010.

Due to the timing of the 2011 CUE rulemaking, EPA issued a No Action Assurance letter December 22, 2010, to allow Critical Use Allowance holders to continue producing and importing methyl bromide beyond December 31, 2010, in the absence of allowances, subject to certain conditions. The amounts authorized in the December 22, 2010, letter, and a subsequent clarification letter dated January 13, 2011, were based on the estimates of the 2010 inventory drawdown. Specifically, EPA clarified that producers and importers ''may assume that the allocations for production and import will equal at least 1,500 MT.'' After EPA issued the No Action Assurance letter, companies submitted their annual end of year reports to EPA containing data about how much pre-phaseout inventory they held on December 31, 2010. These data show that the pre-phaseout inventory is greater than the estimated amounts that formed the basis of the No Action Assurance letter. If EPA were to use these data in the existing methodology for calculating ''available stocks,'' this would result in more ''available stocks'' and fewer allowances for new production or import as compared to the December 2010–January 2011 estimates. However, because regulated entities have been acting on the estimate developed for the No Action Assurance letter in good faith, EPA proposed the amount provided for in the No Action Assurance letter, as clarified by the January 2011 letter.

EPA received one comment about the increasing lateness of the CUE rules. The commenter described how producers and distributors need advanced notice of their allowances so they may plan their production and import schedule. Growers also need the approval of critical uses before fumigating with critical use methyl bromide. EPA is aware of the delay and is developing the 2012 CUE rule as quickly as possible. However, the Agency must conduct a notice and comment rulemaking for each year's allocation which takes a significant amount of time. The commenter encouraged EPA to move to a two-year allocation schedule, suggesting that we nominate two years together and issue a rule to address both years. To date the Parties have only approved critical uses through 2012 and the U.S. government has only submitted nominations through 2013. Therefore, EPA would be unable to write a rule covering the 2012 and 2013 control periods before 2012. In addition, moving to a two-year nomination system would require the U.S. to project the needs of critical users several years in advance. As a result, the nominations would be less accurate for that second year.

EPA received two comments that the total allocation for 2011 should be 2,055,200 kg, which is the amount the Parties authorized, rather than 1,982,333, which is what EPA proposed. The commenters expressed frustration that the EPA reduces the allocated amounts from those authorized by the Parties. One of the commenters states that it is inconceivable that since the nomination was submitted less than 18 months ago, EPA has developed sufficient scientific and objective information that supports a reduction. In past CUE Rules, EPA has made reductions after considering several factors. First, EPA considers new data on alternatives such as the registration of a new alternative not considered when the CUN was submitted to UNEP. EPA does not have new data regarding the uptake of alternatives and is not reducing the total CUE amount on that basis. Second, in some past years, EPA has made reductions to the new production/import amount equal to the amounts approved by the Parties specifically for research. As discussed below, the U.S. did not nominate any separate additional amount for research for 2011 and therefore EPA is not making reductions for that purpose.

Third, EPA has made reductions to the new production/import amount to account for amounts of methyl bromide produced in one control period but not sold in that control period. This amount is referred to as the ''carryover.'' Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. In past CUE rules, EPA deducted an amount equivalent to this carryover from the total level of allowable new production and import in the year following the year of the data report. Companies reported that the carryover from 2009 to 2010 was 72,867 kg. In the proposed 2011 CUE Rule, however, EPA did not propose to reduce the amount of new production and import by 72,867 kg because EPA proposed to honor the amounts allowed in the No Action Assurance letter. Instead, EPA proposed to reduce the total authorization by this carryover amount.

Based on the comments received, EPA is not reducing the total authorization by the carryover amount in this final rule, because the only means to do so would be through an adjustment to the CSA amount. Carryover is separate from ''stockpiled'' methyl bromide, which is material that was produced prior to the phaseout in 2005. EPA does not believe it is necessary to reduce the number of critical stock allowances to account for the carryover of critical use methyl bromide produced but not sold in 2009. On the contrary, EPA seeks to encourage the use of pre-phaseout inventory. Therefore, as compared to the proposal, EPA is increasing the CSA allocation by 72,867 kg to a total of 555,200 kg. EPA does not believe that this will result in the accumulation of critical use methyl bromide. Due to the timing of this year's CUE rule, EPA has data indicating that the full 72,867 kg of carryover from 2009 was sold in 2010. In addition, EPA has since received end of year data for 2010 showing that there is no carryover from the 2010 control period either. Therefore, EPA is finalizing a total allocation that matches the Parties' authorization for 2011.

Three commenters stated that EPA should not be allocating fewer CUEs than the amount authorized by the Parties given EPA's January 19, 2011, proposal to grant objections to the tolerances established for sulfuryl fluoride and fluoride under section 408 of the Federal Food, Drug, and Cosmetic Act (76 FR 3422). This CUE Rule is based on the current status of alternatives and is limited to 2011. The proposed revocation of tolerances for

sulfuryl fluoride has not been finalized and does not apply to use in 2011. Therefore, EPA has not based the allocation amounts in the 2011 CUE Rule on that proposal. In addition, commenters should note that EPA proposed a staggered implementation for withdrawal of the affected tolerances (76 FR 3447).

EPA also took comment on how to account for the fact that the critical use allowance allocation of 1,500,000 kg is greater than what would be allocated if it were based on the ''available stocks'' calculation using end of year inventory data. The proposal stated that EPA could reduce critical use allowances for new production and import in the 2012 allocation rule. EPA received one comment that while the distribution between stocks and new production is different than the result produced by the framework calculation, the total amount is unaffected. In addition, the commenter stated that the calculations in the 2012 rule will automatically compensate for the lesser drawdown of inventory in 2011. EPA will address this issue further in the notice of proposed rulemaking for the 2012 CUE rule.

E. Critical Use Allowance Allocations

EPA is allocating 2011 critical use allowances for new production or import of methyl bromide up to the amount of 1,500,000 kg (5.9% of baseline) as shown in the table at 40 CFR 82.8(c)(1). Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The CUA allocation is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

One commenter objected to EPA allocating only 1,500,000 kg for new production or import. The commenter stated that Decision XXI/11 authorized 1,855,200 kg for new production and import. EPA disagrees with the commenter's interpretation of Decision XXI/11. In Table D of Decision XXI/11, the Parties authorized 1,855,200 kg for new production and import ''minus available stocks.'' EPA is acting consistently with Decision XXI/11by considering ''available stocks.'' How EPA determines ''available stocks'' is discussed in the next section.

Paragraph three of Decision XXI/11 states ''that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis. The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the Agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions, but continues to welcome comments on this issue.

One commenter stated that the demand for methyl bromide exceeds the supply granted to the post-harvest sector. That commenter requested that their uses receive priority over other post harvest uses. It would be counter to EPA's past practice to grant priority for some critical uses over others. EPA does not have a system in place for ranking critical uses against each other. Rather, EPA allows the market to determine the distribution of methyl bromide among critical uses in the post-harvest or pre-plant sectors.

Finally, one commenter noted a typographical error in the table in 40 CFR 82.8(c)(1). The proposed post-harvest amount for ICL–IP was listed as 12,267 kg but should have read 16,267 kg. The final rule corrects this error.

F. Critical Stock Allowance Allocations

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow CUAs to be converted into CSAs.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is ''available'' for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that ''production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks.'' Previous decisions refer to use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decision XXI/11 reinforces this concept by including the phrase ''minus available stocks'' as a footnote to the United States' authorized level of production and consumption in Table D. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties. In each of the subsequent CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2010 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to ''permit'' a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the

CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency ''may'' create an exemption for critical uses, providing EPA with substantial discretion.

In this final rule, EPA is allocating the equivalent of 555,200 kg in the form of CSAs. This amount is greater than EPA proposed but less than the amount of ''available stocks.'' The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2011 was 1,802,705 kg. EPA's analysis of ''available stocks'' shows that there are 610,715 kg of stocks available for use in 2011. In the proposal, EPA took the total U.S. authorization as a starting point, subtracted the new production and import amount stated in the No Action Assurance provided to industry in December 2010, and then subtracted a carryover amount before reaching the tentative conclusion that the CSA amount should be the equivalent of 482,333 kg. EPA received comments, discussed above, that the total CUE amount should not be less than the U.S. authorization. After considering those comments and evaluating its approach to carryover in the specific circumstances of this year's allocation, EPA has determined that the CSA amount should be the difference between the total U.S. authorization and the proposed new production and import amount, which is the equivalent of 555,200 kg. Because at least 555,200 kg of stocks are available, EPA is increasing the CSA allocation in the final rule so that the CSA and CUA allocations taken together equal the total U.S. authorization.

Two commenters also stated that the Agency is incorrect to assume that 482,333 kg of pre-phaseout inventory will be available for critical uses in 2011. Instead, the commenters stated that EPA should allocate only 200,000 kg from stocks, which is the difference between the total authorization and the maximum authorized new production amount. The commenters also say that the distributors that own stocks are free to sell them for any purpose, including for non-CUE uses, and that EPA cannot control how or whether inventory is sold.

EPA agrees that the allocation system allows distributors of inventory to respond to market conditions instead of requiring them to sell inventory to critical users. EPA issues CSAs as a mechanism to track the use of stocks for critical uses. Under section 82.4(p), stocks may not be sold for use on critical uses if the seller does not hold the corresponding amount of CSAs. Critical users may purchase either newly produced or imported critical use methyl bromide or stocks sold through the expenditure of CSAs. EPA chose this approach, at least in part, to promote market flexibility and efficiency. The fact that distributors can choose to sell to non-critical users does not mean that the inventory is unavailable to critical users. End of year reported data show that the inventory on December 31, 2010, was 1,802,715 kg. Of this amount, EPA estimates that 610,715 kg of stocks are available for use in 2011. While EPA is allocating more critical stock allowances than proposed, the amount is still less than the ''available stocks.'' EPA expects that holders of pre-phaseout inventory will be able to expend the full amount of CSA allocations in order to satisfy the needs of critical users.

Two commenters stated that inventory was disproportionately distributed among fewer distributors and thus is unavailable to critical users. EPA collects information annually on the number of companies that hold inventory. These data support the comment that some companies no longer maintain any pre-phaseout inventory. However, there has not been a significant change in the overall distribution of inventory among companies. Inventory is still held by companies in large amounts in both California and the Southeast, the two largest markets for critical use methyl bromide. If some critical users were unable to purchase inventory, that is due to market decisions by distributors, not the quantity of methyl bromide held in inventory.

One commenter stated that the CSA allocation failed to consider the effect of a catastrophic failure in the domestic supply of methyl bromide, either for 2011 or for future years. The commenter states that the critical stock allowance levels undercut EPA's own analysis that the amount necessary to address a catastrophic failure could be as much as 58% of the critical need. EPA disagrees with the commenter's conclusion. EPA's supply chain factor calculation for 2011 indicates that 1,192,000 kg (2,055,200 kg $\times$ 0.58) is the maximum amount of inventory that would be needed in the event of a supply disruption. With 1,802,715 kg of existing inventory for 2011, EPA's analysis of ''available stocks'' shows that there are 610,715 kg of stocks available for use in 2011. EPA is actually allocating only the equivalent of 555,200 kg in the form of CSAs due to the No Action Assurance provided to industry in December 2010.

EPA also disagrees with the comment that it did not consider the effect of this rule on availability of stocks for supply disruptions in the future. The supply chain factor is proportional to the CUE amount. The authorization for 2012 and potential authorization for 2013 continue to decline in pace with both the inventory and the supply chain factor. In 2012, the U.S. was authorized 1,022,826 kg of critical use methyl bromide. EPA estimates that the SCF will be 429,000 kg for 2012, which is less than the estimated amount of stocks in 2012. EPA will discuss this in more detail in the proposed 2012 CUE rule.

EPA reiterates that the SCF is not a ''reserve'' or ''strategic inventory'' of methyl bromide. Rather, it is merely an analytical tool used to provide greater transparency regarding how the Agency determines CSA amounts, in cases where CSA amounts are greater than the amounts stipulated by the Parties. EPA does not guarantee that critical users will have access to inventory in the event of a supply disruption. The timely distribution of pre-phaseout stocks would depend upon business decisions made by suppliers. However, the SCF is large enough to give suppliers the opportunity to provide uninterrupted distribution in the analyzed scenario.

EPA is allocating CSAs to the entities shown in the table for the 2011 control period in the amount of 555,200 kg (2.2% of baseline). EPA is updating the table by incorporating information from recent mergers. Therefore, EPA is listing a single entry for Royster Clark, UAP Southeast (NC), and UAP Southeast (SC) called Crop Production Services. The CSA allocation for Crop Production Services is the sum of the three allocations that would have gone to Royster Clark and the two UAP Southeast entities.

EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table in 40 CFR 82.8(c)(2). EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

As stated in the final 2006 CUE Rule, if an inventory shortage occurs, EPA

may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses. As explained in the 2008 CUE Rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. In past years, EPA has noted that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. A commenter to the 2008 CUE Rule stated that the aggregate data should be confidential if there are fewer than three competitors. More than three companies continue to sell pre-phaseout inventory. While EPA is not adopting a definitive threshold number of companies at this point, EPA has not received any information suggesting that the number of companies has declined to the point that EPA should consider treating the aggregate as confidential information. Therefore, EPA will continue making aggregate inventory information available. The aggregate information for 2003 through 2010 is available in the docket for this rulemaking.

G. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 6 of Decision XXI/11 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2011 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.C, V.D. and V.E. of this preamble. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in section V.F. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex. I/4(3) to the extent feasible and is available in the docket for this rulemaking.

EPA received one comment that the Agency should adjust production and import levels in the 2011 CUE Rule to account for research amounts. The commenter implied that EPA had a previous policy of adjusting the production and import level upward to provide an allocation for research. This is not an accurate characterization of EPA's policy. Prior to 2010, the U.S. Nomination did contain a separate amount for research. While the Parties approved research as a critical use, their decisions encouraged the use of inventory to meet critical research needs. In the corresponding CUE rules, EPA responded to the Parties' decisions by reducing the new production/import amounts by the research amount, leaving the research portion of the total critical use exemption to be met through the use of CSAs. In the CUN for the 2011 control period, as in the CUN for the 2010 control period, the U.S. government did not nominate a separate, additional amount specifically for research purposes. Nonetheless, both the 2010 and 2011 nominations were broad enough to cover both research and non-research uses. While EPA continues to encourage use of inventory for research purposes, EPA is not reducing the CUA level as it did in pre-2010 CUE rules to subtract a research amount because no specific research amount has been identified. EPA also is not increasing the CUA allocation because the Parties did not authorize specific amounts for this purpose in addition to the authorization for pre-plant and post-harvest uses. EPA understands the Parties' decision as including the research amounts in the amounts authorized for pre-plant and post-harvest uses. As discussed in the preamble to the 2010 CUE rule (75 FR 23179), research is a key element of the critical use process. EPA is retaining research on the crops shown in the table in Appendix L to subpart A as a critical use of methyl bromide. While EPA encourages use of pre-phaseout inventory for research purposes, researchers may use either newly produced methyl bromide or pre-phaseout inventory for field, post-harvest, and emission minimization studies requiring the use of methyl bromide.

H. Emissions Minimization

Previous decisions have stated that Parties shall request critical users to employ emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. Through the recent Reregistration Eligibility Decision (RED) for methyl bromide, the Agency requires that methyl bromide applications be tarped except for California orchard replant where EPA instead requires deep (18 inches or greater) shank applications. The RED also encourages the use of high-barrier tarps, such as virtually impermeable film (VIF), by providing credits that applicators can use to minimize their buffer zones. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the USG reflects the lower application rates necessary when using high-barrier tarps, where such tarps are allowed. Emissions minimization efforts should not be limited to pre-plant fumigations. While the RED addresses emissions minimization only in the context of pre-plant fumigation, EPA also urges users to reduce emissions from structures and port facilities through the use of recapture technologies.

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations.

The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences and to provide such information with their critical use applications.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to interagency recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not change any of those existing requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural production	1112—Vegetable and Melon farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes. 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC. 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products.	500 employees.
	311212—Rice Milling	2044—Rice Milling	500 employees.
	493110—General Warehousing and Storage.	4225—General Warehousing and Storage.	$25.5 million.
	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	$25.5 million.
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$7 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA revised this estimate in 2008 down to 2,000 end users of critical use methyl bromide. EPA believes that the number continues to decline as growers stop applying for critical uses. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant

adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule would exempt methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. We have therefore concluded that this rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and does not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. 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, as specified in Executive Order 13132. This rule primarily affects producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose any enforceable duties on communities of Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule does not have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards therefore EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

K. Congressional Review Act

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 rule 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 not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 30, 2011.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: September 26, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.8 is amended as follows:

■ a. By revising the table in paragraph (c)(1);

■ b. By revising paragraph (c)(2) including the table.

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2011 Critical use allowances for pre-plant uses * (kilograms)	2011 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	839,966	71,584
Albemarle Corp.	345,413	29,437
ICL–IP America	190,883	16,267
TriCal, Inc	5,943	507
Total **	*1,382,206*	*117,794*

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2011 on a pro-rata basis in relation to the inventory held by each.

Company

Albemarle
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products
Chemtura Corp.
Crop Production Services
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail
Hy Yield Products
ICL–IP America
Industrial Fumigant Company
Pacific Ag Supplies Inc.
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Trical Inc.
Trident Agricultural Products
Univar
Western Fumigation

TOTAL—555,200 kilograms

■ 3. Appendix L to Subpart A is revised to read as follows:

APPENDIX L TO SUBPART A OF PART 82—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2011 CONTROL PERIOD

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware and Maryland	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Nursery Stock (Fruit, Nut, Flower).	(a) Members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.

Column A Approved Critical Uses	Column B Approved Critical User and Location of Use	Column C Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation.
Sweet Potato Slips	California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(b) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc..	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

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BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1219]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community

where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Pima	City of Tucson (10–09–2016P).	July 22, 2011; July 29, 2011; *The Arizona Daily Star.*	The Honorable Robert E. Walkup, Mayor, City of Tucson, 255 West Alameda Street, Tucson, AZ 85701.	November 28, 2011	040076
Pinal	Unincorporated areas of Pinal County (11–09–0945P).	July 15, 2011; July 22, 2011; *The Case Grande Dispatch.*	The Honorable Pete Rios, Chairman, Pinal County Board of Supervisors, P.O. Box 827, 31 North Pinal Street, Building A, Florence, AZ 85132.	November 21, 2011	040077
Arkansas: Benton	City of Bentonville (11–06–0823P).	July 7, 2011; July 14, 2011; *The Benton County Daily Record.*	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	November 11, 2011	050012
California:					
Sacramento	City of Sacramento (11–09–2263P).	July 16, 2011; July 23, 2011; *The Sacramento Bee.*	The Honorable Kevin Johnson, Mayor, City of Sacramento, 915 I Street, 5th Floor, Mail Code 09100, Sacramento, CA 95814.	November 21, 2011	060266
Sacramento	Unincorporated areas of Sacramento County (11–09–2263P).	July 16, 2011; July 23, 2011; *The Sacramento Bee.*	The Honorable Roberta MacGlashan, Chair, Sacramento County Board of Supervisors, 700 H Street, Suite 2450, Sacramento, CA 95814.	November 21, 2011	060262
Ventura	City of Camarillo (11–09–0883P).	July 27, 2011; August 3, 2011; *The Ventura County Star.*	The Honorable Mike Morgan, Mayor, City of Camarillo, 601 Carmen Drive, Camarillo, CA 93010.	July 19, 2011	065020
Ventura	Unincorporated areas of Ventura County (11–09–0883P).	July 27, 2011; August 3, 2011; *The Ventura County Star.*	The Honorable Linda Parks, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, CA 93009.	July 19, 2011	060413
Colorado:					
Douglas	Unincorporated areas of Douglas County (11–08–0044P).	July 7, 2011; July 14, 2011; *The Douglas County News-Press.*	The Honorable Jill Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	June 30, 2011	080049
Teller	City of Woodland Park (10–08–0932P).	July 13, 2011; July 20, 2011; *The Pikes Peak Courier View.*	The Honorable Steve Randolph, Mayor, City of Woodland Park, P.O. Box 9007, 220 West South Avenue, Woodland Park, CO 80863.	November 17, 2011	080175
Teller	Unincorporated areas of Teller County (10–08–0932P).	July 13, 2011; July 20, 2011; *The Pikes Peak Courier View.*	The Honorable Jim Ignatius, Chairman, Teller County Board of Commissioners, P.O. Box 959, 112 North "A" Street, Cripple Creek, CO 80813.	November 17, 2011	080173
Florida:					
Escambia	Unincorporated areas of Escambia County (11–04–2176P).	June 16, 2011; June 23, 2011; *The Pensacola News Journal.*	The Honorable Kevin White, Chairman, Escambia County Board of Commissioners, P.O. Box 1951, 221 Palafox Place, Suite 400, Pensacola, FL 32502.	June 9, 2011	120080

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Marion	City of Ocala (11–04–2943P).	July 21, 2011; July 28, 2011; *The Star-Banner*.	The Honorable Randy Ewers, Mayor, City of Ocala, 151 Southeast Osceola Avenue, Ocala, FL 34471.	November 25, 2011	120330
Volusia	Unincorporated areas of Volusia County (11–04–5578X).	August 1, 2011; August 8, 2011; *The Beacon*.	Mr. James Dinneen, Volusia County Manager, 123 West Indiana Avenue, DeLand, FL 32720.	December 6, 2011	125155
Hawaii: Honolulu	City of Honolulu and Unincorporated areas of Honolulu County (10–09–3709P).	July 15, 2011; July 22, 2011; *The Honolulu Star-Advertiser*.	The Honorable Peter B. Carlisle, Mayor, City and County of Honolulu, 530 South King Street, Room 300, Honolulu, HI 96813.	November 21, 2011	150001
Idaho: Teton	Unincorporated areas of Teton County (11–10–0678P).	August 11, 2011; August 18, 2011; *The Teton Valley News*.	The Honorable Kathryn Rinaldi, Chair, Teton County Board of Commissioners, Teton County Courthouse, 150 Courthouse Drive Driggs, ID 83422.	September 1, 2011	160230
Iowa: Linn	City of Marion (11–07–1284P).	August 11, 2011; August 18, 2011; *The Marion Times*.	The Honorable Paul Rehn, Mayor, City of Marion, 2710 25th Avenue, Marion, IA 52302.	December 16, 2011	190191
Montana: Missoula	Unincorporated areas of Missoula County (11–08–0184P).	July 28, 2011; August 4, 2011; *The Missoula Independent*.	The Honorable Jean Curtiss, Chairman, Missoula County Board of Commissioners, 200 West Broadway, Missoula, MT 59802.	December 2, 2011	300048
New York: Suffolk	Town of Brookhaven (11–02–0892X).	January 25, 2011; February 1, 2011; *Newsday*.	The Honorable Mark Lesko, Supervisor, Town of Brookhaven, 1 Independence Hill, Farmingville, NY 11738.	July 18, 2011	365334
North Carolina: Mecklenburg.	City of Charlotte (11–04–1802P).	July 6, 2011; July 13, 2011; *The Charlotte Observer*.	The Honorable Anthony R. Foxx, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202.	November 10, 2011	370159
Ohio:					
Lake	Unincorporated areas of Lake County (11–05–2150P).	August 11, 2011; August 18, 2011; *The News-Herald*.	Mr. Raymond E. Sines, President, Lake County Board, 105 Main Street, Painesville, OH 44077.	December 16, 2011	390771
Warren	City of Mason (11–05–2541P).	August 11, 2011; August 18, 2011; *The Pulse Journal*.	The Honorable Don Prince, Mayor, City of Mason, 6000 Mason Montgomery Road, Mason, OH 45040.	December 16, 2011	390559
Warren	Unincorporated areas of Warren County (11–05–2541P).	August 11, 2011; August 18, 2011; *The Pulse Journal*.	Mr. David G. Young, Warren County Commissioner, 406 Justice Drive, Lebanon, OH 45036.	December 16, 2011	390757
Oklahoma: Tulsa	City of Broken Arrow (10–06–0428P).	July 28, 2011; August 4, 2011; *The Tulsa Daily Commerce & Legal News*.	The Honorable Mike Lester, Mayor, City of Broken Arrow, 220 South 1st Street, Broken Arrow, OK 74012.	July 21, 2011	400236
Rhode Island: Washington.	Town of North Kingstown (11–01–1012P).	August 11, 2011; August 18, 2011; *The Standard Times*.	Mr. Michael Embury, Town of North Kingstown Manager, 80 Boston Neck Road, North Kingstown, RI 02852.	July 26, 2011	445404
South Dakota: Fall River.	City of Hot Springs (11–08–0656P).	July 5, 2011; July 12, 2011; *The Hot Springs Star*.	The Honorable Don DeVries, Mayor, City of Hot Springs, 303 North River Street, Hot Springs, SD 57747.	November 9, 2011	460027
Tennessee: Maury	City of Spring Hill (11–04–2516P).	July 28, 2011; August 4, 2011; *The Daily Herald*.	The Honorable Michael Dinwiddie, Mayor, City of Spring Hill, P.O. Box 789, 199 Town Center, Parkway Spring Hill, TN 37174.	August 22, 2011	470278
Texas:					
Ellis	City of Midlothian (10–06–2706P).	May 4, 2011; May 11, 2011; *The Midlothian Mirror*.	The Honorable Boyce Whatley, Mayor, City of Midlothian, 104 West Avenue East, Midlothian, TX 76065.	May 31, 2011	480801
Ellis	Unincorporated areas of Ellis County (10–06–2706P).	May 4, 2011; May 11, 2011; *The Waxahachie Daily Light*.	The Honorable Carol Bush, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	May 31, 2011	480798
Rockwall	City of Rockwall (11–06–2878P).	July 15, 2011; July 22, 2011; *The Rockwall County News*.	The Honorable David Sweet, Mayor, City of Rockwall, 385 South Goliad Street, Rockwall, TX 75087.	November 21, 2011	480547
Tarrant	City of Arlington (11–06–1155P).	July 21, 2011; July 28, 2011; *The Fort Worth Star-Telegram*.	The Honorable Dr. Robert Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004.	November 25, 2011	485454
Tarrant	City of Fort Worth (10–06–2761P).	May 6, 2011; May 13, 2011; *The Fort Worth Star-Telegram*.	The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	September 12, 2011	480596
Tarrant	City of Saginaw (10–06–2761P).	May 6, 2011; May 13, 2011; *The Fort Worth Star-Telegram*.	The Honorable Gary Brinkley, Mayor, City of Saginaw, 333 West McLeroy Boulevard, Saginaw, TX 76179.	September 12, 2011	480610
Travis	City of Austin (11–06–3301P).	June 28, 2011; July 5, 2011; *The Austin American-Statesman*.	The Honorable Lee Leffingwell, Mayor, City of Austin, 301 West 2nd Street, 2nd Floor Austin, Texas 78701.	November 2, 2011	480624

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 13, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–25157 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 2, 4, 62, 111, 120, 129, 133, 401, and 402

49 CFR Parts 450, 451, 452, and 453

[Docket No. USCG–2011–0618]

RIN 1625–AB77

Shipping and Transportation; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive changes throughout Titles 46 and 49 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard shipping and transportation regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of Titles 46 and 49 on October 1, 2011.

DATES: This final rule is effective September 30, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0618 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0618 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Paul Crissy, Coast Guard; telephone 202–372–1093, e-mail *Paul.H.Crissy@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(A) and (b)(B) the Coast Guard finds this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, good cause exists for not publishing an NPRM for all revisions in the rule because the revisions are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

II. Background

Each year, the printed editions of Titles 46 and 49 of the Code of Federal Regulations are recodified on October 1. This rule, which becomes effective September 30, 2011, makes technical and editorial corrections throughout Titles 46 and 49. This rule does not create any substantive requirements.

III. Basis and Purpose

This rule amends 46 CFR 1.03–15 to change the addressee for appeals involving decisions or actions of the Director, Great Lakes Pilotage from CG–5 to CG–55 to better reflect the agency organization of the Coast Guard.

This rule amends 46 CFR 2.10–20 by changing the mailing address for payment of fees related to vessel inspections. We also reformatted the paragraph by creating separate paragraphs broken down by type of fee, i.e., one subparagraph for payment of Certificate of Inspection and Certificate of Compliance fees and a second subparagraph for payment of Overseas Inspection fees. We then created subparagraphs broken down by method of payment, i.e., credit card, check by postal service, and check by overnight courier. This reformatting does not change any substantive requirements, but was done to make it easier to find the correct mailing address for the type of inspection and the method of payment.

This rule amends 46 CFR 4.05–1 so that it refers to § 160.204, the section for definitions, instead of referring to section 160.203, the section for exemptions.

This rule amends 46 CFR 62.35–5 to change the word ''then'' to ''than'' and to remove the reference to subparagraph (a) in the citation to § 62.35–35(a) as this subparagraph no longer exists.

This rule amends 46 CFR 111.79–9 by removing the reference to § 111.79–7, which no longer exists, and replacing it with §§ 111.79–1(d) and 111.79–3 where the requirements of former § 111.79–7 were moved by the Coast Guard's ''Amendment to Electrical Engineering Requirements for Merchant Vessels'' 61 FR 28260 (June 4, 1996).

This rule amends 46 CFR 120.312 by removing the reference to 46 CFR 111.10–11, which no longer exists.

This rule amends 46 CFR 129.510 to remove the reference to subpart 160.115 which does not exist, and put in its place subpart 160.151, which is the correct subpart related to inflatable liferafts.

This rule amends 46 CFR 133.135 to change the approval series number from 160.056 to 160.156, the correct approval series number. The 160.156 approval series number was published correctly in 1996 in the Coast Guard's ''Lifesaving Equipment Rule'' 61 FR 25272, at 25308, May 20, 1996, but was erroneously changed in the 2000 Coast Guard ''Technical Amendment'' 65 FR 58455, at 58463, September 29, 2000.

This rule amends 46 CFR 401.110 by replacing the reference to the Department of Transportation with the Department of Homeland Security in the definition of ''Secretary'' because the Coast Guard is no longer an agency of the Department of Transportation (DOT), and is now an agency of the Department of Homeland Security (DHS).

This rule amends 46 CFR 402.210 to correct a grammatical error by replacing the word ''or'' with the word ''to''.

This rule amends 49 CFR parts 450, 451, 452, and 453 to correct the

authority citations in each part to remove the reference to the statutes at large citation as unnecessary and duplicative and to replace the official code citation of 46 U.S.C. 1503 with 46 U.S.C. 80503 to reflect the recodification of Title 46.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget. A regulatory analysis was not prepared because this rulemaking involves only technical and administrative changes.

This final rule makes non-substantive changes throughout Titles 46 and 49 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard shipping and transportation regulations. This rule will have no substantive effect on the regulated public.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This final rule makes non-substantive changes throughout Titles 46 and 49 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard shipping and transportation regulations. We estimate that this rule will not impose additional costs and should have little or no impact on small entities because the provisions of this rule are technical and non-substantive. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please consult Paul Crissy, Coast Guard; telephone 202–372–1093, e-mail *Paul.H.Crissy@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, as supplemented by Executive Order 13563, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraphs (34)(a) and (b) of the Instruction. This rule involves regulations that are editorial, procedural, and involve internal agency functions. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

46 CFR Part 62

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 111

Vessels.

46 CFR Part 120

Marine safety, Passenger vessels.

46 CFR Part 129

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 133

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 402

Great Lakes, Navigation (water), Seamen.

49 CFR Part 450

Freight, Packaging and containers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 451

Freight, Packaging and containers, Safety.

49 CFR Part 452

Freight, Packaging and containers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 453

Administrative practice and procedure, Freight, Packaging and containers, Safety.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 4, 62, 111, 120, 129, 133, 401, and 402 and 49 CFR parts 450, 451, 452, and 453 as follows:

Title 46

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.03–15 [Amended]

■ 2. In § 1.03–15(h)(5), following the words ''Commandant (CG-'', remove the number ''5'' and add, in its place, the number ''55''.

PART 2—VESSEL INSPECTIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. Note prec. 1).

■ 4. Revise § 2.10–20(d) to read as follows:

§ 2.10–20 General requirements.

* * * * *

(d) Unless otherwise specified, fees required by this subpart must be mailed to the following addresses:

(1) For COI and COC Inspections:

(i) For payment by credit card, U.S. Coast Guard Finance Center (OGR), 1430A Kristina Way, Chesapeake, VA 23326.

(ii) For payment by check, made payable to U.S. Treasury, with delivery by postal service, USCG Inspection Fees, P.O. Box 531030, Atlanta, GA 30353–1030.

(iii) For payment by check, made payable to U.S. Treasury, with delivery by overnight courier, USCG Vessel Inspection Fees, Bank of America, Lockbox Number 531030 (COI), 1075 Loop Road, Atlanta, GA 30337–6002.

(2) For Overseas Inspection Fees:

(i) For payment by credit card, U.S. Coast Guard Finance Center (OGR), 1430A Kristina Way, Chesapeake, VA 23326.

(ii) For payment by check, made payable to U.S. Treasury, with delivery by postal service, USCG User Fees, P.O. Box 531769, Atlanta, GA 30353–1769.

(iii) For payment by check, made payable to U.S. Treasury, with delivery by overnight courier, USCG User Fees, Bank of America, Lockbox Number 531769 (USF), 1075 Loop Road, Atlanta, GA 30337–6002.

* * * * *

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 5. The authority citation for part 4 continues to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2303a, 2306, 6101, 6301, and 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 0170.1.

Subpart 4.40 issued under 49 U.S.C. 1903(a)(1)(E).

§ 4.05–1 [Amended]

■ 6. In § 4.05–1(b), following the words ''defined by 33 CFR'', remove the number ''160.203'', and add, in its place, the number ''160.204''.

PART 62—VITAL SYSTEM AUTOMATION

■ 7. The authority citation for part 62 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 8105; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 62.35–5 [Amended]

■ 8. In § 62.35–5(c)(3), after the words ''starting capability less'', remove the word ''then'', and add, in its place, the word ''than''; and following the words ''that required by § '', remove the text ''62.35–35(a)'', and add, in its place, the text ''62.35–35''.

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

■ 9. The authority citation for part 111 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 111.79–9 [Amended]

■ 10. In § 111.79–9(b), following the words ''plug must meet § '', remove the number ''111.79–7'', and add, in its place, the text ''111.79–1(d) or § 111.79–3''.

PART 120—ELECTRICAL INSTALLATION

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

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 120.312 [Amended]

■ 12. In § 120.312(b), following the numbers ''111.10–4, 111.10–5,'', add the word ''and''; and following the number ''111.10–9'', remove the number '', 111.10–11''.

PART 129—ELECTRICAL INSTALLATIONS

■ 13. The authority citation for part 129 continues to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

§ 129.510 [Amended]

■ 14. In § 129.510, following the words ''subparts 160.015 or'', remove the number ''160.115'', and add, in its place, the number ''160.151''.

PART 133—LIFESAVING SYSTEMS

■ 15. The authority citation for part 133 continues to read as follows:

Authority: 46 U.S.C. 3306, 3307; Department of Homeland Security Delegation No. 0170.1.

§ 133.135 [Amended]

■ 16. In § 133.135(a), following the words ''approval series'', remove the number ''160.056'', and add, in its place, the number ''160.156''.

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 17. The authority citation for part 401 continues to read as follows:

Authority: U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

§ 401.110 [Amended]

■ 18. In § 401.110(a)(7), following the words ''the Secretary of'', remove the word ''Transportation'', and add, in its place, the words ''Homeland Security''.

PART 402—GREAT LAKES PILOTAGE RULES AND ORDERS

■ 19. The authority citation for part 402 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 8105, 9303, 9304.

§ 402.210 [Amended]

■ 20. In § 402.210(a), following the words ''physical condition, and competency'', remove the word ''or'', and add, in its place, the word ''to''.

Title 49

PART 450—GENERAL

■ 21. The authority citation for part 450 is revised to read as follows:

Authority: 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

PART 451—TESTING AND APPROVAL OF CONTAINERS

■ 22. The authority citation for part 451 is revised to read as follows:

Authority: 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

PART 452—EXAMINATION OF CONTAINERS

■ 23. The authority citation for part 452 is revised to read as follows:

Authority: 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

PART 453—CONTROL AND ENFORCEMENT

■ 24. The authority citation for part 453 is revised to read as follows:

Authority: 46 U.S.C. 80503; Department of Homeland Security Delegation No. 0170.1.

Dated: September 27, 2011.

Kathryn Sinniger,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2011–25276 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GN Docket No. 09–191; WC Docket No. 07–52; FCC 10–201]

Preserving the Open Internet

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of September 23, 2011, a document establishing rules to preserve the open Internet. Inadvertently the wrong paragraph was amended. This document corrects the error.

DATES: This correction is effective November 20, 2011.

FOR FURTHER INFORMATION CONTACT: Matt Warner, (202) 418–2419 or e-mail, *matthew.warner@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document in the **Federal Register** of May 2, 2011 (76 FR 24376), adding 47 CFR 0.111(a)(24). In FR Doc. 2011–24259, published in the **Federal Register** of September 23, 2011 (76 FR 59192), 47 CFR 0.111(a)(24) was inadvertently amended. This rule should stand as is in the current CFR. This correction removes the amendment to 47 CFR 0.111(a)(24) published on September 23, 2011 and instead adds 47 CFR 0.111(a)(25).

In rule FR Doc. 2011–24259, published September 23, 2011 (76 FR 59192), make the following correction. On page 59232, in the first column,

revise amendatory instruction 2 to read as follows:

■ 2. Section 0.111 is amended by adding paragraph (a)(25) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(25) Resolve complaints alleging violations of the open Internet rules.

Federal Communications Commission.

Matt Warner,

Attorney Advisor.

[FR Doc. 2011–25287 Filed 9–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549

[Docket No. TSA–2009–0018; Amendment Nos. 1515–2, 1520–9, 1522–1, 1540–11, 1544–10, 1546–6, 1548–6, 1549–1]

RIN 1652–AA64

Air Cargo Screening; Reopening of Comment Period

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule; reopening of comment period.

SUMMARY: On August 18, 2011, the Transportation Security Administration (TSA) published a final rule pertaining to air cargo screening with a request for comments on the proposed fee range and methodology for the processing of security threat assessments, and provided a 30-day public comment period that ended on September 19, 2011. The TSA has decided to reopen the comment period for an additional 30 days to allow the public to comment on data available in the public docket concerning the underlying methodology used to calculate the fee.

DATES: The comment period for the final rule at 76 FR 51848, Part III, August 18, 2011, is reopened until October 31, 2011.

ADDRESSES: You may submit comments, identified by the TSA docket number TSA–2009–0018, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Alice Crowe, Senior Counsel, Office of Chief Counsel, TSA–22, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227 –2652; facsimile (571) 227–1379; e-mail *alice.crowe@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this action by submitting written comments, data, or views on the proposed fee range and the methodology used to develop the fee for the processing of security threat assessments detailed in the final rule. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number, TSA–2009–0018, at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or by fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or e-mail under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and sensitive security information (SSI).[1] Should you wish your personally identifiable information be redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenter's have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, or labor union submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of the Rulemaking and Comments Received

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Background

On August 18, 2011, TSA published the Air Cargo Screening final rule in a separate Part III of the **Federal Register** (76 FR 51848). The rule included a proposed new fee range of $31-$51 for security threat assessments (STAs). The final rule provided a 30-day comment period that ended on September 19, 2011, for public comments on the proposed fee range for the processing of STAs, and on the proposed fee range and the methodology used to develop the fee.

In the preamble ''Fee Range'' section to the final rule, TSA stated that additional detailed information regarding the fee determination had been provided in the ''Air Cargo Screening Security Threat Assessment Fee Development Report.'' 76 FR 51858. The final rule stated that this report had been placed in the public docket established for this rulemaking. TSA inadvertently omitted to place this report in the public docket, and therefore the information in the report was not available for review during the comment period. TSA has since placed the report in the docket and is reopening the comment period for an additional 30 days on the proposed fee range of $31 to $51. This will allow interested parties the opportunity to provide substantive input on the additional information regarding the fee determination in the report.

Comment Period Reopening

The TSA determines that reopening the comment period is in the public interest. Accordingly, the comment period for the final rule ''Air Cargo Screening'' is reopened for an additional 30 days until October 31, 2011. This reopening will allow industry and other interested entities and individuals additional time to complete their comments on the fee range and methodology.

Notice of Final Fee

Once this additional comment period closes, TSA will publish a notice in the **Federal Register** announcing the final fee, and will respond to comments received during both public comment periods on the proposed fee range in the Air Cargo Screening final rule.

Issued in Arlington, Virginia on September 26, 2011.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. 2011–25218 Filed 9–29–11; 8:45 am]

BILLING CODE 9110–05–P

Proposed Rules

Federal Register
Vol. 76, No. 190
Friday, September 30, 2011

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Qualified Trusts

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to amend the executive branch regulation regarding qualified trusts. The proposed amendments would make a few minor substantive changes, but would primarily put the regulation in a more logical order, make it more readable, and eliminate redundant provisions.

DATES: Written comments by the agencies and the public on these proposed amendments are welcome and must be received by November 29, 2011.

ADDRESSES: You may submit comments in writing to OGE on this proposed rule, identified by RIN 3209–AA00, by any of the following methods:

- *E-Mail: usoge@oge.gov.* Include the reference ''Proposed Revisions to the Executive Branch Qualified Trusts Regulation'' in the subject line of the message.
- *Fax:* 202–482–9237.
- *Mail/Hand Delivery/Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Deborah J. Bortot, Associate Director for Nominee Financial Disclosure, Office of General Counsel and Legal Policy.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA00, for this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Deborah J. Bortot, Associate Director for Nominee Financial Disclosure, Office of General Counsel and Legal Policy, Office of Government Ethics; telephone: 202–482–9300; TYY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background: History of the Executive Branch Qualified Trusts Program

The Ethics in Government Act established standards for the creation, composition, and administration of two types of qualified trusts for executive branch officials: Qualified blind trusts and qualified diversified trusts. The purpose of these qualified trusts is to reduce the potential for conflicts of interest by generally preventing an employee from knowing the identity and nature of his financial interests.

With a qualified blind trust, the independent trustee will, over time, sell or dispose of some or all of the initial assets placed in the trust. The executive branch employee will be blind with regard to the assets added by the independent trustee. The most significant objective to be achieved through the use of a qualified blind trust is the lack of knowledge, or actual ''blindness,'' by an executive branch employee with respect to the holdings in his trust.

The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer and sector is limited. Under these conditions, it is unlikely that official actions taken by the executive branch employee who holds a beneficial interest in the trust would affect individual securities or sectors to such a degree that the overall value of the trust's portfolio would be materially enhanced. Additionally, as with the blind trust, the employee is not told what assets the independent trustee adds to the trust.

OGE has implemented the qualified trusts provisions for the executive branch in subparts D and E of 5 CFR part 2634 (see 57 FR 11800–11830, at 11814–11821 (Apr. 7, 1992)).

II. Analysis of Proposed Amendments

The primary purpose of proposing to amend 5 CFR part 2634, subparts D and E is to eliminate redundant provisions and to reorganize the provisions into a more logical order. Because of the extensive rewriting and reorganization of the regulation being proposed, we are publishing the full text of the regulation as proposed for revision. The following discussion summarizes some minor substantive changes that OGE is proposing.

A. Changes to Definitions: There are several definitions in the current regulation that differ somewhat from the definitions of these terms in the Ethics in Government Act. To establish consistency between the regulation and the statute, we propose to make certain changes. Proposed § 2634.402(d) would modify the definition of ''interested party'' so that it refers only to the employee, spouse, and minor or dependent child, just as it does in the statute. In the current regulation at § 2634.401(a)(i), the definition also includes the representatives of these individuals. This change would bring the regulation in line with the statute. Where appropriate in the regulation, such as in the provisions relating to communications among parties to the trust, the proposed regulation would add the word ''representative'' to the phrase ''interested party.''

Proposed § 2634.406(b)(2)(i)(A) would modify the description of ''widely diversified portfolio'' that is currently in § 2634.404(b)(2)(i). Specifically, the proposed regulation would delete the word ''industrial'' in referring to a particular sector. With this change, the phrase ''widely diversified'' would have the same meaning as ''widely diversified'' in § 2634.310(c)(3). Removing the word ''industrial'' would provide more uniformity in the financial disclosure program by consistently defining terms that are intended to encompass the same concept.

Current § 2634.407(a) uses the language ''knowingly or negligently'' in connection with the restrictions on fiduciaries and interested parties. However, the statute at 5 U.S.C. app., sec. 102(f)(6)(A) and current §§ 2634.403(b)(12) and 2634.404(c)(12) identify the same restrictions, but use the language ''knowingly and willfully, or negligently.'' The proposed regulation would modify current § 2634.407(a) by including the word ''willfully'' in proposed §§ 2634.408(d) and 2634.408(e) to make the regulation consistent with the statute at 5 U.S.C. app., sec. 102(f)(6)(A). It would also make the regulation internally consistent.

The proposed language of 5 CFR 2634.405(c)(3)(ii) is identical to the current regulation at 5 CFR 2634.406(a)(3)(iii)(B). Consistent with practice, OGE interprets the restriction

to apply to an individual who was a trustee for an employee on another trust.

B. Standardizing the Terminology: In various places in the current regulation, the terms ''government employee,'' ''reporting individual,'' ''government official,'' ''filer,'' and ''beneficiary'' are used interchangeably. OGE would standardize the terminology by using the term ''employee'' throughout the proposed regulation. The definition of ''employee'' would make clear to the public that this regulation applies only to trusts created by executive branch employees, not qualified trusts created by employees of the legislative or judicial branches of the Federal Government.

C. Changes to the Communications Provisions: The statute allows an employee to communicate with the independent trustee to request distributions of cash or other unspecified assets from the trust. The current regulation at sections 2634.403(b)(9)(ii)(A) and 2634.404(b)(9)(ii)(A) adds a restriction that does not appear in the statute. It does not allow an executive branch employee to specify whether he wants the distribution in cash or other unspecified assets from the trust. OGE can discern no harm to the integrity of the qualified trust program by allowing the employee to specify whether he wants the distribution in cash or in other unspecified assets from the trust. Proposed § 2634.408(a) would amend the regulation by removing this restriction and allowing the employee to specify whether he wants the distribution in cash or other unspecified assets from the trust.

The proposed regulation would add a provision at § 2634.408(c)(2)(iii) about communications between the independent trustee and the interested parties relating to estimated taxes. This provision would clarify that the independent trustee and the interested parties are permitted to provide income information that is necessary to pay estimated income taxes. This communication must be approved in advance by the Director of OGE.

The proposed language of 5 CFR 2634.408(a)(1)(i)(D) is similar to the language of the current regulation at 5 CFR 2634.403(b)(9)(ii)(D), and it tracks the language of the statute at 5 U.S.C. app. IV, sec. 102(f)(3)(C)(vi). The proposed language clarifies that divestiture is not required because an employee can also comply with 18 U.S.C. sec. 208 by recusal or waiver.

The proposed language of 5 CFR 2634.408(a)(2) is similar to the current regulation at 5 CFR 2634.408(c), and it tracks the language of the statute at 5 U.S.C. app. IV, sec. 102(f)(5)(E). The proposed regulation at 5 CFR 2634.408(a)(2) addresses the filing of copies of communications with the Director. OGE interprets the entire regulatory section at 5 CFR 2634.408 as referring to all communications from the interested party or the party's representative and the independent trustee or any other designated fiduciary. OGE does not read the word ''initiating'' as applicable only to the communication that begins an exchange between parties. When a party responds to a communication, OGE views that party as ''initiating'' a responsive communication.

D. Reorganization: As part of the reorganization of the regulation, OGE proposes listing in one section, § 2634.413, all of the qualified trust documents that are publicly available. Currently, these references are scattered throughout the regulation. OGE's proposed new section would additionally indicate the exception from public availability, consistent with the statute at 5 U.S.C. app., secs. 102(f)(5)(A)(i), (f)(5)(D) and (f)(7)(B), of any qualified trust provisions relating to the testamentary disposition of trust assets. Also, the current regulation fails to list the document that identifies the assets that have been sold from a blind trust. However, the statute lists the document as publicly available. Proposed § 2634.413(a)(4) would add that document to the list of publicly available trust documents. In order to clarify that the Certificate of Independence is publicly available, the proposed rule would also add that document to the list of publicly available documents at § 2634.413(a)(5).

E. Miscellaneous Changes: The proposed regulation would add a note at § 2634.404(g) about existing qualified trusts. The note would explain that, in accordance with its current practice, OGE does not allow individuals to roll over existing trusts established in another branch of the Federal Government, or under any State law. Therefore, individuals entering the executive branch, nominees for positions appointed by the President and subject to confirmation by the Senate, and candidates for President or Vice President, need to break open any such existing trusts and disclose the trust assets on their financial disclosure report, as appropriate. However, they can establish a new qualified trust in the executive branch if they wish. The proposed regulation, at 5 CFR 2634.404(f), would eliminate the current requirement, at 5 CFR 2634.403(b)(17) and 2634.404(c)(17), in the existing regulation, that the trust instrument include the compensation schedule of the independent trustee and any other designated fiduciary. This requirement does not appear in the statute. OGE has determined after years of experience that the private proprietary interests of the independent trustee or other designated fiduciary outweighs any public interest in disclosure of the compensation schedule. The proposed regulation would also eliminate the current provisions about OGE maintaining programs to assess, on a frequent basis, the appropriateness of any trustee approval at current § 2634.406(c) and the appropriateness of any trust certification at current § 2634.405(d). This amendment would make the regulation consistent with current practice.

In addition, proposed § 2634.407(d) would eliminate the requirement in the current regulation at § 2634.405(e) that the independent trustee or settlor must get the approval of the Director of OGE before they can revoke the trust.

Finally, in an attempt to keep the qualified trust regulation in one subpart, OGE is proposing to add the financial disclosure reporting requirements for a qualified trust at § 2634.411. The current qualified trusts regulation does not explain the financial disclosure reporting requirements.

F. Conforming Amendments: If these proposed changes are adopted as final, various cross-references in other sections of part 2634 will have to be amended. These technical cross-reference amendments would be included in the final rule stage of this rulemaking.

Finally, in accordance with section 402(b) of the Ethics in Government Act, OGE has consulted with the Department of Justice and the Office of Personnel Management on these proposed rule amendments.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested agencies and members of the public are invited to submit written comments on these proposed amendments to OGE's qualified trusts regulation, to be received by November 29, 2011. The comments will be carefully considered and any appropriate changes will be made before a final rule is adopted and published in the **Federal Register** by OGE.

Regulatory Flexibility Act

As Acting Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a

substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

No additional clearance is needed under the Paperwork Reduction Act (44 U.S.C. chapter 35) for these proposed rule amendments, because they would not affect the qualified trusts information collection requirements in the regulation that are currently approved under OMB paperwork control number 3209–0007.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed amendatory rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law.

Executive Order 12866

In promulgating this proposed rulemaking, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to this proposed rulemaking, which would revise 5 CFR part 2634, notes the legal basis and benefits of, as well as the need for, the proposed regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this amended regulation, if it is adopted as final, since the revisions being proposed only make a few minor substantive changes as well as reorganize and improve OGE's qualified trusts regulatory provisions under the Ethics Act. Finally, this proposed rulemaking is not economically significant under the Executive order and will not interfere with State, local or Tribal governments.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: September 26, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Subparts D and E of part 2634 are revised to read as follows:

Subpart D—Qualified Trusts

Sec.
2634.401 Overview.
2634.402 Definitions.
2634.403 General description of trusts.
2634.404 Summary of procedures for creation of a qualified trust.
2634.405 Standards for becoming an independent trustee or other fiduciary.
2634.406 Initial portfolio.
2634.407 Certification of qualified trust by the Office of Government Ethics.
2634.408 Administration of a qualified trust.
2634.409 Pre-existing trusts.
2634.410 Dissolution.
2634.411 Reporting on financial disclosure reports.
2634.412 Sanctions and enforcement.
2634.413 Public access.
2634.414 OMB control number.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

Sec.
2634.501 Purpose and scope.
2634.502 Definitions.
2634.503 Determinations.

Subpart D—Qualified Trusts

§ 2634.401 Overview.

(a) *Purpose.* The Ethics in Government Act of 1978 created two types of qualified trusts, the qualified blind trust and the qualified diversified trust, that may be used by employees to reduce real or apparent conflicts of interest. The primary purpose of an executive branch qualified trust is to confer on an independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without participation by, or the knowledge of, any interested party or any representative of an interested party. This responsibility includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of, and in what investments the proceeds of sale are to be reinvested. Because the requirements set forth in the Ethics in Government Act and this regulation assure true ''blindness,'' employees who have a qualified trust cannot be influenced in the performance of their official duties by their financial interests in the trust assets. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest.

(b) *Scope.* Two characteristics of the qualified trust assure that true ''blindness'' exists: The independence of the trustee and the restriction on communications between the independent trustee and the interested parties. In order to serve as a trustee for an executive branch qualified trust, an entity must meet the strict requirements for independence set forth in the Ethics in Government Act and this regulation. Restrictions on communications also reinforce the independence of the trustee from the interested parties. During both the establishment of the trust and the administration of the trust, communications are limited to certain reports that are required by the Act and to written communications that are pre-screened by the Office of Government Ethics. No other communications, even about matters not connected to the trust, are permitted between the independent trustee and the interested parties.

§ 2634.402 Definitions.

Director means the Director of the Office of Government Ethics.

Employee means an officer or employee of the executive branch of the United States.

Independent trustee means a trustee who meets the requirements of section 2634.405 of this subpart and who is approved by the Director under this subpart.

Interested party means an employee, the employee's spouse, and any minor or dependent child, in any case in which the employee, spouse, or minor or dependent child has a beneficial interest in the principal or income of a trust proposed for certification under this subpart or certified under this subpart.

Qualified blind trust means a trust in which the employee, his spouse, or his minor or dependent child has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 of this subpart by the Director;

(2) Has a portfolio as specified in § 2634.406(a) of this subpart;

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405 of this subpart.

Qualified diversified trust means a trust in which the employee, his spouse, or his minor or dependent child has a beneficial interest and which:

(1) Is certified pursuant to § 2634.407 of this subpart by the Director;

(2) Has a portfolio as specified in § 2634.406(b) of this subpart;

(3) Follows the model trust document prepared by the Office of Government Ethics; and

(4) Has an independent trustee as defined in § 2634.405 of this subpart.

Qualified trust means a trust described in the Ethics in Government Act of 1978 and this regulation and certified by the Director under this subpart. There are two types of qualified trusts, the qualified blind trust and the qualified diversified trust.

§ 2634.403 General description of trusts.

(a) *Qualified blind trust.* (1) The qualified blind trust is the most universally adaptable qualified trust. An interested party may put most types of assets (such as cash, stocks, bonds, mutual funds or real estate) into a qualified blind trust.

(2) In the case of a qualified blind trust, 18 U.S.C. sec. 208 and other Federal conflict of interest statutes and regulations apply to the assets that an interested party transfers to the trust until such time as he or she is notified by the independent trustee that such asset has been disposed of or has a value of less than $1,000. Because the employee knows what assets he or she placed in the trust and there is no requirement that these assets be diversified, the possibility still exists that the employee could be influenced in the performance of official duties by those interests.

(b) *Qualified diversified trust.* (1) An interested party may put only readily marketable securities into a qualified diversified trust. In addition, the portfolio must meet the diversification requirements of § 2634.406(b)(2) of this subpart.

(2) In the case of a qualified diversified trust, the conflict of interest laws do not apply to the assets that an interested party transfers to the trust. Because the assets that an interested party puts into this trust must meet the diversification requirements set forth in this regulation, the diversification achieves ''blindness'' with regard to the initial assets.

(3) *Special notice for Presidential appointees*—(i) *In general.* In any case in which the establishment of a qualified diversified trust is contemplated with respect to an individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee. There is a section on the public financial disclosure form, the OGE Form 278, for the individual to indicate whether he or she intends to create a qualified diversified trust.

(ii) *Applicability.* Paragraph (b)(3)(i) of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

(c) *Conflict of interest laws.* In the case of each type of trust, the conflict of interest laws do not apply to the assets that the independent trustee or any other designated fiduciary adds to the trust.

§ 2634.404 Summary of procedures for creation of a qualified trust.

(a) *Consultation with the Office of Government Ethics.* Any employee, spouse, or minor or dependent child (or that party's representative) who is interested in setting up a qualified blind or qualified diversified trust must contact the Office of Government Ethics prior to beginning the process of creating the trust. The Office of Government Ethics is the only entity that has the authority to certify a qualified trust. Because an interested party must propose, for the approval of the Office of Government Ethics, an entity to serve as the independent trustee, the Office of Government Ethics will explain the requirements that an entity must meet in order to qualify as an independent trustee. Such information is essential in order for the employee to interview entities for the position of independent trustee. The Office of Government Ethics will also explain the restrictions on the communications between the interested parties and the proposed trustee.

(b) *Selecting an independent trustee.* After consulting with the Office of Government Ethics, the interested party may interview entities who meet the requirements of § 2634.405(a) of this subpart in order to find one to serve as an independent trustee. At an interview, the interested party may ask general questions about the institution, such as how long it has been in business, its policies and philosophy in managing assets, the types of clients it serves, its prior performance record, and the qualifications of the personnel who would be handling the trust. Because the purpose of a qualified trust is to give an independent trustee the sole responsibility to manage the trust assets without the interested party having any knowledge of the identity of the assets in the trust, the interested party may communicate his or her general financial interests and needs to any institution which he or she interviews. For example, the interested party may communicate a preference for maximizing income or long-term capital gain or for balancing safety of capital with growth. The interested party may not give more specific instructions to the proposed trustee, such as instructing it to maintain a specific allocation between stocks and bonds, or choosing stocks in a particular industry.

(c) *The proposed independent trustee.* (1) The entity selected by an interested party as a possible trustee must contact the Office of Government Ethics to receive guidance on the qualified trust program. The Office of Government Ethics will ask the proposed trustee to submit a letter describing its past and current contacts, including banking and client relationships, with the employee, spouse, and minor or dependent children. The extent of these contacts will determine whether the proposed trustee is independent under the Act and this regulation.

(2) In addition, an interested party may select an investment manager or other fiduciary. Other proposed fiduciaries selected by an interested party, such as an investment manager,

must meet the independence requirements.

(d) *Approval of the independent trustee.* If the Director determines that the proposed trustee meets the requirements of independence, the Director will approve, in writing, that entity as the trustee for the qualified trust.

(e) *Confidentiality Agreement.* If any person other than the independent trustee or designated fiduciary has access to information that must not be shared with an interested party or that party's representative, that person must file a Confidentiality Agreement with the Office of Government Ethics. Persons filing a Confidentiality Agreement must certify that they will not make prohibited contacts with an interested party or that party's representative.

(f) *Drafting the trust instrument.* The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. There are two annexes to the model trust document: An annex describing any current, permissible banking or client relationships between any interested parties and the independent trustee or other fiduciaries and an annex listing the initial assets that the interested party transfers to the trust. Any deviations from the model trust documents must be approved by the Director.

(g) *Certification of the trust.* The representative then presents the unexecuted trust instrument to the Office of Government Ethics for review. If the Director finds that the instrument conforms to one of the model documents, the Director will certify the qualified trust. After certification, the employee and the independent trustee will sign the trust instrument. They will submit a copy of the executed instrument to the Office of Government Ethics within 30 days of execution. The employee will then transfer the assets to the trust.

Note to paragraph (g): Existing qualified trusts approved under any State law or by the legislative or judicial branches of the Federal Government of the United States will not be recertified by the Director. Individuals with existing qualified trusts who are required to file a financial disclosure report upon entering the executive branch, becoming a nominee for a position appointed by the President and subject to confirmation by the Senate, or becoming a candidate for President or Vice President must file a complete financial disclosure form that includes a full disclosure of items in the trust. After filing a complete form, the individual may establish a qualified trust under the policies and provisions of this rule.

§ 2634.405 Standards for becoming an independent trustee or other fiduciary.

(a) *Eligible entities.* An interested party must select an entity that meets the requirements of this regulation to serve as an independent trustee or other fiduciary. The type of entity that is allowed to serve as an independent trustee is a financial institution, not more than 10 percent of which is owned or controlled by a single individual, which is:

(1) A bank, as defined in 12 U.S.C. 1841(c); or

(2) An investment adviser, as defined in 15 U.S.C. 80b–2(a)(11).

Note to paragraph (a): By the terms of paragraph (3)(A)(i) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his or her sole discretion.

(b) *Orientation.* After the interested party selects a proposed trustee, that proposed trustee should contact the Office of Government Ethics for an orientation about the qualified trust program.

(c) *Independence requirements.* The Director shall determine that a proposed trustee is independent if:

(1) The entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party;

(2) The entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(3) Any director, officer, or employee of such entity:

(i) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(ii) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(iii) Is not a relative of any interested party.

(d) *Required documents.* In order to make this determination, the proposed trustee must submit the following documentation to the Director:

(1) A letter describing its past and current contacts, including banking and client relationships, with the employee, spouse, or minor or dependent child; and

(2) The Certificate of Independence, which must be executed in the form prescribed in appendix A to this part.

(e) *Determination.* If the Director determines that the current relationships, if any, between the interested party and the independent trustee do not violate the independence requirements, these relationships will be disclosed in an annex to the trust instrument. No additional relationships with the independent trustee may be established unless they are approved by the Director.

(f) *Approval of the trustee.* If the Director determines that the proposed trustee meets applicable requirements, the Office of Government Ethics will send the interested parties and their representatives a letter indicating its approval of a proposed trustee.

(g) *Revocation.* The Director may revoke the approval of a trustee or any other designated fiduciary pursuant to the rules of subpart E of this part.

(h) *Adding fiduciaries.* An independent trustee may employ or consult other entities, such as investment counsel, investment advisers, accountants, and tax preparers, to assist in any capacity to administer the trust or to manage and control the trust assets, if all of the following conditions are met:

(1) When any interested party or any representative of an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director;

(2) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under paragraphs (a) through (f) of this section to be independent of an interested party with respect to the trust arrangement;

(3) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust

assets or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets in the case of the blind trust; and

(4) The person is instructed by the independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party or any representative of an interested party, and to make all indirect communications with respect to the trust only through the independent trustee, pursuant to section 2634.408(a) of this subpart.

§ 2634.406 Initial portfolio.

(a) *Qualified blind trust.* (1) None of the assets initially placed in the portfolio of the blind trust shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation.

(2) Except as described in paragraph (a)(1) of this section, an interested party may put most types of assets (such as cash, stocks, bonds, mutual funds or real estate) into a qualified blind trust.

(b) *Qualified diversified trust.* (1) The initial portfolio may not contain securities of entities having substantial activities in the employee's primary area of Federal responsibility. If requested by the Director, the designated agency ethics official for the employee's agency shall certify whether the proposed portfolio meets this standard.

(2) The initial assets of a diversified trust shall comprise a widely diversified portfolio of readily marketable securities.

(i) A portfolio will be widely diversified if:

(A) The value of the securities concentrated in any particular or limited economic or geographic sector is no more than twenty percent of the total; and

(B) The value of the securities of any single entity (other than the United States Government) is no more than five percent of the total.

(ii) A security will be readily marketable if:

(A) Daily price quotations for the security appear regularly in newspapers of general circulation; and

(B) The trust holds the security in a quantity that does not unduly impair liquidity.

(iii) The interested party or the party's representative shall provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market value and demonstrating that these securities meet the requirements of this paragraph. The Director will determine whether the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities.

(iv) The independent trustee shall not acquire additional securities in excess of the diversification standards.

(c) *Hybrid qualified trust.* A qualified trust may contain both a blind portfolio of assets and a diversified portfolio of assets. The Office of Government Ethics refers to this arrangement as a hybrid qualified trust.

§ 2634.407 Certification of qualified trust by the Office of Government Ethics.

(a) *General.* After the Director approves the independent trustee, the employee or a representative will prepare the trust instrument for review by the Director. The representative of the interested party will use the model documents provided by the Office of Government Ethics to draft the trust instrument. Any deviations from the model trust documents must be approved by the Director. No trust will be considered qualified for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution.

(b) *Certification procedures.* (1) After the Director has approved the trustee, the interested party or the party's representative must submit the following documents to the Office of Government Ethics for review:

(i) A copy of the proposed, unexecuted trust instrument;

(ii) A list of the assets which the employee, spouse, or minor or dependent child proposes to place in the trust; and

(iii) In the case of a pre-existing trust as described in § 2634.409 of this subpart which the employee asks the Office of Government Ethics to certify, a copy of the pre-existing trust instrument and a list of that trust's assets categorized as to value in accordance with § 2634.301(d).

(2) In order to assure timely trust certification, the interested parties and their representatives shall be responsible for the expeditious submission to the Office of Government Ethics of all required documents and responses to requests for information.

(3) The Director will indicate that he or she has certified the trust in a letter to the interested parties or their representatives. The interested party and the independent trustee may then execute the trust instrument.

(4) Within thirty days after the trust is certified under this section by the Director, the interested party or that party's representative must file with the Director a copy of the executed trust instrument and all annexed schedules (other than those provisions which relate to the testamentary disposition of the trust assets), including a list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with § 2634.301(d).

(5) Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed in this section, § 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(c) *Certification standard.* A trust will be certified for purposes of this subpart only if:

(1) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met; and

(2) The Director determines that approval of the trust arrangement as a qualified trust is appropriate to assure compliance with applicable laws and regulations.

(d) *Revocation.* The Director may revoke certification of a trust pursuant to the rules of subpart E of this part.

§ 2634.408 Administration of a qualified trust.

(a) *General rules on communications between the independent fiduciaries and the interested parties.* (1) There shall be no direct or indirect communications with respect to the qualified trust between an interested party or the party's representative and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) In the case of the blind trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

(B) The general financial interest and needs of the interested party including, but not limited to, a preference for maximizing income or long-term capital gain;

(C) Notification to the independent trustee by the employee that the employee is prohibited by a subsequently applicable statute, Executive order, or regulation from holding an asset, and to direction to the independent trustee that the trust shall not hold that asset; or

(D) Instructions to the independent trustee to sell all of an asset which was initially placed in the trust by an interested party, and which in the determination of the employee creates a real or apparent conflict due to duties the employee subsequently assumed

(but nothing herein requires such instructions); or

(ii) In the case of the diversified trust, the proposed communication is approved in advance by the Director and it relates to:

(A) A distribution of cash or other unspecified assets of the trust;

(B) The general financial interest and needs of the interested party including, but not limited to, a preference for maximizing income or long-term capital gain; or

(C) Information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust that are required by the independent trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust.

(2) The person initiating a communication approved under paragraphs (a)(1)(i) or (ii) of this section shall file a copy of the communication with the Director within five days of the date of its transmission.

Note to paragraph (a): By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments that do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his or her sole discretion.

(b) *Required reports from the independent trustee to the interested parties*—(1) *Quarterly reports.* The independent trustee shall, without identifying specifically an asset or holding, report quarterly to the interested parties and their representatives the aggregate market value of the assets representing the interested party's interest in the trust. The independent trustee must follow the model document for this report and shall file a copy of the report, within five days of the date of its transmission, with the Director.

(2) *Annual report.* In the case of a qualified blind trust, the independent trustee shall, without identifying specifically an asset or holding, report annually to the interested parties and their representatives the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with section 2634.302(b) to enable the employee to complete the public financial disclosure form. In the case of a qualified diversified trust, the independent trustee shall, without identifying specifically an asset or holding, report annually to the interested parties and their representatives the aggregate amount actually distributed from the trust to the interested party or applied for the party's benefit. Additionally, in the case of the blind trust, the independent trustee shall report on Schedule K–1 the net income or loss of the trust and any other information necessary to enable the interested party to complete an individual tax return. The independent trustee must follow the model document for each report and shall file a copy of the report, within five days of the date of its transmission, with the Director.

(3) *Report of sale of asset.* In the case of the qualified blind trust, the independent trustee shall promptly notify the employee and the Director when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than $1,000. The independent trustee shall file a copy of the report, within five days of the date of its transmission, with the Director.

(c) *Communications regarding trust and beneficiary taxes.* The Act establishes special tax filing procedures to be used by the independent trustee and the trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administrators.

(1) *Trust taxes.* Because a trust is a separate entity distinct from its beneficiaries, an independent trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). The independent trustee is prohibited from providing the interested parties and their representatives with a copy of the trust tax return.

(2) *Beneficiary taxes.* The trust beneficiaries must report income received from the trust on their individual tax returns.

(i) For beneficiaries of qualified blind trusts, the independent trustee sends a modified Schedule K–1 summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. The independent trustee is prohibited from providing the interested parties or their representatives with the identity of the assets.

(ii) For beneficiaries of qualified diversified trusts, the Act requires the independent trustee to file the individual tax returns on behalf of the trust beneficiaries. The interested parties shall give the independent trustee a power of attorney to prepare and file, on their behalf, the personal income tax returns and similar tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(iii) Some qualified trust beneficiaries may pay estimated income taxes.

(A) In order to pay the proper amount of estimated taxes each quarter, the beneficiaries of a qualified blind trust will need to receive information about the amount of income, if any, generated by the trust each quarter. To assist the beneficiaries, the independent trustee is permitted to send, on a quarterly basis, information about the amount of income generated by the trust in that quarter. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(B) In order to pay the proper amount of estimated taxes each quarter, the independent trustee of a qualified diversified trust will need to receive information about the amount of income, if any, earned by the beneficiaries on assets that are not in the trust. To assist the independent trustee, the beneficiaries are permitted to send, on a quarterly basis, information about the amount of income they earned in that quarter on assets that are outside of the trust. This communication must be approved in advance by the Director in accordance with paragraph (a) of this section.

(d) *Responsibilities of the independent trustee and other fiduciaries.* (1) Any independent trustee or any other designated fiduciary of a qualified trust shall not knowingly and willfully, or negligently:

(i) Disclose any information to an interested party or that party's representative with respect to the trust that may not be disclosed under title I

of the Act, the implementing regulations or the trust instrument;

(ii) Acquire any holding:

(A) Directly from an interested party or that party's representative without the prior written approval of the Director; or

(B) The ownership of which is prohibited by, or not in accordance with, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(iii) Solicit advice from any interested party or any representative of that party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by the implementing regulations or the trust instrument.

(2) The independent trustee and any other designated fiduciary, in the exercise of their authority and discretion to manage and control the assets of the trust, shall not consult or notify any interested party or that party's representative.

(3) The independent trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director, securities, cash, or other property from any interested party or any representative of an interested party.

(4) Certificate of Compliance. An independent trustee and any other designated fiduciary shall file, with the Director by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust.

(e) *Responsibilities of the interested parties and their representatives.* (1) Interested parties to a qualified trust and their representatives shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(ii) Fail to file any document required by this subpart or the trust instrument.

(2) The interested parties and their representatives shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the independent trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b) and (c) of this section.

(3) In the case of any qualified trust, the interested party shall, within thirty days of transferring an asset, other than cash, to a previously established qualified trust, file a report with the Director, which identifies each asset, categorized as to value in accordance with section 2634.301(d).

(4) Any portfolio asset transferred to the trust by an interested party shall be free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director.

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust.

(f) *Amendment of the trust.* The independent trustee and the interested parties may amend the terms of a qualified trust only with the prior written approval of the Director and upon a showing of necessity and appropriateness.

§ 2634.409 Pre-existing trusts.

An interested party may place a pre-existing irrevocable trust into a qualified trust, which may then be certified by the Office of Government Ethics. This arrangement should be considered in the case of a pre-existing trust whose terms do not permit amendments that are necessary to satisfy the rules of this subpart. All of the relevant parties (including the employee, any other interested parties, the trustee of the pre-existing trust, and all of the other parties and beneficiaries of the pre-existing trust) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella trust agreement. The umbrella trust agreement will specify that the pre-existing trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella trust agreement on behalf of a required participant who is a minor child. The Office of Government Ethics has prepared model umbrella trust agreements that the employee can use in this circumstance. The umbrella trust agreement will be certified as a qualified trust if all of the requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured.

§ 2634.410 Dissolution.

Within thirty days of dissolution of a qualified trust, the interested party shall file a report of the dissolution with the Director and a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 2634.301(d).

§ 2634.411 Reporting on financial disclosure reports.

An employee who files a public or confidential financial disclosure report shall report the trust on the financial disclosure report.

(a) *Public financial disclosure report.* If the employee files a public financial disclosure report, the employee shall report the trust as an asset, including the overall category of value of the trust. Additionally, in the case of a qualified blind trust, the employee shall disclose the category of value of income earned by the trust. In the case of a qualified diversified trust, the employee shall report the category of value of income received from the trust by the employee, the employee's spouse, or dependent child, or applied for the benefit of any of them.

(b) *Confidential financial disclosure report.* In the case of a confidential financial disclosure report, the employee shall report the trust as an asset.

§ 2634.412 Sanctions and enforcement.

Section 2634.702 sets forth civil sanctions, as provided by sections 102(f)(6)(C)(i) and (ii) of the Act and as adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act, which apply to any interested party, independent trustee, or other trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

§ 2634.413 Public access.

(a) *Documents subject to public disclosure requirements.* The following qualified trust documents filed by a public filer, nominee, or candidate are subject to the public disclosure requirements of § 2634.603:

(1) The executed trust instrument and any amendments (other than those provisions which relate to the testamentary disposition of the trust assets), and a list of the assets which were transferred to the trust, categorized as to the value of each asset;

(2) The identity of each additional asset (other than cash) transferred to a

qualified trust by an interested party during the life of the trust, categorized as to the value of each asset;

(3) The report of the dissolution of the trust and a list of the assets of the trust at the time of the dissolution, categorized as to the value of each asset;

(4) In the case of a blind trust, the lists provided by the independent trustee of assets placed in the trust by an interested party which have been sold; and

(5) The Certificates of Independence and Compliance.

(b) *Documents exempt from public disclosure requirements.* The following documents are exempt from the public disclosure requirements of § 2634.603 and also shall not be disclosed to any interested party:

(1) Any document (and the information contained therein) filed under the requirements of § 2634.408(a) and (c) of this subpart; and

(2) Any document (and the information contained therein) inspected under the requirements of § 2634.408(d)(4) of this subpart (other than a Certificate of Compliance).

§ 2634.414 OMB control number.

The various model trust documents and Certificates of Independence and Compliance referenced in this subpart, together with the underlying regulatory provisions (and appendices A, B and C to this part for the Certificates), are all approved by the Office of Management and Budget under control number 3209–0007.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

§ 2634.501 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) *Scope.* This subpart applies to all trustee approvals and trust certifications pursuant to §§ 2634.405 and 2634.407, respectively.

§ 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated), the term ''trust restrictions'' means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

§ 2634.503 Determinations.

(a) *Violations.* If the Office of Government Ethics learns that violations or apparent violations of the trust restrictions exist that may warrant revocations of trust certification or trustee approval previously granted under § 2634.407 or § 2634.405, the Director may, pursuant to the procedure specified in paragraph (b) of this section, appoint an attorney on the staff of the Office of Government Ethics to review the matter. After completing the review, the attorney will submit findings and recommendations to the Director.

(b) *Review procedure.* (1) In the review of the matter, the attorney shall perform such examination and analysis of violations or apparent violations as the attorney deems reasonable.

(2) The attorney shall provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations that shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within ten business days of the recipient's actual receipt of the notice and summary.

(c) *Determination.* (1) In making determinations with respect to the violations or apparent violations under this section, the Director shall consider the findings and recommendations submitted by the attorney, as well as any written statements submitted by the independent trustee or interested parties.

(2) The Director may take one of the following actions upon finding a violation or violations of the trust restrictions:

(i) Issue an order revoking trust certification or trustee approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If the Director issues an order of revocation, parties to the trust instrument will receive prompt written notification. The notice shall state the basis for the revocation and shall inform the parties of the consequence of the revocation, which will be either of the following:

(i) The trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or

(ii) The independent trustee may no longer serve the trust in any capacity and must be replaced by a successor, who is subject to the prior written approval of the Director.

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FEDERAL TRADE COMMISSION

16 CFR Part 435

Mail or Telephone Order Merchandise Rule

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The FTC proposes amending the Mail or Telephone Order Merchandise Rule (''MTOR'' or ''Rule'') to respond to the development of new technologies and changed commercial practices. By doing so, the Commission seeks to accomplish four objectives: clarify that the Rule covers all Internet merchandise orders regardless of whether the buyer accesses the Internet through a telephone line, allow sellers to provide refunds and refund notices to buyers by any means at least as fast and reliable as first class mail, clarify sellers' obligations under the Rule for sales made using payment methods not specifically enumerated in the Rule, and require sellers to process any third party credit card refund within seven working days of a buyer's right to a refund vesting. Additionally, the FTC sets forth its interpretation of ''demand drafts'' as the functional equivalents of checks for purposes of the Rule.

DATES: Written comments must be received on or before December 14, 2011. Parties interested in an opportunity to present views orally, should submit a request to do so, and such requests must be received on or before December 14, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''16 CFR Part 435—Mail or Telephone Order Merchandise'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/MTORamendmentsNPRM,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326–2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Ave., NW., Washington, DC 20580, or Gregory Madden, (202) 326–2426, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M–8102B, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission finds that using expedited procedures in this rulemaking will serve the public interest. Expedited procedures will support the Commission's goals of clarifying and updating existing regulations without undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should amend the Rule. Because written comments should adequately present the views of all interested parties, the Commission is not scheduling a public hearing or workshop. However, if any person would like to present views orally, he or she should follow the procedures set forth in the **DATES**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** sections of this document. Pursuant to 16 CFR 1.20, the Commission will use the procedures set forth in this document, including: (1) Publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing (such as a workshop), if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a document published in the **Federal Register**. Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

I. MTOR Background

The Commission originally promulgated the Mail Order Rule in 1975 in response to complaints that many mail order sellers failed to ship ordered merchandise, failed to ship merchandise on time, or failed to provide prompt refunds for unshipped merchandise. The Commission issued the Rule pursuant to its authority under sections 5 and 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45 and 57a, to proscribe these deceptive and unfair acts or practices.[1]

A second proceeding, concluding in 1993, demonstrated that consumers who ordered merchandise by telephone experienced the same shipment and refund problems. Accordingly, the Commission amended the Rule to cover merchandise ordered by telephone, ''including orders placed by facsimile machines or computers with telephone modems,'' and renamed the Rule the ''Mail or Telephone Order Merchandise Rule.''[2]

The MTOR prohibits sellers from soliciting mail or telephone order sales unless sellers have a reasonable basis to expect that they will be able to ship, after receipt of a properly completed order, the ordered merchandise within the time stated on the solicitation or, if no time is stated, within 30 days. The MTOR further requires a seller to seek the buyer's consent to the delayed shipment when the seller learns that it cannot ship within the time stated or, if no time is stated, within 30 days. If the buyer does not consent, the seller must promptly refund all money paid for the unshipped merchandise.[3]

II. Proposed Amendments Due to Changing Conditions

The Commission can issue a notice of proposed rulemaking under the FTC Act if it has ''reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.'' 15 U.S.C. 57a(b)(3). The Commission can find ''unfair or deceptive acts or practices are prevalent'' where: ''(A) It has issued cease and desist orders regarding such acts or practices, or (B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.'' *Id.* at 57a(b)(3)(A)–(B). The Commission has ''wide latitude for judgment'' in fashioning a remedy and need only show a ''reasonable relationship'' between the unfair or deceptive act or practice and the remedy. *American Fin. Servs. Ass'n* v. *FTC,* 767 F.2d 957, 988 (DC Cir. 1985) (quoting *Jacob Siegel Co.* v. *FTC,* 327 U.S. 608, 612–13 (1946)); *see also Telephone Order Merchandise,* 58 FR 49096, 49106.

On September 11, 2007, as part of its rule review process,[4] the Commission published a request for public comment,[5] which also served as an Advance Notice of Proposed Rulemaking.[6] In this Advance Notice of Proposed Rulemaking (''ANPR''), the Commission generally sought comment on the Rule's costs, benefits, and the continuing need for the Rule.[7] The Commission specifically sought comment on whether to propose amending the Rule to: (1) Clarify that it covers all Internet merchandise sales regardless of how buyers access the Internet (*e.g.,* dial-up telephone modem, cable, or wireless); (2) allow sellers to provide refunds and refund notices by means at least as fast and reliable as first class mail; and (3) require sellers to provide cash, check, or money order refunds when buyers use any payment method other than credit.

After reviewing the comments received in response to the ANPR, and based on recent enforcement actions and complaints, the Commission finds that it has reason to believe that unfair

[1] *Federal Trade Commission: Part 435—Mail Order Merchandise: Promulgation of Trade Regulation Rule,* 40 FR 49492–94 (Oct. 22, 1975); *Federal Trade Commission: Part 435—Mail Order Merchandise: Promulgation of Trade Regulation Rule: Correction,* 40 FR 51582–597 (Nov. 5, 1975) (''*Promulgation of Rule: Correction*''). The Commission initiated the rulemaking in 1971 under section 6(g) of the FTC Act, 15 U.S.C. 46(g), and had substantially completed the rulemaking when Congress amended the FTC Act by adopting section 18, 15 U.S.C. 57a. By operation of law, the Mail Order Rule was then treated as having been promulgated under authority of section 18. *See United States* v. *JS&A Group, Inc.,* 547 F. Supp. 20, 23 (N.D. Ill. 1982); *United States* v. *Braswell, Inc.,* No. C 81–558 A, 1981 U.S. Dist LEXIS 15444, at *8 (N.D. Ga. 1981). The Mail Order Rule took effect February 2, 1976.

[2] *Federal Trade Commission: Trade Regulation Rule; Mail or Telephone Order Merchandise: Final Trade Regulation Rule,* 58 FR 49096, 49097 (Sept. 21, 1993) (''*Telephone Order Merchandise*'').

[3] The MTOR is consistent with the requirements of the Telemarketing Sales Rule (''TSR''), 16 CFR 310, but covers different practices. The MTOR covers post-purchase events, such as actions that a seller must take when it learns it cannot ship merchandise on time. The TSR, unlike the MTOR, also covers sales of services, and covers numerous pre-purchase practices, such as disclosures made before a customer consents to pay. The MTOR covers telemarketing sales that the TSR exempts, such as certain customer-initiated telephone calls made in response to a direct mail solicitation, 16 CFR 310.6(b)(6), and sales that do not involve telemarketing, such as mailorder or non-voice telephone (facsimile or Internet) sales.

[4] The Commission reviews all its rules and guides periodically to ensure that they remain relevant. These periodic reviews seek information about the costs and benefits of the Commission's rules and guides as well as their economic and regulatory impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

[5] *Federal Trade Commission: Mail or Telephone Order Merchandise: Request For Public Comment,* 72 FR 51728 (Sept. 11, 2007) (''*ANPR*'').

[6] 15 U.S.C. 57a(b)(2)(A).

[7] In a separate document published elsewhere in this **Federal Register**, the Commission publishes its determination retaining the Rule. In that document, the Commission is also making final, non-substantive technical amendments, placing the Rule's definitions at the beginning and alphabetizing the definitions. References in this document are to the Rule as reordered and redesignated in the final rule.

or deceptive acts or practices involving Internet sales are prevalent, notwithstanding the number of reliable Internet retailers. Consequently, the Commission proposes amending the Rule to address new technologies and commercial practices by: (1) Expressly covering all Internet merchandise orders, (2) allowing sellers to provide refunds and refund notices by any means at least as fast and reliable as first class mail, (3) clarifying sellers' obligations under the Rule for sales made using payment methods not specifically enumerated in the Rule, and (4) requiring sellers to provide refunds within seven working days where the buyer uses a third party credit card.[8] The Commission finds these proposed amendments are reasonably related to remedying unfair and deceptive acts or practices and ensuring that buyers receive timely delivery or timely refunds.

Finally, consistent with the Federal Reserve System's handling of demand drafts, the Commission announces its determination that ''demand drafts'' are the functional equivalent of checks and the Commission will treat them as such for purposes of the Rule.

A. Clarify Coverage of Internet Orders

The Commission expanded coverage of the Rule to include Internet orders when it amended the ''telephone'' definition in 1993.[9] At that time, to the extent consumers had access to the Internet, they typically accessed it through the telephone. Other means of accessing the Internet, however, are now widespread. In fact, from June 2000 to May 2011, American consumers largely switched from dial-up connections to broadband for Internet access.[10] The Commission's 2007 ANPR therefore sought comment on whether the Commission should clarify the Rule by amending it to expressly cover merchandise ordered via the Internet regardless of the access method.[11]

All four responsive comments supported clarifying the Rule in this manner.[12] The Direct Marketing Association (''DMA'')[13] commented that its own guidelines treat all Internet orders equally and its members follow those guidelines.[14] The National Retail Federation (''NRF'')[15] also supported covering Internet orders regardless of means of access, provided that the order was placed through the ''publicly accessible worldwide web.'' NRF at 3. Specifically, NRF's comments urged the Commission not to cover sales by retailers who use Internet connections within their stores only to provide information to sales representatives.[16] NRF at 3 n.1.

Two individual commenters also voiced support. Paul T. Dearing (''Dearing'') commented that a merchant could not ''reasonably argue that an order placed over a wireless network was somehow exempt from the requirements of the Rule.''[17] He further noted that, given current practices, amending the Rule would not ''impose any new obligations or create any new rights that have not already been recognized for over a decade.'' *Id.* Oriyomi Nwokeji (''Nwokeji'') commented that consumers and merchants do not consider access methods when processing Internet orders.[18]

These comments are consistent with publicly available data, consumer complaints, and enforcement actions. First, Internet sales accounted for 44 percent of the almost $200 billion of 2007 non-store merchandise sales, indicating how common such purchases have become.[19] As noted, the overwhelming majority of these sales occur via broadband Internet access, not telephone dial-up.

Second, consumer complaints indicate that Internet merchandise buyers, regardless of the way they connect to the Internet, suffer from the unfair or deceptive acts or practices that prompted adoption of the Rule. The Internet Crime Complaint Center (''IC3'')[20] reported that in 2009 almost 12 percent of the 336,655 Internet-related complaints that it received (approximately 40,000 complaints) related to ''Non-Delivery of Merchandise/Payment.''[21] Significantly, non-delivery represented almost 20 percent of the 146,633 complaints referred to local, State, and Federal law enforcement authorities for further investigation (approximately 29,000 referrals). *Id.* at 5.

While many Internet sellers are highly reliable, law enforcement actions[22] and

[8] Even though the ANPR sought comment on only three potential amendments, the Commission now proposes four amendments to the MTOR. The additional proposed amendment responds to comments the FTC received.

[9] Section 435.1(f) defines ''telephone'' as ''any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.'' The Commission noted that rulemaking participants understood that the ''telephone'' definition was meant to ''cover orders taken by mechanical means over the phone, orders placed by computers, and orders placed by fax transmission.'' *Telephone Order Merchandise,* 58 FR at 49113.

[10] During this period, the portion of U.S. households accessing the Internet through dial-up connections declined from 34 percent to 4 percent, and the portion using broadband increased from 3 percent to 60 percent. Broadband and Dial-up Adoption, 2000–2011, *http://pewinternet.org/Trend-Data/Home-Broadband-Adoption.aspx.*

[11] In 2007, the Commission explained that it intended to ''cover all Internet ordering, regardless of [buyers'] means of access * * *.'' *ANPR,* 72 FR at 51729.

[12] Public comments received in response to the ANPR are available at: *http://www.ftc.gov/os/comments/mailortelephoneorder/index.shtm.* This document cites to these comments by indicating the short form for the commenter, *e.g.,* ''DMA'' for the Direct Marketing Association, and the page of the comment.

[13] DMA is a global trade organization representing business and nonprofit organizations engaged in direct marketing. DMA at 1. DMA represents more than 3,600 companies in the U.S. and abroad, along with more than 200 nonprofit organizations. *Id.*

[14] DMA, *http://www.ftc.gov/os/comments/mailortelephoneorder/532289-00004.htm,* at 3.

[15] NRF identifies itself as the world's largest retail trade association with membership from all retailing formats and distribution channels (*e.g.,* catalog sales, Internet sales). NRF, *http://www.ftc.gov/os/comments/mailortelephoneorder/532289-00003.htm,* at 1. NRF's membership comprises more than 1.6 million U.S. retail establishments with 2006 sales of $4.7 trillion. *Id.* NRF includes a division for members with interests in merchandise distribution via the Internet, Shop.Org, that specifically joined NRF's comments. *Id.*

[16] The Commission notes that the MTOR does not presently cover transactions in which a seller's representative merely receives product or inventory information through a telephone, but the transaction with the buyer is conducted by means of media outside the Rule's scope (*e.g.,* face-to-face transactions). Similarly, the proposed amendments to the MTOR would not cover transactions in which a seller's representative uses the Internet to receive product or inventory information, but where the buyer orders the merchandise by means outside of the Rule's scope.

[17] Dearing, *http://www.ftc.gov/os/comments/mailortelephoneorder/532289-00002.pdf,* at 2.

[18] Nwokeji, *http://www.ftc.gov/os/comments/mailortelephoneorder/532289-00001.htm,* at 1.

[19] U.S. Census Bureau, E-Stats, 2007 E-Commerce Multi-Sector Report, May 28, 2009, *http://www.census.gov/compendia/statab/2010/tables/10s1022.pdf,* tbl.1022 *Electronic Shopping and Mail-Order Houses—Total and E-Commerce Sales by Merchandise Line: 2006–2007.*

[20] IC3 is a joint operation of the National White Collar Crime Network and the Federal Bureau of Investigation. It serves as a clearinghouse for receiving, developing, and referring complaints regarding Internet crime.

[21] *2009 Internet Crime Report,* at 2, Internet Crime Complaint Center, *http://www.ic3.gov/media/annualreport/2009_IC3Report.pdf* (2010). IC3 defines this category as: ''Non-Delivery of Merchandise (non-auction)—An incident in which the complainant bought something, but it never arrived.'' *Id.* app. II.

[22] IC3's report highlights two criminal prosecutions related to non-delivery of merchandise purchased on the Internet. *Id.* at 13. Additionally, several states have filed failure to deliver or untimely delivery cases for a variety of products sold through the Internet. Complaint for Injunctive Relief, Restitution, Civil Penalties and Other Relief, *Florida* v. *Lyne,* 16–2008–CA–2759 (Fla. Cir. Ct. Mar. 3, 2008); Complaint for Permanent Injunctive Relief, Civil Penalties and Other Relief, *Florida* v. *Showbiz Promotions, LLC,* 2009–CA–005681 (Fla. Cir. Ct. Apr. 9, 2009); Complaint for Injunctive and Other Relief, *People of State of Illinois ex. rel. Madigan* v. *United World Exchange,* No. 07CH16005 (Cook County Cir. Ct. June 18, 2007); Complaint for Injunctive and Other Relief, *People of State of Illinois* v. *Meyer,* No. 2007CH003506

Continued

IC3 data indicate that some Internet sellers fail to ship substantial numbers of Internet merchandise orders on time or at all.[23] Because of the proliferation of Internet access by cable, satellite, optical-fiber, and other non-telephonic means, many of these purchases undoubtedly involved access to the Internet using a means other than the telephone. Therefore, the Commission concludes that, although many Internet retailers are highly reliable, there is reason to believe that the merchandise shipment and refund problems are prevalent regardless of the means of Internet access. Explicitly covering all Internet order sales regardless of the means of access to the Internet is consistent with the Commission's longstanding intent to address all Internet merchandise orders.

Furthermore, because sellers cannot determine how buyers access their Web sites, sellers that comply with the Rule do not distinguish between access methods and comply with the Rule for all Internet orders. Thus, explicitly covering all Internet transactions provides clarity without imposing new costs on these sellers. Moreover, consumers have no reason to expect that their legal protections depend on how they access the Internet. Therefore, the Commission proposes amending the Rule's name, coverage section, and the ''order sales'' definition by inserting the word ''Internet'' where appropriate.

B. Permit New Refund Delivery Options

The Commission proposes amending the Rule to allow sellers to deliver refunds ''by any means at least as fast and reliable as first class mail.'' Currently, sellers must send refunds and charge reversal notices by first class mail. 16 CFR 435.1(b).[24] When the Commission promulgated the Rule, first class mail was the most reliable method of ensuring timely refunds. In the ANPR, the Commission requested comment on changing the first class mail requirement in light of new refund methods, such as electronic transfer. *ANPR,* 72 FR at 51730.

In response, two commenters favored, and none opposed, amending the Rule to provide sellers with more flexibility when delivering refunds. DMA suggested amending the Rule to ''embrace new practicable means of sending refunds.'' DMA at 3. It stated that such a change would advance the Rule's original intent of ensuring buyers receive refunds quickly without unduly burdening sellers. *Id.* at 3–4 (citing *Promulgation of Rule: Correction,* 40 FR at 51593.) Nwokeji commented that legal requirements should recognize technological changes, and suggested amending the Rule to permit refunds via electronic transfers and e-mail notification of charge reversals or refunds. Nwokeji at 2.

This proposed amendment would also harmonize the Rule with Regulation Z, which implements the Truth In Lending Act (''TILA''), 15 U.S.C. 1601 *et seq.* Regulation Z requires third party credit card refunds to occur ''through the card issuer's normal channels for credit statements.'' 12 CFR 226.12(e)(1). The proposed amendment should eliminate potential inconsistency between the requirements of the Rule and Regulation Z when the card issuer's normal channel does not include first class mail.

Although DMA suggested that private couriers or electronic transfers are at least as fast and reliable as first class mail for providing refunds, the Commission's proposal does not identify specific permissible methods other than first class mail. DMA at 4. Instead the Commission proposes providing sellers flexibility to use any refund delivery method they can demonstrate is as fast and reliable as first class mail. This flexibility will allow sellers to incorporate new delivery methods in the future.

C. Clarify Sellers' Obligations for Sales Using Non-Enumerated Payment Methods

The Commission proposes amending the Rule to identify sellers's obligations for sales made using all payment methods. The Rule's' ''mail or telephone order sales'' definition already explicitly covers all mail or telephone order sales ''regardless of the method of payment.'' 16 CFR § 435.1(a).[25] However, the Rule's definitions tie sellers' shipment, notification, and refund obligations to payment methods in just two categories: (1) Cash, check, or money order; or (2) credit.[26] Consequently, the Rule does not delineate sellers' obligations when buyers pay by methods not enumerated in the Rule, such as debit card, prepaid gift card, or payroll card payments.

To clarify sellers' obligations, the Commission suggested possible solutions and asked for comment in the ANPR. Below, the Commission describes: (1) The responsive comments, and (2) the Commission's proposed amendments.

1. ANPR Comments

In the ANPR, the Commission sought comment to help identify the appropriate requirements for sales made using newly developed payment methods. *ANPR,* 72 FR at 51729. Specifically, the Commission asked ''into which of the two categories [(1) cash, check, or money order; or (2) credit] the new payment methods best fall, or whether they should be placed in a third category.'' *Id.*

Two commenters supported, and none opposed, amending the Rule to delineate sellers' obligations.[27] DMA suggested amending the Rule to identify obligations for ''new forms of payment, including, but not limited to, debit cards and demand drafts.'' DMA at 3. Nwokeji suggested that ''[c]reating an expanded list [of payment methods] with open-ended options may be preferable; that way consumers and merchants are not trapped in a morass of administrative rigidity.'' Nwokeji at 2.

The commenters, however, expressed conflicting opinions about how to categorize payment methods that currently are not enumerated in the Rule (''non-enumerated methods''). DMA advocated placing demand drafts and debit card payments in the same category as cash, checks, or money orders because doing so would

(Dupage County Cir. Ct. Dec. 28, 2007); Complaint for Declaratory Judgment, Injunctive Relief, Consumer Restitution, and Civil Penalty, *State of Ohio ex. rel. Cordray* v. *Decorate With Style, Inc. d/b/a USA WallPaper,* Case No. 2009CV0885 (Ct. Common Pleas Erie County, Oct. 19, 2009).

[23] This is an unfair or deceptive practice, as the Commission indicated when it promulgated the initial Rule.

[24] Specifically, § 435.1(b) states that *Prompt refund* shall mean: Where a refund is made pursuant to paragraph (d)(1) or (2)(iii) of this section, a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part; where a refund is made pursuant to paragraph (d)(2)(i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

[25] Specifically, § 435.1(a) states:

Mail or telephone order sales shall mean sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

[26] Under the ''refund'' definition, if the buyer paid by cash, check, or money order, the seller must send the buyer a refund by cash, check, or money order. 16 CFR 435.1(d). If the buyer paid by authorizing the seller to charge the buyer's charge account (*i.e.,* by credit), the seller must act to remove or reverse the charge. *Id.*

Under the ''prompt refund'' definition, the seller must send refunds by cash, check, or money order by first class mail within seven working days after a buyer's right to a refund vests. 16 CFR 435.1(d)(1) and (2)(iii); 16 CFR 435.1(b)(1). If the buyer paid by credit, the seller must send the charge reversal notice (*i.e.,* the refund) to the buyer by first class mail within one billing cycle of a buyer's right to a refund vesting. 16 CFR 435.1(d)(2)(i) & (ii); 16 CFR 435.1(b)(2).

[27] NRF did not oppose expressly identifying the Rule's obligations that apply when new payment methods are used, but as discussed below, did raise concerns about sellers' refund obligations triggered by the different payment methods. NRF at 3–4.

appropriately treat them ''in the same manner as check payment methods.'' DMA at 3. In contrast, NRF recommended placing third party card payment methods, *i.e.,* payment methods where a party other than the seller issues the payment card, in the same category as credit card payments because sellers often cannot readily distinguish between debit and credit card transactions. NRF at 4. It stated that placing different requirements on debit card, payroll card, or third party gift card payments than on credit card payments would be ''unnecessarily cumbersome'' because it would force merchants to distinguish these payments from credit card payments in order to meet the Rule's requirements. NRF at 5.

NRF therefore recommended that transactions appearing to sellers to operate as credit cards be subject to the same one billing cycle refund requirement as credit transactions. NRF argued that applying this requirement to payments by non-enumerated methods would not, as a practical matter, inconvenience buyers because ''currently most customers' [credit or debit] accounts are not debited for payment until merchandise is ready for shipping'' to engender good customer relations, to simplify Rule compliance, and to avoid the need to process refunds. *Id.* Thus, according to NRF, in most instances where a merchant fails to ship merchandise there is no charge to reverse.

Nwokeji commented that the Rule should allow sellers flexibility. He suggested amending the Rule to require that ''refunds be made in the manner in which payments were received with the exception of Western Union, MoneyGram, escrow, Paypal, gift card, or other universally accepted method of payment.'' Nwokeji at 3–4. For these exceptions, he recommended refunds by check or, ''if the merchant is likely to incur burdensome expense, the next best option * * *.'' *Id.*

2. FTC Proposal

Based on the comments, the Commission proposes amending the Rule to create explicit requirements for sellers when buyers use non-enumerated methods. Specifically, the Commission proposes creating a third payment category, distinct from both the ''cash, check, or money order'' category, and from the ''credit'' category. The proposal requires sellers to make prompt refunds of such payments by either reversing the payment or sending a cash, check, or money order refund within seven working days.

To effectuate these requirements, the Commission proposes amending the definitions for: ''Receipt of a properly completed order,'' ''Refund,'' and ''Prompt Refund.''

a. ''Receipt of a Properly Completed Order''

The current ''receipt of a properly completed order'' definition establishes the starting point for calculating the time by which sellers must ship orders, notify consumers of shipment delays, offer to cancel orders, or make refunds. 16 CFR 435.1(c). Specifically, the Rule times these obligations from the point when the buyer tenders payment ''in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account.'' *Id.* The Commission proposes amending this definition to expressly include other payment methods that are not enumerated in the Rule. The proposed amendment would add that a seller also has receipt of a properly completed order when the buyer tenders payment by ''other payment methods.'' The amended definition would establish a clear starting point for calculating the time by which sellers must ship or take other action, regardless of the method of payment.

b. ''Refund''

The current ''refund'' definition prescribes the payment method for refunding cash, check, or money order sales (§ 435.1(d)(1)), and for credit sales (§ 435.1(d)(2)).[28] The Commission proposes amending this definition to establish the payment method sellers can use to refund sales made with other methods of payment.[29] The proposed amendment would require sellers to refund such payments by reversing the transaction or, where appropriate, by cash, check, or money order.[30] Alternatively, if sellers have not yet accessed the buyers' funds, they must notify the buyers that they have not done so, will not do so, and have cancelled the orders.

Under this proposal, sellers would be able to use the same payment method as the buyer to refund non-enumerated payments when that is the simplest or cheapest means available.[31] For example, sellers could reverse debit card payments without distinguishing them from credit card payments. This addresses NRF's concerns about the costs and burdens of making such a determination.

In addition, where appropriate, sellers could make refunds by cash, check, or money order. This would provide flexibility where refunding: (1) By the original payment method is not possible (*e.g.,* because the buyer has closed his or her debit card account, or value cannot be returned to the buyer's prepaid gift card); or (2) by cash, check, or money order is cheaper or easier (*e.g.,* refunding by wire payment would require a seller to pay wire fees).[32]

Finally, where a seller has not yet accessed a buyer's funds, a seller could simply notify the buyer that it has cancelled the order. This provision tracks an existing, similar provision dealing with credit sales. 16 CFR 435.1(d)(2)(ii).

c. ''Prompt Refund''

The ''prompt refund'' definition sets the time frames and identifies the recipients for prompt refunds of cash, check, money order, and credit purchases.[33] Sellers must refund cash, check, or money order refunds within seven working days after a buyer's right to a refund vests. For credit sales, sellers

[28] The present ''refund'' definition provides that: (1) Where the seller is the creditor, a seller can make a refund by sending ''an account statement reflecting the * * * absence of any remaining charge''; and (2) where a third party is the creditor, a seller can make a refund by sending ''a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party.'' 16 CFR 435.1(d)(2)(i)–(ii).

[29] After considering the comments, the Commission no longer proposes requiring that all non-enumerated payment method refunds be made by cash, check, or money order. Requiring debit card, payroll card, or gift card payment refunds to be made by cash, check, or money order would require sellers to distinguish between electronic payment methods in order to process refunds in accordance with the Rule. NRF commented sellers cannot readily do so. The Commission's proposal therefore avoids placing this additional burden on sellers.

[30] For some payment methods, regulations or contractual obligations may require sellers to reverse transactions rather than issue refunds by cash, check, or money order. The proposed amendments do not override such requirements.

[31] The proposed amendment provides that, when sellers provide refunds using the same non-enumerated payment method as the buyer, ''refund'' shall mean instructions sent to the entity that transferred payment to the seller instructing that entity to return to the buyer the amount tendered in the form tendered and a statement sent to the buyer setting forth the instructions sent to the entity, including the date of the instructions and the amount to be returned to the buyer.

Proposed 16 CFR 435.1(d)(3)(i).

[32] Contrary to NRF's recommendation, the Commission does not propose requiring that sellers refund purchases made with non-enumerated payment methods in the same manner as they refund credit payments, by reversing such transactions. Some non-enumerated payments, such as certain gift card payments, cannot be reversed, and some non-enumerated payments may be expensive to reverse.

[33] The Rule covers all sales ''regardless of the method of payment'' and all sellers have an obligation to provide a ''prompt refund'' within a reasonable time frame regardless of the buyer's payment method. 16 CFR 435.1(a).

must provide a refund within one billing cycle. The definition does not specify the time frames or recipients for refunds for non-enumerated payment method purchases.[34]

The Commission proposes amending the ''prompt refund'' definition to require sellers to send refunds for transactions using non-enumerated methods within seven working days of a buyer's right to a refund vesting.[35] Proposed 16 CFR 435.1(b)(1) and (d)(3). Under the proposed amendment, when a seller learns that it cannot provide a refund using the buyer's payment method, it must send a cash, check, or money order refund within seven working days.[36]

The proposed amendment provides clarity, while imposing little burden on sellers. Technological improvements make it easier for sellers to process refunds within seven working days.[37] The proposal to permit prompt refunds by means at least as fast and reliable as first class mail will permit sellers to take advantage of these faster technologies. Moreover, when payment is made by credit or debit card, sellers generally delay charging buyers' accounts until shipment to avoid processing refunds. NRF at 5. Such a seller satisfies its refund obligation by sending a notice informing the buyer that the seller has cancelled the order and will not request payment.

D. Require Third Party Credit Sale Refunds Within Seven Working Days

The Commission proposes further amending the ''prompt refund'' definition to require sellers to provide refunds within seven working days to buyers who purchased with third party credit cards (*e.g.,* Visa, MasterCard, or American Express cards).[38] In addition to the obvious benefit for consumers, the proposed amendment would also benefit sellers in two ways.

First, harmonizing the treatment of credit card sale orders and sales by non-enumerated methods would provide simplicity for sellers. NRF commented on the difficulty of distinguishing credit sales from a number of other non-enumerated methods, such as debit card payments. NRF at 4–5. The proposed amendment addresses this problem by setting the same refund deadline for third party credit sales as for non-enumerated methods, thereby limiting the need to distinguish between different types of card payments.

Second, the seven working day time frame is consistent with current credit card regulations and business practices. Regulation Z requires that sellers make third party credit card refunds within seven business days.[39] 12 CFR 226.12(e)(1). Therefore, the proposed change should have limited impact on sellers. Moreover, to avoid costs associated with high chargeback rates, sellers have economic incentives to process refunds immediately. For example, Visa advises merchants to process refunds ''as quickly as possible, preferably the same day as the credit transaction is generated'' to prevent chargebacks.[40]

The proposed amendment, however, recognizes that the Rule places greater obligations on a seller creditor[41] than on a seller using a third party creditor (*e.g.,* Visa). A seller creditor must remove a charge within the time allotted by the Rule. A seller using a third party creditor need only send timely notice to that third party. Therefore, shortening the seller creditors' refund period to seven days would create an additional burden, which the Commission declines to propose at this time.[42] However, the FTC seeks comment on whether seller creditors should also be subject to the seven working day refund deadline.

E. Demand Drafts as Check Payments

In the ANPR, the Commission sought comment on treating demand drafts as checks. In the context of the MTOR, a demand draft is a check created by the seller, with the buyer's authorization and the buyer's checking account number, without a physical signature.[43] As the Commission noted in the ANPR, demand drafts allow sellers access to buyers' bank accounts in the same manner as traditional checks.[44] *ANPR,* 72 FR at 51729. Moreover, the Federal Reserve expressly identifies a document with the attributes of a demand draft as a ''remotely-created check'' subject to Federal Reserve Regulation CC governing the bank check clearing system. 12 CFR 229.2(fff); *see also Collection of Checks,* 70 FR at 71218. Thus, the Commission considers demand drafts to be checks, and refunds for payments made through demand drafts should be processed in the same manner as checks. Because the Rule already uses the term ''check,'' and the Commission's interpretation clarifies but does not alter the substantive scope of that term, the Commission finds it unnecessary to amend the Rule further to reflect this interpretation.[45]

III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 14, 2011. Write ''16 CFR part 435—Mail or Telephone Order Merchandise'' on your comment. Your

[34] The ''prompt refund'' definition references subsections of the ''refund'' definition that currently apply only to cash, check, or money order payments, or to credit payments. The prompt refund obligation is timed from the ''receipt of a properly completed order.''

[35] The Rule currently requires the seller to send the buyer ''a copy of an appropriate credit memorandum or the like to the third party creditor.'' This requires the seller to send the original credit memorandum to the third party creditor, and does not set forth a time frame for sending the original. The Commission proposes clarifying the Rule by amending the ''refund'' and ''prompt refund'' definitions to explicitly require the seller to send the original to the third party creditor within seven working days. The Commission proposal further requires the seller to tell the buyer the date that the seller sent the original to the third party creditor and the amount of the charge to be removed.

[36] For example, if a seller cannot reverse a debit card payment because a buyer has closed his or her debit account, the seller must send a cash, check, or money order refund within seven working days.

[37] *See* Nwokeji at 2.

[38] As noted above, the Rule currently requires sellers to provide refunds for all credit sales within one billing cycle. 16 CFR 435.1(b)(2) and (d)(2).

[39] Section 226.12(e)(1) of Regulation Z states: ''[w]hen a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.''

[40] Preventing Chargebacks, *http://usa.visa.com/merchants/operations/chargebacks_dispute_resolution/preventing_chargebacks.html.*

[41] Seller creditors are merchants using their own store credit or charge cards.

[42] There is a huge disparity between the number of third party creditor and seller creditor transactions. Retailer credit cards where the retailer is the creditor appear to be less than 5 percent of total debit and credit card sales. *See http://www.creditcards.com/credit-card-news/retail-store-credit-card-comparison-table* and *http://www.creditcards.com/credit-card-news/credit-card-industry-facts-personal-debt statistics.* (2007 total retail store credit card sales $138.8 million versus 2008 credit card sales of $2.1 trillion, 2008 debit card sales of $1.33 trillion, and combined 2008 credit and debit card sales of $3.44 trillion.)

[43] Other terms used include ''telechecks,'' ''preauthorized drafts,'' and ''paper drafts.'' *See Federal Reserve System: Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire and Availability of Funds and Collection of Checks: Final rule,* 70 FR 71218 (''*Collection of Checks*''), 71219, n.1. (Nov. 28, 2005).

[44] Due to the substantial potential for fraud with demand drafts, the Telemarketing Sales Rule prohibits the use of demand drafts unless the telemarketer obtains an express verifiable authorization (*e.g.,* customer's express written authorization or tape recorded oral authorization) from the consumer. 16 CFR 310.3(a)(3); *see also* ''*Demand Draft Fraud,*'' FTC Prepared Statement Before the House of Representatives Banking Committee, April 15, 1996.

[45] The Commission's definition of ''demand draft'' as a check, if incorporated into the Rule as a formal amendment, would be an interpretive rule not subject to notice and comment requirements. *See ANPR,* 72 FR at 51728–29.

comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don't include any '[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[46] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/MTORamendmentsNPRM,* by following the instruction on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''16 CFR Part 435—Mail or Telephone Order Merchandise'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 14, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Questions

The Commission seeks comments on all proposed Rule changes. The Commission specifically solicits public comment on the costs and benefits to buyers and sellers of each of the proposals. In addition, the Commission solicits comments on the specific questions identified below. These questions are designed to assist the public and should not be construed to limit the issues about which the public may comment.

(1) In what ways, and to what extent, do buyers' experiences with untimely shipments, notices of delay, and refunds for merchandise ordered over the Internet through telephone connections resemble or differ from their experiences for merchandise ordered over the Internet through connections that use other means to access the Internet? What evidence supports your answer?

(2) In what ways, and to what extent, do buyers' experiences with untimely shipments, notices of delay, and refunds for merchandise ordered using payment methods not specifically enumerated in the Rule resemble or differ from their experiences for merchandise ordered using cash, check, money order, or credit? What evidence supports your answer?

(3) In the absence of express shipment representations, in what ways and to what extent do buyers' expectations with respect to shipment times or refunds for merchandise ordered using payment methods not specifically enumerated in the Rule resemble or differ from their expectations for merchandise ordered using cash, check, money order, or credit? What evidence supports your answer?

(4) What usual or customary practices do sellers follow, and how much time do they need, to make a ''prompt refund'' through first class mail as required by the Rule? Would these practices and times differ for refunds made by methods other than first class mail? If so, how? If not, why not? What evidence supports your answer?

(5) What refund delivery means can sellers use that are at least as fast and reliable as first class mail? What are the costs and benefits of providing refunds by delivery means other than first class mail? What evidence supports your answer?

(6) Would the following amendments impose costs or confer benefits on buyers, especially small businesses? Would the amendments impose costs or confer benefits on sellers, especially small businesses? If so, how? If not, why not? What evidence supports your answers?

(a) Amending the Rule to explicitly cover all merchandise orders placed over the Internet;

(b) Amending the ''prompt refund'' definition to permit sellers to deliver refunds by any means at least as fast and reliable as first class mail;

(c) Amending the ''receipt of a properly completed order'' definition to add that a seller has receipt of a properly completed order when the seller receives ''authorization to access the buyer's funds by other payment methods.''

(d) Amending the ''refund'' definition to require sellers, who accept payment for mail, Internet, or telephone merchandise orders by payment methods other than cash, check, money order, or credit, to make required refunds by the same method that payment was tendered; or by cash, check, or money order; or by sending a statement to the buyer acknowledging the cancellation of the order and representing that the seller has not accessed any of the buyer's funds;

(e) Amending the ''prompt refund'' definition to require sellers to make refunds by cash, check, or money order within seven working days of the date on which sellers discover they cannot provide a refund by the same method as the customer tendered payment for mail, Internet, or telephone merchandise orders made with non-enumerated payment methods;

(f) Amending the ''prompt refund'' definition to require sellers to make

[46] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

refunds within seven working days of the date on which the buyer's right to a refund vests for mail, Internet, or telephone merchandise orders, other than credit orders where the seller is the creditor; and

(g) Amending the ''prompt refund'' definition to require sellers to make refunds within seven working days from the date on which the buyer's right to a refund vests for mail, Internet, or telephone merchandise orders, including credit orders where the seller is the creditor.

(7) What methods of payment other than check, cash, money order or credit do sellers accept as payment for mail, Internet, or telephone merchandise orders? For each of these payment methods, identify whether a seller can provide a refund in the form tendered? If so, how? If not, why not? What evidence supports your answer?

(8) When a purchase is made using a debit card, credit card, or prepaid card, to what extent do sellers delay accessing the buyer's assets to remove funds for payment until the merchandise is shipped? Do sellers delay accessing the buyer's funds when accepting any other payment method(s)? What evidence supports your answer?

(9) General Questions: To maximize the benefits and minimize the costs for buyers and sellers (including specifically small businesses), the Commission seeks views and data on the following general questions for all the proposed changes described in this document:

(a) What benefits would the proposed changes confer, and on whom?

(b) What paperwork burdens would the proposed changes impose, and on whom?

(c) What other costs or burdens would the proposed changes impose, and on whom?

(d) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

IV. Communications to Commissioners and Commissioner Advisors by Outside Parties

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[47]

V. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under Section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of $100 million or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy; on the cost of ordering merchandise by mail, telephone, or over the Internet; or on covered parties or consumers. The comments indicate that sellers already treat Internet orders in the same manner as mail or telephone orders, and do not charge buyers' debit cards until the time of shipment, so the proposed amendments would not require sellers to alter their behavior and would not impose additional costs on sellers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency consider the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendments to the Rule would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. Specifically, the Commission is proposing a few limited amendments designed to clarify the Rule and defining for sellers how to satisfy the Rule's refund requirement. In the Commission's view, the proposed amendments should not have a significant or disproportionate impact on the costs of small entities that solicit orders for merchandise to be ordered through the mail, by telephone, or via the Internet. To the extent that the proposed amendments expand the Rule's coverage, the proposed amendments do so in a way that will not result in significantly higher costs because sellers generally have already aligned their practices with the proposed amendments. Specifically, expanding the Rule to clarify its application to all Internet merchandise orders will not result in significantly higher costs as the comments indicate that sellers currently treat all Internet orders as being subject to the Rule. Dearing at 2, DMA at 3, NRF at 3, Nwokeji at 1. Moreover, defining the timing and method of refunding non-enumerated payment methods should not have a significant cost impact on small entities because sellers typically do not access buyer funds until merchandise shipment, and thus there are only a limited number of refunds issued. NRF at 5. For the same reason, requiring refunds for third party credit sales within seven working days should not have a significant impact on small entities. Therefore, based on available information, the Commission certifies that amending the MTOR as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed Rule would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

[47] *See* 15 U.S.C. 57a(i)(2)(A); *Federal Trade Commission: Oral Presentations Before the Commission and Communications With Commissioners and Their Staffs in Trade Regulation Rulemaking Proceedings: Proposed Rule,* 45 FR 50814 (1980); *Federal Trade Commission: Oral Presentations Before the Commission and Communications With Commissioners and Their Staffs in Trade Regulation Rulemaking Proceedings: Final Rules,* 45 FR 78626 (1980).

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes amending the Rule to respond to the development of new technologies and changed commercial practices.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Rule is to clarify that the Rule covers all Internet merchandise orders, allow sellers to provide refunds and refund notices to buyers by any means at least as fast and reliable as first class mail, clarify sellers' obligations under the Rule for sales made using payment methods not specifically enumerated in the Rule, and require sellers to process any third party credit card refund within seven working days of a buyer's right to a refund vesting. Section 18(b)(3) of the FTC Act, 15 U.S.C. 57a(b)(3) provides the Commission with authority to issue a notice of proposed rulemaking where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, Mail-Order Houses qualify as small businesses if their sales are less than $ 35.5 million annually. The Commission estimates that the proposed Rule will not have a significant impact on small businesses because, according to comments, sellers already comply in many respects with the requirements of the proposed Rule. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed Rule would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

As explained earlier in this document, the proposed amendments will clarify that the Rule covers all Internet merchandise sales regardless of how buyers access the Internet, will allow sellers to provide refunds and refund notices by means at least as fast and reliable as first class mail, and will clarify sellers' obligations under the Rule for sales made using non-enumerated payment methods. The small entities potentially covered by these amendments will include all such entities subject to the Rule (*e.g.,* for purposes of the proposed amendment, entities selling merchandise ordered by mail, Internet, or telephone and paid for using non-enumerated payment methods). The professional skills necessary for compliance with the proposed amendments would include clerical personnel. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other Federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed Rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply clarify the scope of the rule (*i.e.,* Internet sales), provide additional compliance options (*e.g.,* for refunds and refund notices), and require certain actions (*e.g.,* refunds) consistent with the Rule's existing requirements. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on small entities. If the comments filed in response to this Notice identify small entities that would be affected by the proposed Rule, as well as alternative methods of compliance that would reduce the economic impact of the proposed Rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rule.

VI. Paperwork Reduction Act

The MTOR contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (''PRA''), Office of Management and Budget (''OMB'') Control Number 3084–0106. OMB renewed 3-year PRA clearance for the MTOR on February 16, 2010, effective through February 28, 2013.

As discussed above, the Commission is proposing a limited number of amendments designed to clarify the Rule and provide sellers with methods for satisfying the Rule's refund requirement. As described above, to the extent that the proposed amendments expand the Rule's coverage, the proposed amendments do so in a way that will not result in significantly higher costs because sellers have already aligned their practices with the proposed amendments. Dearing at 2, DMA at 3, NRF at 3, Nwokeji at 1.

In the Commission's view, there are no additional ''collection of information'' requirements included in the proposed amendments to submit to OMB for clearance under the PRA. Consequently, the proposed amendments would not affect the PRA ''burden'' associated with the Rule's requirements.

VII. Proposed Rule Language

List of Subjects in 16 CFR Part 435

Mail order merchandise, Telephone order merchandise, Trade practices.

For the reasons set out in the preamble, the Commission is proposing to amend 16 CFR part 435 as follows:

PART 435—MAIL, INTERNET, AND TELEPHONE ORDER MERCHANDISE

1. The authority citation for part 435 continues to read as follows:

Authority: 15 U.S.C. 57a.

2. Revise the heading of part 435 to read as set forth above.

3. Amend § 435.1 by revising paragraphs (a) through (d) to read as follows:

§ 435.1 Definitions.

* * * * *

(a) *Mail, Internet, or telephone order sales* shall mean sales in which the buyer has ordered merchandise from the seller by mail, via the Internet, or by telephone, regardless of the method of payment or the method used to solicit the order.

(b) *Prompt refund* shall mean:

(1) Where a refund is made pursuant to paragraph (d)(1), (d)(2)(ii), (d)(2)(iii), or (d)(3) of this section, a refund sent by any means at least as fast and reliable as first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part. Provided, however, that where the seller cannot provide a refund by the same method payment was tendered, *prompt refund* shall mean a refund sent in the form of cash, check, or money order, by any means at least as fast and reliable as first

class mail, within seven (7) working days of the date on which the seller discovers it cannot provide a refund by the same method as payment was tendered;

(2) Where a refund is made pursuant to paragraph (d)(2)(i) of this section, a refund sent by any means at least as fast and reliable as first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(c) *Receipt of a properly completed order* shall mean, where the buyer tenders full or partial payment in the proper amount in the form of: cash, check, or money order; authorization from the buyer to charge an existing charge account; or other payment methods, the time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order. Provided, however, that where the seller receives notice that a payment by means other than cash or credit as tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, *receipt of a properly completed order* shall mean the time at which:

(1) The seller receives notice that a payment by means other than cash or credit in the proper amount tendered by the buyer has been honored;

(2) The buyer tenders cash in the proper amount; or

(3) The seller receives notice that the buyer qualifies for a credit sale.

(d) *Refund* shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order sent to the buyer;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or an account statement sent to the buyer reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, an appropriate credit memorandum or the like sent to the third party creditor which will remove the charge from the buyer's account and a copy of the credit memorandum or the like sent to the buyer that includes the date that the seller sent the credit memorandum or the like to the third party creditor and the amount of the charge to be removed, or a statement from the seller sent to the buyer acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check, or money order, a return of the amount tendered in the form of cash, check, or money order sent to the buyer.

(3) Where the buyer tendered payment for the unshipped merchandise by any means other than those enumerated in paragraph (d)(1) or (2) of this section:

(i) Instructions sent to the entity that transferred payment to the seller instructing that entity to return to the buyer the amount tendered in the form tendered and a statement sent to the buyer setting forth the instructions sent to the entity, including the date of the instructions and the amount to be returned to the buyer; or

(ii) A return of the amount tendered in the form of cash, check, or money order sent to the buyer; or

(iii) A statement from the seller sent to the buyer acknowledging the cancellation of the order and representing that the seller has not taken any action regarding the order which will access any of the buyer's funds.

* * * * *

4. Amend § 435.2 by revising the introductory text of the section and the introductory text of paragraph (a)(1) to read as follows:

§ 435.2 Mail or telephone order sales.

In connection with mail, Internet, or telephone order sales in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act or practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the buyer through the mail, via the Internet, or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–24354 Filed 9–29–11; 8:45 am]

BILLING CODE 6750–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The purpose of this document is to inform the public of an extension of the comment period for proposed rules of the Susquehanna River Basin Commission (Commission) as published in the **Federal Register** of July 13, 2011.

DATES: The deadline extension of the public comment period is November 10, 2011. Comments on the proposed rule published July 13, 2011 (76 FR 41154) may be submitted to the Commission on or before November 10, 2011.

ADDRESSES: Address all comments to Richard A. Cairo, General Counsel, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391 or by e-mail to *rcairo@srbc.net.*

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net.* Also, for further information on the proposed rules, visit the Commission's Web site at *http://www.srbc.net.*

SUPPLEMENTARY INFORMATION: The public is hereby advised that, at its regular business meeting on September 15, 2011, in Milford, New York, the Commission extended to November 10, 2011, the written comment deadline for proposed rules that appeared in 76 FR 41154–41157 July 13, 2011. This action to extend the public comment period and delay action on the proposed rules is based on the level of public interest indicated in the comments received thus far by the Commission.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: September 20, 2011.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2011–25159 Filed 9–29–11; 8:45 am]

BILLING CODE 7040–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2011–8]

Discontinuance of Form CO in Registration Practices

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking and request for comments.

SUMMARY: The United States Copyright Office is proposing to amend its

regulations to discontinue use of the Form CO application as an option for applying for copyright registration; and remove the references to CON 1 and CON 2 sheets. Form CO applications comprise only a small percentage of all applications submitted but they contain a significant number of errors, thus requiring a disproportionate amount of the Office's time, effort and resources to process. The proposed amendments would remove references to Form CO and would instead allow applicants a choice to file an application for registration either by filing the application electronically or by using the appropriate printed application form that relates to the subject matter of the application (i.e., Form TX for nondramatic literary works, Form PA for works of the performing arts, Form VA for works of visual art, Form SR for sound recordings, and Form SE for serials). Additionally, the proposed amendment would remove the references to CON 1 and CON 2 sheets, which were never developed or made available to the public, and would instead refer only to the continuation sheets currently available for applicants filing paper applications.

DATES: Comments must be received in the Office of the General Counsel of the Copyright Office no later than November 29, 2011.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment submission page is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/formco/.* The Web site interface requires submitters to complete a form specifying name and other required information, and to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations if provided. If electronic submission of comments is not feasible, please contact the Copyright Office at (202) 707–8380 for special instructions.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Deputy General Counsel, Copyright Office, GC/I&R, P.O. Box 70400, Washington, DC 20024. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366.

SUPPLEMENTARY INFORMATION: In 2007, the Copyright Office began an extensive business process reengineering initiative that had an impact on a variety of registration-related activities. *See* 72 FR 36883 (July 6, 2007). As part of this initiative, the Office promulgated interim regulations regarding how the public submits and the Office processes copyright applications. *Id.* In these interim regulations, the Office announced four ways to file an application for registration. At the time, the Office used the term ''Form CO'' generically in its regulations to cover all four approaches to registration. With the implementation of the new electronic registration practices, however, Form CO was used to describe a specific form that is filled out on a computer and that uses barcodes to capture the information entered by the claimant. This newer incarnation of Form CO, first made available in 2008, was intended to simplify the application process and replace the traditional paper forms Forms TX, VA, PA, SR, and SE. *See* 72 FR at 36885; 37 CFR 202.3(b)(2)(ii). However, following the implementation of reengineering, it eventually became clear (for reasons discussed below) that Form CO did not live up to its expectations because many users of the form made entries on the form that were not captured in the barcodes and therefore were not carried over into the Office's registration records. Indeed, experience of the past couple of years has demonstrated that the costs to the Office in offering and processing Form CO far outweigh the benefits, and the Office proposes to eliminate this application option.

The regulations also referred to two additional continuation sheets, CON 1 and CON 2, which the Office intended to be used in connection with Form CO and would have allowed applicants to provide additional information that would not fit within the bar codes to be generated by Form CO. *See* 72 FR at 36886. However, the Office never developed these new continuation sheets and continued to accept the traditional Form CON for providing additional information. *See http://www.copyright.gov/forms/formcon.pdf.* For this reason, the Office proposes to amend its regulations by removing references to CON 1 and CON 2.

1. *Issues with Form CO.* Although Form CO is not commonly used, it does present a disproportionate number of problems for the Office. For example, sometimes after filling out Form CO using the free Adobe Reader software, printing the form and closing out the program, the applicant would like to provide additional information. As many people are aware (and as the product itself warns), the free Adobe Reader software does not save the content once the document is closed, leaving the applicant with two choices to make corrections: To fill out the form again online or fill in the missing elements by hand. Many applicants have elected to fill in the additional information by hand. Unfortunately, writing on the form does not embed the added information into the barcode and, as a result, either additional time and resources are required for the Office to manually input this information into the system, or it may be missed in the ingestion process altogether.

The Office has also noted that some applicants using the more expensive Adobe Professional software work from a previously submitted form when preparing a new application for another work. In this scenario, the applicant prints out the original saved form because it includes all the basic information needed for registering the new work except for perhaps the title and the date of publication. The applicant then proceeds to ''white-out'' the erroneous information and type in or write in the new data associated with the later work. The new data entered manually on the form is not embedded into the barcode.

Errors like these result in discrepancies between the text on the application and the information embedded in the barcode. Because the errors occur on a fairly regular basis, Copyright Office staff are unsure whether and when to rely on the information that appears in the barcode of the applications. In order to exercise due diligence, staff instead undertake time-consuming comparisons of the printed text against the information ingested through the barcode, a process that defeats all the efficiencies promised by this technology.

Human error is not the only concern. The use of barcodes presents other unique problems associated with the technology. Barcodes can be compromised and thus fail to function properly. For example, the barcodes may be torn on one or more pages of the printed form or the applicant's printer may have distorted the barcode due to a number of technical difficulties, *e.g.,* low toner, making it impossible to scan the data into the system. In these cases, the information on a Form CO application must be manually entered into the online registration system.

For these reasons, and because Form CO represents a very small percentage of applications received by the Office, (*e.g.,* approximately two percent of applicants submitted since January 2011 have been submitted on Form CO), the Office has concluded that the use of Form CO should be discontinued.

Eliminating Form CO will simplify the registration process for the Copyright Office and leave applicants with two options to register their works: They may submit applications for registration electronically or they may use the traditional paper forms, e.g., Form TX, Form PA, Form VA, Form SR, and Form SE. Applications submitted electronically allow processing more quickly. However, both methods will lead to higher probability of accuracy than using Form CO.

2. *CON 1 and CON 2 Forms.* Although the regulations published in 2007 envisioned the creation and use of specialized continuation sheets for use with Form CO, the Copyright Office never created these forms. In the meantime, in circumstances when it is necessary or desirable to provide additional information, applicants continue to use the existing continuation sheet, Form CON. Because the Office is proposing to discontinue Form CO and never created the CON 1 and CON 2 forms that were to be used with Form CO, the Office now proposes to amend its regulations to remove references to the CON 1 and CON 2 forms. Note, however, that those applicants using paper applications may continue to use existing Form CON *See http://www.copyright.gov/forms/formcon.pdf.*

Accordingly, the Office proposes to amend its regulations to formally discontinue use of Form CO, and to eliminate references to CON 1 and CON 2. In lieu of these options, applicants may use the online registration system to file applications electronically (in cases where electronic filing is available) or use the existing paper application forms. As a related point of clarity, the Office also proposes to amend §§ 202.3(b)(10)(iv)(D) and (v) of the regulations, relating to group registration of published photographs, to clarify that the references therein to ''special continuation sheet'' are references to Form GR/PPh/CON.

List of Subjects

37 CFR Part 201

Copyright, General provisions

37 CFR Part 202

Copyright, Registration of claims to copyright.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend parts 201 and 202 of 37 CFR, as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.3 [Amended]

2. Amend § 201.3(c) by removing the line beginning ''Form-D barcode application properly completed online) * * *'' and ''; and Form CO without barcodes or incomplete information, or information added after printing (paper filing)'' from item (1) of the fee chart titled ''Registration, Recordation and Related Services.''

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 reads as follows:

Authority: 17 U.S.C. 409 and 702.

§ 202.3 [Amended]

4. Amend § 202.3(b) by revising paragraph (b)(2) and (b)(3).

5. Amend § 202.3(b)(10) by adding ''(Form GR/PPh/CON)'' after the phrase ''special continuation sheet'' wherever it appears.

6. Amend § 202.3(c)(2) by removing '', electronically or in printed form, on the appropriate form prescribed by the Register of Copyrights under'' and by adding ''by using one of the methods set forth in'' in its place.

7. In § 202.3 revise paragraphs (b)(2)(i)–(ii) and (b)(3) to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b)(2) *Application for registration.* For purposes of registration, an applicant may submit an application for registration of individual works and certain groups of works electronically through the Copyright Office's Web site, or by using the printed forms prescribed by the Register of Copyrights.

(i) An applicant may submit an application electronically through the Copyright Office Web site [*http://www.copyright.gov*]. An online submission requires a payment of the application fee through an electronic fund transfer, credit card, or through a Copyright Office deposit account. Deposit materials in support of the online application may be submitted in a digital format along with the application and payment, or deposit materials in physically tangible formats may be separately mailed to the Copyright Office, using a mailing label generated during the online registration process, or

(ii) (A) Alternatively, an applicant may submit an application on one of the printed forms prescribed by the Register of Copyrights. Each printed form corresponds to a class set forth in paragraph (b)(1) of this section and is so designated (''Form TX''; ''Form PA''; ''Form VA''; ''Form SR''; ''Form SE''; and ''Form SE/Group''). Printed form applications should be submitted in the class most appropriate to the nature of the authorship in which copyright is claimed. In the case of contributions to collective works, applications should be submitted in the class representing the copyrightable authorship in the contribution. In the case of derivative works, applications should be submitted in the class most appropriately representing the copyrightable authorship involved in recasting, transforming, adapting, or otherwise modifying the preexisting work. In cases where a work contains elements of authorship in which copyright is claimed which fall into two or more classes, the application should be submitted in the class most appropriate to the type of authorship that predominates in the work as a whole. However, in any case where registration is sought for a work consisting of or including a sound recording in which copyright is claimed the application shall be submitted on Form SR. Copies of the printed forms are available on the Copyright Office's Web site [*http://www.copyright.gov*] and upon request to the Copyright Public Information Office, Library of Congress.

(B) Printed form applications may be completed and submitted by completing a printed version or using a PDF version of the applicable Copyright Office application form and mailing it together with the other required elements, *i.e.,* physically tangible deposit copies and/or materials, and the required filing fee, all elements being placed in the same package and sent by mail or hand-delivered to the Copyright Office.

(b)(3) Continuation sheets. A continuation sheet is appropriate only in the case when a printed form application is used and where additional space is needed by the applicant to provide all relevant information concerning a claim to copyright. An application may include more than one continuation sheet, subject to the limitations in paragraphs (b)(10)(v) of this section.

* * * * *

Dated: September 27, 2011.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2011–25230 Filed 9–29–11; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0406; FRL–9473–8]

Approval and Promulgation of Implementation Plans; North Dakota; Regional Haze State Implementation Plan; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Regional Haze; Correction of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Correction of Public Hearing.

SUMMARY: EPA is changing the public hearing arrangements for our proposed action on North Dakota's State Implementation Plans (SIPs) addressing regional haze and the interstate transport of pollutants that interfere with programs to protect visibility in other states. We are making this change in response to a letter that the Governor of North Dakota submitted on September 9, 2011.

DATES: Public hearings will be held October 13–14, 2011.

ADDRESSES: The public hearings will be held at the North Dakota Department of Health, Environmental Training Center, 2639 East Main Avenue, Bismarck, ND 58506.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, CO, 80202–1129, (303) 312–6281, *Fallon.Gail@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 21, 2011 we published a proposed rule partially approving and partially disapproving a revision to the North Dakota SIP addressing regional haze and disapproving a revision to the North Dakota SIP for interstate transport of pollutants that interfere with programs to protect visibility in other states. See 76 FR 58570. To accommodate the Governor of North Dakota's request submitted in a letter dated September 9, 2011 for additional hearing time, we have changed the location to the North Dakota Department of Health's Environmental Training Center, 2639 East Main Avenue, Bismarck, ND 58506. We have changed the schedule to provide four different hearing sessions. Public hearings will now be held on Thursday, October 13, 2011 from 1 p.m. until 5 p.m., and again from 7 p.m. until 9 p.m. A second day of public hearings will be held on Friday, October 14, 2011 from 8 a.m. until 12 p.m., and again from 1 p.m. until 5 p.m.

The public hearings will provide interested parties the opportunity to present information and opinions to EPA concerning our proposal. Interested parties may also submit written comments, as discussed in the proposal. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. We will not respond to comments during the public hearings. When we publish our final action, we will provide written responses to all oral and written comments received on our proposal.

At the public hearings, the hearing officer may limit the time available for each commenter to address the proposal to 5 minutes or less if the hearing officer determines it to be appropriate. The limitation is to ensure that everyone who wants to make a comment has the opportunity to do so. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations. Any person may provide written or oral comments and data pertaining to our proposal at the public hearings. Verbatim transcripts, in English, of the hearings and written statements will be included in the rulemaking docket.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 23, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–25293 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R04–SFUND–2011–0749; FRL–9472–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Martin-Marietta/Sodyeco Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 is issuing a Notice of Intent to Delete the Martin-Marietta/Sodyeco Superfund Site (Site), which is a portion of the Clariant Corporation property located at 11701 Mount Holly Road in Charlotte, North Carolina, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA, with the concurrence of the State of North Carolina, through the Department of Environment and Natural Resources (DENR), has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund if deemed necessary by EPA.

DATES: Comments must be received by October 31, 2011.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–R04–SFUND–2011–0749, by one of the following methods:

- *Online: http://www.regulations.gov.* Follow instructions for submitting comments.
- *E-mail: townsend.michael@epa.gov.*
- *Fax:* 404 562–8788 Attention: Michael Townsend.
- *Mail:* Michael Townsend, Remedial Project Manager, Superfund Remedial Section, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Such deliveries are only accepted during the public docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional EPA Office is open for business Monday through Friday, 8:30 am to 4:30 pm, excluding Federal holidays.

Instructions: Direct your comments to Docket ID no. EPA–R04–SFUND–2011–0749. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any electronic files you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at:

Regional Site Information Repository: U.S. EPA Record Center, Attn: Ms. Debbie Jourdan, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Hours of Operation (by appointment only): 8 a.m. to 4 p.m., Monday through Friday.

Local Site Information Repository: Mt. Holly Public Library, 235 West Catawba Avenue, Mt. Holley, North Carolina 28120–1603. Hours of operation: 10 a.m.–6 p.m., Monday, Tuesday, Thursday and Friday. 10 a.m.–2 p.m., Wednesday and Saturday.

FOR FURTHER INFORMATION, CONTACT: Michael Townsend, Remedial Project Manager, Superfund Remedial Section, Superfund Remedial Branch, Superfund Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, (404) 562–8813, Electronic mail at: *townsend.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion

I. Introduction

EPA Region 4 is announcing its intent to delete the Martin-Marietta/Sodyeco Superfund Site (Site), which is a portion of the Clariant Corporation facility, located at 11701 Mount Holly Road, Charlotte, NC, from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e) (3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if warranted by future conditions.

EPA will accept comments on the proposal to delete the Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates that the deletion criteria are met.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further CERCLA action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of North Carolina prior to developing this Notice of Intent to Delete.

(2) The State of North Carolina, through DENR, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the Charlotte Observer. The newspaper notice announces the thirty (30) day comment period for the proposed action to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the proposed deletion in the deletion docket and has made these items available for public inspection and copying at the Site's information repositories identified above.

If adverse comments on this deletion notice are received within the thirty (30) day public comment period, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public

comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and added to the Site's information repositories listed above.

Deletion of a site from the NPL does not itself create, alter or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. In addition, 40 CFR 300.425(e)(3) states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Martin Marietta/Sodyeco Superfund Site (EPA ID: NCD001810365) is located in Charlotte, Mecklenberg County, North Carolina. The Site is located within a 492-acre property referred to as the Sandoz Chemical Corporation, Mount Holly Plant, and is located on Highway 27 West in Mecklenburg County, North Carolina. The Site is comprised of five noncontiguous areas located within the facility's boundaries. Manufacturing, administrative and storage facilities cover about 362 acres. The remaining balance of the land is covered by woodlands and grassed areas.

The entire 492-acre facility is regulated under RCRA authority. DyeStuff Company began operations at the facility in 1936. Initially, the plant produced liquid sulfur dyes from purchased raw materials. American Marietta (which became Martin Marietta in 1961) purchased the facility in 1958. Martin Marietta's products included vat dyes, disperse dyes and specialty chemical products for the agrochemical, electronic, lithographic, pigment, plastic, rubber and general chemical industries. Sodyeco Inc. purchased the plant from Martin Marietta in 1983. Sodyeco Inc.'s early operations produced wastes that consisted of low-volume, aqueous, acidic or alkaline streams containing inorganic salts, which were discharged untreated to the Catawba River. Later, Sodyeco Inc.'s operations were expanded and included organic solvent wastes. Among the materials placed in landfills at the Site were residual distillation tars from solvent recovery operations, empty drums and cartons, discarded chemicals, off-specification products, general plant wastes and construction debris. The first indication of potential groundwater contamination at the Site was the discovery of organic solvents in the Sodyeco's potable water well in September 1980. Contaminated groundwater was also detected in water supply wells adjacent to the Sodeyco Plant. In June 1982, a hazardous waste site investigation was conducted by EPA. Results of surface water, groundwater and sediment samples revealed the presence of organic contaminants in groundwater and small amounts in the surface water. The Site was proposed to the NPL on December 30, 1982 (47 FR 58476) and finalized on the NPL September 8, 1983 (48 FR 40674) due to the presence of potable water wells within a 3-mile radius and the presence of two municipal surface water intakes on the Catawba River.

The Site contains five contaminated areas designated as A, B, C, D, and E. Area A is an on-site landfill that operated between the 1930s and 1973. Area B is an on-site landfill that operated between 1973 and 1978. Area C consists of three covered pits that contained the remains of laboratory and production samples, distillation tars, and waste solvents. The two northern pits in Area C were excavated in March 1981 and the contents were trucked off site to a landfill in Pinewood, South Carolina. Removal of the remaining pit was conducted in 1983. After excavation activities, Area C was regraded and planted with grass. Area D formerly contained two wastewater settling ponds. The ponds were taken from service in 1966; one was cleaned out in 1973 and the other between 1976 and 1977. Area E is located down-gradient of the old plant and manufacturing area. No waste is known to have been disposed of in this area.

The current land use is heavy industrial. There are two business tenants located within the facility that occupy only a few buildings. Most of the land surrounding the Site is primarily undeveloped woodland. The Site is currently fenced and requires security clearance for access. The ground water aquifer underlying the Site is currently not used as a drinking water source; however, there are no controls preventing that use. Although the groundwater is not being used for drinking purposes, the aquifer is classified as a Class IIA aquifer, a current source of drinking water. There are no residential properties that exist above or near the ground water contaminant plume at the Site.

Remedial Investigation and Feasibility Study (RI/FS)

In February 1986, Sandoz Chemical Corporation, the facility owner, entered into an Administrative Order on Consent with EPA to conduct the RI/FS to evaluate the extent of contamination and identify feasible alternative remedies.

Results of the RI showed the groundwater in the five identified CERCLA areas A through E were contaminated with toluene, chlorobenzene, ethylbenzene, xylene, o-dichlorobenzene, tetrachloroethylene, and trichloroethylene. The Site posed an unacceptable carcinogenic risk to human receptors via ingestion of local water fowl and small mammals and the ingestion of ground water. The Site also posed an unacceptable non-carcinogenic risk to human health via inhalation intake from Area D and the ingestion of onsite groundwater.

Selected Remedy

EPA issued the ROD for the clean-up of the Site in 1987. The remedial action objectives at the Site were to protect human health and the environment from exposure to contaminated on-site soils through inhalation and direct contact, and to restore contaminated groundwater to levels protective of human health and the environment. The cleanup consisted of the following elements:

- Extraction, treatment and discharge of contaminated ground water for all five areas;
- Excavation and off-site incineration for Area D;
- Installation of a landfill cap for Area B; and
- Implementation of one of the following activities after treatability studies were undertaken for Area C, including: (1) Flushing; (2) soil washing; (3) thermal processing; or (4) in-situ steam stripping and excavation and off-site incineration.

No soil remediation was deemed necessary for CERCLA Areas A and E during the RI/FS.

The initial cleanup approach for Area C was an interim action. The final cleanup plan for Area C was outlined in a 1994 Explanation of Significant Difference (ESD), and included in-situ soil flushing, with the flushing water being captured and treated by the existing ground water treatment system. The ESD also included continuation of a vacuum extraction pilot study to treat

soil stock-piled on site that was contaminated with VOCs. The vacuum extraction method eventually proved ineffective and EPA issued a second ESD in November 1998, which required off-site treatment and disposal for the stock-piled soil in Area C.

Response Actions

Installation of the asphalt cap for Area B was completed in October 1989. The off-site treatment and disposal of Area C stockpiled soils was completed in March of 1999. The installation of an in-situ flushing system for the Area C soil was completed during the third week of September of 1999. Remediation of Area D soil was completed in April 1999. A total of 397 tons of soils were removed in two phases, and sent off-site for treatment and disposal.

The groundwater system was designed to remove VOCs from the shallow (Areas C and D), intermediate (Areas A/B, D and E) and deep aquifers (Area D). The groundwater remediation involved extraction through recovery wells and treatment in the onsite RCRA wastewater treatment facility. The treated water is discharged to the Catawba River, as regulated by the National Pollutant Discharge Elimination System (NPDES) program. The groundwater extraction wells for Areas A through E were installed 1990. The contaminated groundwater continues to be treated in the RCRA-regulated on-site wastewater treatment facility, along with contaminated groundwater from the RCRA-regulated portions of the facility.

The remedial actions were completed by the responsible party, with oversight by the state RCRA program. The Preliminary Close-Out Report was issued by EPA on September 29, 1999.

Since the groundwater remedy was constructed, implementation has been conducted under the facility's RCRA permit and authority. The facility's permit incorporated the groundwater remediation goals and cleanup levels established in the 1987 ROD and requires ICs for limiting the use of groundwater from aquifers impacted by Site contaminants. At the time the Site was listed on the NPL, the RCRA Hazardous Solid Waste Amendments (HSWA) provisions had not been promulgated, and it was necessary to use CERCLA response authority to address the contamination at the Site outside of the regulated RCRA units (Areas A–E). Since the facility's RCRA permit and authority have been used to implement the groundwater cleanup and HSWA now provides the legal authority necessary to continue the treatment until cleanup levels are achieved in the CERCLA areas outside of the RCRA regulated units, EPA has concluded that the groundwater risks originally identified in the 1987 ROD no longer need to be addressed by CERCLA authority.

Institutional controls were also necessary because the selected remedy resulted in hazardous substances, pollutants, or contaminants remaining at the Site above levels that would allow for unlimited use and unrestricted exposure in the soils. More specifically, the remedy capped soil in place in CERCLA Areas A and B, as well as left contaminated soils covered by clean soils in place in Area D. The Declaration of Perpetual Land Use Restrictions were implemented on 8/10/2011 with the Charlotte, Mecklenburg County, Register of Deeds.

The 1987 ROD, as amended by the ESDs, was further amended to select no further CERCLA action for groundwater and required institutional controls preventing disturbance of the caps and precluding direct contact with any onsite soils impacted by Site contaminants. The ROD amendment was signed on July 5, 2011.

Cleanup Goals

Contaminated soils above industrial cleanup levels were excavated and disposed of off-site or were capped in place in Areas B, C and D. Post-excavation sampling was conducted and described in the Preliminary Closeout Report issued by EPA on September 29, 1999.

Operation and Maintenance

For CERCLA Areas A, B, and C, the Clariant Corporation, under the existing RCRA C permit, is conducting the long-term monitoring, and operation and maintenance activities at the Site. The primary activities associated with O&M, associated with the Site, include:

- Visual inspection of the cap, assuring that it is stable and sound; and
- Monitoring of institutional controls.

Operation of the water treatment plant and associated groundwater monitoring is being conducted under the RCRA Subtitle C permit and is not part of the CERCLA response.

Five-Year Reviews

Three five year review reports for the Site have been issued, in 1996, 2002 and 2007. The 2007 five year review report concluded that the remedy selected in the ROD is protective in the short term, but recommended follow-up actions to analyze the extraction wells for their effectiveness in addressing ground water contamination, conduct maintenance on the Area B cap, and to evaluate the type of ICs that should be implemented at the Site. All recommended actions have been addressed. Additional groundwater studies are being conducted to address issues identified in the 2007 five year review report under RCRA oversight. These activities included installation of additional groundwater extraction and monitoring wells in Areas D and E. These activities were completed in 2007 and 2010. Repairs to surficial cracks on the Area B cap were completed in 2008. EPA incorporated institutional controls into a decision document in the July 5, 2011 ROD. The ICs preventing disturbance of the caps and precluding direct contact with any onsite soils impacted by site contaminants were implemented and filed on August 10, 2011 with the Charlotte, Mecklenburg County, Register of Deeds.

Community Involvement

EPA has conducted a range of community involvement activities at the Site to solicit community input and to ensure that the public remains informed about site-related activities throughout the cleanup process. Outreach activities have included public notices, interviews and public meetings on cleanup activities. In addition to publishing notices about its intent to delete the Site and amend the ROD in the **Federal Register** and in a local newspaper, EPA conducted a public meeting on May 12, 2011 to provide the public with the opportunity to comment on the proposed ROD Amendment. The ROD Amendment and Responsiveness Summary, addressing comments received during the comment period, have been included in the Administrative Record.

EPA has also prepared the deletion docket, which includes the documents which EPA relied on for its decision to propose deleting the Site from the NPL. Therefore, the public participation requirements, required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617, have been satisfied.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate responsible parties or other persons have implemented all appropriate response actions required.'' EPA, with concurrence of the State of North Carolina, through the Department of the Environment and Natural Resources, by a letter dated June 17, 2010, believes this criteria for deletion have been satisfied. The contaminated soils have been capped and institutional

controls are in place preventing unacceptable exposure. The contaminated groundwater is being addressed under the facility's RCRA permit and authority, therefore CERCLA response is not warranted. Therefore, EPA is proposing to delete this Site from the NPL.

List of Subjects in 40 CFR Part 300

Environmental protection; Air pollution control; Chemicals; Hazardous waste, Hazardous substances; Intergovernmental relations; Penalties; Reporting and recordkeeping requirements; Superfund; Water pollution control; Water supply.

Dated: September 13, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

For the reasons set out in this document, 40 CFR part 300 is proposed to be amended as follows:

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by removing ''Martin-Marietta, Sodyeco, Inc.,'' ''Charlotte, NC.''

[FR Doc. 2011–25107 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–OEI–2011–0196; FRL–9472–5]

RIN 2025–AA31

Toxics Release Inventory (TRI) Reporting for Facilities Located in Indian Country and Clarification of Additional Opportunities Available to Tribal Governments Under the TRI Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to: require TRI reporting facilities located in Indian country to report to the appropriate Tribal government for the relevant area instead of the State; and improve and clarify certain opportunities allowing Tribal governments to participate more fully in the TRI Program. In 1990, EPA finalized regulations in the **Federal Register** (FR) requiring facilities in Indian country to submit annual TRI reports to EPA and the appropriate Tribal government. These amendments, however, were inadvertently omitted from the Code of Federal Regulations (CFR), and the relevant provisions were later overwritten by a subsequent final rule, thus resulting in the exclusion of the intended requirement from the CFR. EPA intends to correct that inadvertent result by proposing this rule. Further, because Tribal governmental structures may vary, EPA is proposing to update its terminology to refer to the principal elected official of the Tribe as the ''Tribal chairperson or equivalent elected official.'' EPA is also amending its definition of ''State'' for purposes of 40 CFR part 372 to no longer include Indian country, so as to avoid any confusing overlap in terminology with the proposed express discussion of facilities in Indian country. With regard to the procedures for EPA to modify the list of covered chemicals and TRI reporting facilities, EPA proposes to clarify the opportunities available to Tribal governments. In particular, EPA proposes to include within the relevant provision an opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe's Indian country. Secondly, EPA is proposing that the Tribal Chairperson or equivalent elected official may petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI. By increasing the participation and engagement of Tribal governments in the TRI program, EPA is helping to increase awareness of toxic releases within Tribal communities, thereby increasing the understanding of potential human health and ecological impacts from these hazardous chemicals.

DATES: Comments must be received on or before November 29, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2011–0196, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–0677
- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2011–0196. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage: *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Louise Camalier, Environmental Analysis Division, Office of Environmental Information (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0503; fax number: (202) 566–0677; e-mail address: *Camalier.louise@epa.gov,* for specific information on this notice. For general information on EPRCA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424–9346 or (703) 412–9810 in Virginia and Alaska or toll free, TDD (800) 553–7672, *http://www/epa/gov/epaoswer/hotline/.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you own or operate a facility located in Indian country (18 U.S.C. 1151) with a toxic chemical(s) known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity, as referenced in 40 CFR 372.25, 372.27, or 372.28, at its covered facility described in § 372.22. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. * Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government.	Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations.

Facilities in Indian country would no longer be required to report to the States, although States would still receive this information once it is available to the public. Tribes with facilities located in their Indian country would receive the facility reports under this proposal. This would represent a change for facilities, States, and Tribes.

If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How should I submit CBI to the agency?

Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

II. Introduction

Since the beginning of the TRI Program in 1986, facilities that meet TRI reporting requirements have been required to submit annual TRI reports to EPA and the State in which they are located. In 1990, EPA finalized regulations in the **Federal Register** (FR) requiring facilities in Indian country to submit annual TRI reports to EPA and the appropriate Tribal government (55 FR 30632). EPA's rationale supporting those regulations was fully explained in the relevant preambles to the proposed and final rules. *Id.;* 45 FR 12992. These amendments, however, were inadvertently omitted from the CFR and later overwritten by a subsequent final rule and left out of the CFR. To correct this inadvertent omission, EPA intends to include these provisions in the CFR, in 40 CFR 372.30(a), to require each facility located in Indian country to submit its annual TRI reports to the appropriate Tribe, rather than to the State in which the facility is geographically located. The requirement for the facility to report to EPA would remain the same.

To further encourage Tribal engagement and participation in the TRI program, EPA also proposes to make explicitly clear in the regulations certain additional opportunities for governments of federally-recognized Tribes. The first opportunity would allow the Tribal Chairperson or equivalent elected official to request that EPA apply the TRI reporting requirements to a specific facility located within the Tribe's Indian country, under the authority of EPCRA Section 313(b)(2). The second opportunity would allow the Tribal Chairperson or equivalent elected official to petition EPA to add or delete a particular chemical respectively to or from the list of chemicals covered by TRI, under the authority of EPCRA Section 313(e)(2). EPA proposes to treat these request and petitioning opportunities as EPA currently treats those for Governors of States under EPCRA Sections 313(b)(2) and (e)(2). After EPA has received a formal request

from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action. Opportunities for the public to participate in the TRI program consist of the right to petition the EPA to add or delete a particular chemical or chemicals to the TRI list of hazardous chemicals for toxics release reporting.

III. Background Information

A. What does this document do and what action does this document affect?

This document primarily proposes to fulfill the goals of the July 26, 1990, action (55 FR 30632), which required facilities located in Indian country to report to the appropriate Tribal government and the EPA, instead of to the State and EPA. This amendment, however, was inadvertently omitted from the CFR and later overwritten by a subsequent final rule. Therefore, EPA is proposing to update 40 CFR 372.30(a) to reflect the purpose of the 1990 amendment. Secondly, to supplement this action, this document also clarifies existing TRI reporting regulations and guidance to further enable Tribal governments to participate more fully in the TRI Program.

Under today's proposal for 40 CFR 372.30(a), an owner or operator of a TRI facility in Indian country would have to submit (to the extent applicable) EPA's Form R, Form A, and Form R Schedule 1 to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Tribe, as well as to EPA. The form(s) would no longer have to be submitted to the State in which the facility is geographically located. Under this proposal, facilities would select/provide the name of the federally-recognized Tribe as part of the *State* data field in the *Address* block on the TRI forms. To accommodate this, EPA would make changes to the description of this data field on the TRI form. In addition, EPA would modify the instructions that accompany the forms in the annual TRI Reporting Forms & Instructions document accessible from the TRI Web site.

Also under today's proposal, EPA proposes to clarify request and petitioning rights available to Tribal governments. A Tribe would have the opportunity to request EPA to require TRI reporting by a facility in the Indian country of that Tribe. Tribes would also have the opportunity to petition for the addition or deletion of a chemical, which would apply to all facilities that manufacture (including import), process, or otherwise use the particular chemical. The statute—at sections 313(b)(2) and 313(d)—expressly authorizes the Administrator to apply TRI reporting requirements to particular facilities and to add or delete chemicals to or from the list of chemicals subject to TRI reporting. The statute provides opportunities for Governors of States to request that particular facilities be subject to TRI reporting or that specific chemicals be added to or deleted from the TRI reporting list (EPCRA Section 313(b)(2), (e)(2)). Similar to the process for Governors, after EPA has received a formal request from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action. EPA believes that these same opportunities are appropriately available to Tribal governments under the statute and EPA proposes to interpret these provisions so that the Tribal Chairperson or equivalent elected official may make similar requests to EPA. Ultimately, it is EPA that determines whether TRI reporting requirements will apply to a particular facility or whether a specific chemical will be added to, or deleted from, the TRI chemicals list.

B. What is the agency's authority for taking this action?

EPA proposes this rule under sections 313, 328, and 329 of EPCRA, 42 U.S.C. 11023, 11048 and 11049.

EPCRA Section 313(a) requires that the TRI reporting form be submitted to EPA and the official(s) of the State designated by the Governor. Section 329 defines ''State'' to mean ''any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.'' The statute has no separate definition of, or explicit reference to, Indian Tribes or Indian country. As EPA has explained previously, however, Congress clearly intended the statute's protections to apply to all persons nationwide, including in Indian country. *See, e.g.,* 55 FR 30632, 30641–30642 (July 26, 1990); 54 FR 12992, 13000–13002 (March 29, 1989). In the context of a facility located in Indian country, EPA interprets section 313(a) as requiring reporting to EPA and the official designated by the Tribal Chairperson or equivalent elected official for the relevant area of Indian country. As discussed in EPA's prior notices, the statutory language, the legislative history, and principles of Federal law relating to Indian Tribes and Indian country support the application of EPCRA in Indian country and EPA's reasonable interpretation of section 313(a) requirements. *Id.*

This reasonable interpretation of the statute is reinforced by the broad grant of rulemaking authority from Congress to EPA under EPCRA. Section 328 provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

For purposes of regulatory clarity, EPA has proposed that the reporting requirements for a facility in Indian country be discussed expressly in part 372. Part 372 already contains a definition of Indian country at 40 CFR 372.3. To avoid any confusing overlap, EPA has proposed to remove Indian country from the definition of ''State'' as that term is used in part 372.

EPA also expressly interprets section 313(b)(2) and (e)(2) in the context of Indian Tribes. In the case of a facility located in Indian country, EPA interprets section 313(b)(2) as allowing requests by a Tribal Chairperson or equivalent elected official that EPA apply TRI reporting requirements to a facility located in the requesting Tribe's Indian country. EPA also interprets section 313(e)(2) as allowing petitions by a Tribal Chairperson or equivalent elected official requesting that EPA add or delete a chemical to or from the list of chemicals subject to TRI reporting. EPA's interpretation of each of these provisions flows from the same reasoning and authority as discussed above for section 313(a). EPA also notes that in all cases it is EPA, not a Tribe or State, that makes the final determination whether a facility or chemical should be subject to the TRI program.

EPA believes that each of these Tribal roles will enhance Tribal participation in the TRI program and the availability of relevant information to communities within Indian country consistent with statutory authorities and requirements. EPA notes that pursuant to EPA's 1990 rulemaking cited above, federally-recognized Indian Tribes already participate in other important elements of implementation of EPCRA in Indian country. Today's proposed rulemaking would, among other things, rectify the inadvertent omission from the CFR of Tribal roles in the TRI program.

C. What is an Indian Tribe, and what kind of land is Indian country?

As defined at 40 CFR 372.3, ''Indian Tribe'' refers to those Tribes that are

''federally-recognized by the Secretary of the Interior.'' The Secretary of the Interior maintains a list of federally-recognized Indian Tribes, which is published periodically in the **Federal Register**. As also set forth at 40 CFR 372.3, ''Indian country'' means Indian country as defined in 18 U.S.C. 1151, which defines Indian country as: all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

D. What is a Tribe's responsibility under this rule?

Under this proposed rule and per the intent of the 1990 regulation, a Tribe's only responsibility would be to receive any TRI reports submitted by facilities located within its Indian country.

E. How would Tribes receive reports from facilities?

Under this proposed rule, Tribes may define how they would like to receive reports from TRI facilities. If a Tribe provides no specific guidance as to receipt, owners and operators of TRI facilities would mail TRI reports to the appropriate Tribal government representative. Tribes would be requested by EPA to provide a mailing address and contact name to be published on the TRI Web site, so that facilities in Indian country would know where to send their TRI reports. If no specific contact is provided, EPA would use the Tribal Council or Tribal Environmental Department as the default contact. As described further below, Tribal governments could also chose to provide electronic options for report submittal.

F. How would the proposal affect TRI reporting facilities and the States or Tribes to which they would report?

1. Submission of TRI Reports to Tribal Governments

As described above, under the proposal the owner or operator of a facility located in Indian country would have to submit their TRI reports to the relevant Tribal government in lieu of the State government. The requirement to submit the report to EPA would remain unchanged. In many cases, this means the owner or operator would mail a copy of the TRI report to the specific Tribal government representative. As noted, Tribal governments may also choose to allow for electronic submittal of TRI reports. If a Tribal government becomes a member of the Internet-based TRI Data Exchange, then the owner or operator of a facility could meet its dual EPA/Tribal reporting requirements by submitting its TRI report to EPA via TRI Made Easy (TRI–ME) Web, a Web-based application that allows facilities to submit a paperless report. EPA would then automatically transmit the report to the appropriate Tribe (instead of the State) via the TRI Data Exchange.

If the facility is located in the Indian country of a Tribe that does not become a member of the TRI Data Exchange, then the facility would be required to submit a TRI report to EPA and also separately to the appropriate Tribe. The approach described above is the same as for EPA and States for those facilities not located in Indian country.

2. Requests by Tribal Governments for EPA To Add Specific Facilities to TRI

Under this proposed rule, a Tribe would have the opportunity to request that EPA require that a currently non-covered facility located in its Indian country report the facility's releases and other waste management to TRI. Under the statute, it is EPA that applies TRI reporting requirements to particular facilities (EPCRA Section 313(b)(2)). Section 313(b)(2) also provides an opportunity for Governors of States to request that EPA apply TRI requirements to facilities in their areas. The addition of certain facilities that would otherwise not be covered by TRI helps to aid communities and leaders to comprehensively assess chemical releases to their local environment. EPA proposes to interpret this provision to provide a similar opportunity for the Tribal Chairperson or equivalent elected official to request that EPA apply TRI reporting requirements to particular facilities located in the Tribe's Indian country. This opportunity for Tribes to request that EPA add a facility located in its Indian country can address situations where a Tribal government becomes aware of a facility that manufactures (including imports), processes, or otherwise uses a TRI chemical yet does not meet the full criteria to trigger reporting. This opportunity to add the facility may help the Tribe better understand chemical risks within their Indian country.

This would be an opportunity and not a requirement, which means that the Tribal Chairperson or equivalent elected official would not be required to request the addition of a facility; however, he or she may do so, for instance, if there is a concern about toxic releases coming from that facility. After EPA has received a formal request from a Tribe, EPA would make its final decision on the facility addition based on the criteria outlined in EPCRA Section 313(b)(2). EPA may also act on its own motion to add a facility without anyone requesting action.

EPA's consultation with Tribes consisted of two consultation calls (February 7 and 28 of 2011), and during these calls EPA facilitated discussion and collected comments from Tribes in response to the actions proposed in this rule. Furthermore, EPA officiated two additional webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, as well as hosting an electronic discussion forum (or ''blog'') to collect electronic feedback from interested parties. Material summarizing these meetings and the blog can be accessed from the docket for this proposed rule (Docket ID No. EPA–HQ–OEI–2011–0196).

During the Agency's consultation with Tribes, EPA received several positive comments about this proposed clarification to the request rights for Tribes to add a facility to the TRI. As EPA has heard in consultation, however, Tribes may be concerned about such facilities that are not in Indian country but are located nearby, where releases of those chemicals may inevitably reach and affect Indian country lands and communities. Although the opportunity expressly provided by the statute to request the addition of a facility under EPCRA 313 only extends to a facility located in the relevant State and, under this proposed rule, Indian country, EPA would consider any concerns and information about facilities outside of the State or Indian country in the exercise of EPA's discretionary authority, including concerns and information brought to EPA's attention by a Tribal chairperson or equivalent elected official, and/or similarly, Governors of States. This possibility is especially relevant in situations where a facility releases chemicals into or near a Territory boundary or interstate community, yet it is not located within that Governor's or Tribal Chairperson or equivalent elected official's jurisdiction. While there is no 180-day time limit as there is for chemical petitions, and while this proposed rule does not address these general request opportunities which are already in existence, EPA, as a matter of administrative policy, would give such requests from Tribal governments (as

well as Governors of States) appropriate priority and consideration.

The impact on owners and operators of facilities that EPA includes within the TRI reporting program pursuant to the authority of EPCRA Section 313(b)(2) is that they would be required to report to EPA and the relevant Tribe (for facilities located in Indian country) or State (for facilities outside of Indian country) under TRI. The impact from this opportunity on citizens around the requested facility would be access to additional information on chemicals being managed at the facility if EPA adds the facility.

3. Petitions by Tribal Governments for EPA To Add or Delete Specific Chemicals to TRI List

Under this proposed rule, Tribes would have the same opportunity as Governors of States to petition EPA to require that a chemical be added to or removed from the TRI list of toxic chemicals. Ultimately, it is EPA that determines whether the chemical will be added to, or deleted from, the TRI list. If EPA adds a chemical to the list, such action would affect all facilities releasing the particular substance, regardless of a facility's location inside or outside of the petitioning Tribe's Indian country. This type of provision already applies in the context of petitions by Governors of States (EPCRA Section 313(e)(2)). Therefore, EPA proposes to interpret the statute to provide similar opportunities to the Tribal Chairperson or equivalent elected official. This would be an opportunity and not a requirement. In other words, the Tribal Chairperson or equivalent elected official would not be required to petition EPA to modify the list of substances managed by TRI; however, he or she may do so, for instance, if there is a concern about toxic releases of that substance.

If EPA receives a petition from a Tribe that requests the addition of a particular chemical, EPA would have 180 days to respond with either the initiation of a rulemaking to add the chemical to the list or an explanation of why the petition does not meet the requirements to add a chemical to the list. The petition would need to be based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2). As a matter of administrative policy, EPA places a high priority on petitions from Tribes to add a chemical. However, if EPA does not respond within 180 days of receipt of a Tribe's petition to add a chemical, the chemical would be added to the list pursuant to EPCRA Section 313(e)(2).

Within 180 days of receipt of a Tribe's petition to delete a chemical based on the criteria provided in subparagraph (A), (B), or (C) of EPCRA Section 313(d)(2), EPA would either initiate a rulemaking to delete the chemical or explain why EPA denied the petition. Unlike the analogous process for petitions to add a chemical, however, the chemical would not be deleted within 180 days if EPA failed to respond.

During the Agency's consultation with Tribes, EPA received several positive comments about this proposed clarification to the petition rights for Tribes to add a chemical to the TRI reporting list. For more information, the materials summarizing these meetings and the blog can be accessed from the docket for this proposed rule (Docket ID No. EPA–HQ–OEI–2011–0196).

Further, any person may petition EPA to add or delete a chemical based on certain grounds specified under EPCRA Section 313(e)(1). However, if EPA receives a petition by a private citizen to add a chemical and EPA fails to respond within 180 days, the chemical would not necessarily be added. This result distinguishes citizen petitions to add a chemical from petitions to add a chemical by a Governor of a State or, as clarified under this proposed rule, the Tribal Chairperson or equivalent elected official (compare EPCRA Section 313(e)(1) with EPCRA Section 313(e)(2)).

If EPA adds a chemical(s) to the TRI list (through its own initiative under Section 313(d) or in response to a petition), the impact on owners and operators of facilities with the toxic chemical(s) in question would be that they would be required to evaluate the TRI reporting requirements with the new chemical and, if appropriate, based on those requirements, report under TRI to EPA and the relevant State or, if located in Indian country, the relevant or appropriate Tribe. The impact from this action by EPA on Tribes, States, and the general public would be that they would have access to information on new toxic chemicals being managed at facilities across the nation. The potential impact from this action on industry consists of the cost of compliance for facilities that would have to report for a particular chemical that was added.

IV. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OEI–2011–0196. The public docket includes information considered by EPA in developing this action, which is electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

V. Statutory and Executive Order reviews associated with this action?

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EOs 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. Currently, the facilities subject to the reporting requirements under EPCRA 313 and PPA 6607 may use (to the extent applicable) the EPA Toxic Chemical Release Inventory Form R (EPA Form 9350–1), the EPA Toxic Chemical Release Inventory Form A (EPA Form 9350–2), and the EPA Toxic Chemical Release Inventory Form R Schedule 1 (EPA Form 9350–3) for dioxin and dioxin-like compounds. The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical

identity of a substance as a trade secret pursuant to EPCRA section 322 42 U.S.C. 11042: 40 CFR part 350.

OMB has approved the reporting burden associated with the EPCRA Section 313 reporting requirements under OMB Control number 2070–0093 (EPA Information Collection Request (ICR) No. 1363.15); OMB control number 2070–0143 (EPA ICR No. 1704.09); and OMB Control 2070–0078 (EPA ICR No. 1428). As provided in 5 CFR 1320.5(b) and 1320.6(a), 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 numbers relevant to EPA's regulations are listed in 40 CFR part 9, 48 CFR chapter 15, and displayed on the information collection instruments (*e.g.,* forms, instructions).

EPA estimates the incremental burden for facilities located in Indian country to send their reports to the Tribe instead of the State to average, in the first year, approximately $26.71 per facility for the 51 facilities located in Indian country. EPA estimates an incremental burden of $18.14 for the remaining 20,746 TRI reporters. Thus, the total first year incremental cost associated with the rule is estimated at $377,695 based on 6,934 total burden hours. In subsequent years, there is no incremental reporting burden, given that the burden created by the rule is limited to rule familiarization and compliance determination in which facilities will only engage in the first year. These estimates include the time needed to become familiar with the new requirement (rule familiarization) and to determine whether the facility is located in Indian country (compliance determination). The actual burden on any facility may be different from this estimate depending on how much time it takes individual facilities to complete these activities. Upon promulgation of a final rule, the Agency may determine that the existing burden estimates in the ICR need to be amended in order to account for an increase in burden associated with the final action. If so, the Agency will submit an information collection worksheet (ICW) to OMB requesting that the total burden in the ICR be amended, as appropriate.

The Agency would appreciate any comments or information that could be used to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) evaluate the reasonableness of the Agency's estimate of the incremental burden associated with the proposed rule, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Please submit your comments within 60 days as specified at the beginning of this proposal.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A business that is classified as a ''small business'' by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. All of the 3,185 potentially affected small entities have cost impacts of less than 1% in the first year of the rulemaking. Note that facilities do not incur reporting burden or costs in subsequent years of the rulemaking. No small entities are projected to have a cost impact of 1% or greater. Of the 3,185 estimated cost impacts, there is a maximum impact of approximately 0.13% and a median impact of approximately 0.002%. A more detailed analysis of the impacts on small entities is located in EPA's economic analysis support document, *Economic Analysis of the Proposed Toxics Release Inventory (TRI) Reporting Rule for Facilities Located in Indian Country,* located in the docket.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA's economic analysis indicates that the total cost of this rule is estimated to be $377,695 in the first year of reporting, and $0 in subsequent years. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments are not subject to the EPCRA section 313 reporting requirements.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does have some Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action relates to toxic chemical reporting under EPCRA section 313, which primarily affects private sector facilities; however, it does have Tribal implications in the way that the Agency is proposing a change in the current way toxic chemical reporting information is transmitted and received. EPA organized and provided a formal consultation with Tribes to discuss the

proposed actions that may have the potential to affect one or more Tribes or areas of interest to Tribes. Two consultation calls occurred on February 7 and 28 of 2011, and during these calls EPA facilitated discussion and collected comments from Tribes in response to the actions proposed in this rule. During the Agency's consultation with Tribes, EPA received several positive comments about this proposed clarification to the request rights for Tribes to add a facility to the TRI, as well as the petitioning rights to add or delete a chemical. Furthermore, EPA officiated two additional Webinars for representatives from the National Tribal Air Association (NTAA) on March 17 and 30 of 2011, as well as hosting a blog to collect electronic feedback from interested parties. Additionally, in the spirit of EO 13175, and consistent with EPA policy to promote communications between EPA and Indian Tribal governments, EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This proposed rule provides opportunities to request the addition of additional chemicals to the EPCRA section 313 reporting requirements. By adding chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA, EPA would be providing communities across the United States (including minority populations and low-income populations) with access to data which they may use to seek lower exposures and consequently, reductions in chemical risks for themselves and their children. This information can also be used by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. Therefore, the informational benefits of the proposed rule will have a positive impact on the human health and environmental impacts of minority populations, low-income populations, and children.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Tribes, and Indian country.

Dated: September 21, 2011.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.3, the definition of ''Chief Executive Officer of the tribe'' is removed, the definition of ''State'' is revised, and the definition ''Tribal Chairperson or equivalent elected official'' is added in alphabetical order to read as follows:

§ 372.3 Definitions.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

* * * * *

Tribal Chairperson or equivalent elected official means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.

* * * * *

3. Add § 372.20 to subpart B to read as follows:

§ 372.20 Process for modifying covered chemicals and facilities.

(a) *Request to add a facility to the TRI list of covered facilities.*

(1) The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State) or a Tribal Chairperson or equivalent elected official (with regard to facilities located in the Indian country of that Tribe), may apply the requirements of section 313 of Title III to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of section 313 of Title III if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(b) *Petition to add or delete a chemical from TRI list of covered chemicals.*

(1) *In general.* Any person may petition the Administrator to add or

delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) and (d)(3) of section 313 of Title III. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(i) Initiate a rulemaking to add or delete the chemical to or from the list, in accordance with subsection (d)(2) or (d)(3) of section 313 of Title III.

(ii) Publish an explanation of why the petition is denied.

(2) *State and Tribal petitions.* A State Governor, or a Tribal chairperson or equivalent elected official, may petition the Administrator to add or delete a chemical to or from the list described in subsection (c) of section 313 of Title III on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of section 313 of Title III. In the case of such a petition from a State Governor, or a Tribal Chairperson or equivalent elected official, to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (b)(1) of this section. In the case of such a petition from a State Governor, or a Tribal Chairperson or equivalent elected official, to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator:

(i) Initiates a rulemaking to add the chemical to the list, in accordance with section (d)(2) of section 313 of Title III, or

(ii) Publishes an explanation of why the Administrator believes the petition does not meet the requirement of subsection (d)(2) of section 313 of Title III for adding a chemical to the list.

4. In § 372.27, paragraph (d) is revised to read as follows:

§ 372.27, Alternate threshold and certification.

* * * * *

(d) Each certification statement under this section for activities involving a toxic chemical that occurred during a calendar year at a facility must be submitted to EPA and to the State in which the facility is located on or before July 1 of the next year. If the covered facility is located in Indian country, the facility shall submit the certification statement as described above to EPA and to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe, instead of to the State.

* * * * *

5. In § 372.30(a), paragraph (a) is revised to read as follows:

§ 372.30 Reporting requirements and schedule for reporting.

(a) For each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in § 372.25, § 372.27, or § 372.28 at its covered facility described in § 372.22 for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350–1), EPA Form A (EPA Form 9350–2), and, for the dioxin and dioxin-like compounds category, EPA Form R Schedule 1 (EPA Form 9350–3) in accordance with the instructions referred to in subpart E of this part. If the covered facility is located in Indian country, the facility shall submit (to the extent applicable) a completed EPA Form R, Form A, and Form R Schedule 1 as described above to EPA and to the official designated by the Tribal Chairperson or equivalent elected official of the relevant Indian Tribe, instead of to the State.

* * * * *

[FR Doc. 2011–24821 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 153, 155 and 156

[CMS–9989–N2]

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Extension of Comment Period

AGENCY: Department of Health and Human Services.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for two proposed rules published in the **Federal Register** on July 15, 2011. One proposed rule would implement the new Affordable Insurance Exchanges (''Exchanges''), consistent with Title I of the Patient Protection and Affordable Care Act of 2010 as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. The other proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk corridors, and risk adjustment consistent with Title I of the Affordable Care Act. The comment period for both proposed rules, which would have ended on September 28, 2011, is extended to October 31, 2011.

DATES: The comment period for two proposed rules published in the **Federal Register** on July 15, 2011 (76 FR 41866 and 76 FR 41930, respectively), is extended from 5 p.m. Eastern Standard Time on September 28, 2011, to 5 p.m. Eastern Standard Time on October 31, 2011.

ADDRESSES: In commenting, please refer to file code CMS–9989–N2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9989–N2, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9989–N2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid

Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT:

Sharon Arnold, (301) 492–4415 for general information and matters related to reinsurance, risk adjustment, and risk corridors.

Laurie McWright, (301) 492–4372 for general information and matters related to Exchanges and qualified health plans.

Alissa DeBoy, (301) 492–4428 for general information and matters related to Exchanges and qualified health plans.

SUPPLEMENTARY INFORMATION: On July 15, 2011, we published two proposed rules in the **Federal Register** (76 FR 41866 through 41927 and 76 FR 41930 through 41956, respectively).

The first rule would implement the new Affordable Insurance Exchanges (''Exchanges''), consistent with Title I of the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), referred to collectively as the Affordable Care Act. The Exchanges would provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which would become operational by January 1, 2014, would help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses. This proposed rule, ''Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans,'' is significant in that it proposes—(1) Federal requirements that States must meet if they elect to establish and operate an Exchange; (2) minimum requirements that health insurance issuers must meet to participate in an Exchange and offer qualified health plans (QHPs); and (3) basic standards that employers must meet to participate in the Small Business Health Options Program (SHOP).

The second proposed rule would implement standards for States related to reinsurance and risk adjustment, and for health insurance issuers related to reinsurance, risk adjustment, and risk corridors consistent with Title I of the Affordable Care Act. Collectively, these programs would mitigate the impact of potential adverse selection and stabilize premiums in the individual and small group markets as insurance reforms and the Exchanges are implemented. These programs are significant in that—(1) The transitional reinsurance program would serve to reduce uncertainty of insurance risk in the individual market by making payments to health plan issuers for high-cost cases; (2) the temporary risk corridor program would serve to protect against uncertainty by limiting the extent of health plan issuer losses and gains; and (3) the permanent risk adjustment program, on an on-going basis, is intended to provide adequate payments to health insurance issuers that attract high-risk populations, such as individuals with chronic conditions.

We believe that rules proposed by HHS and the Treasury on August 17, 2011 (76 FR 51148, 76 FR 51202, and 76 FR 50931, respectively), about eligibility determinations by an Exchange, generate additional insight on the issues raised by the July 15, 2011 proposed rules. Based on this reason, we are extending the comment period for the July 15, 2011 proposed rules to October 31, 2011.

Dated: September 26, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–25202 Filed 9–27–11; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 07–244, CC Docket No. 95–116; DA 11–1558]

Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; comments requested.

SUMMARY: In this document, the Commission seeks comment on a submission by the North American Numbering Council (NANC) recommending a set of standard thresholds and intervals for non-simple ports and ''projects''—port requests that involve a large quantity of telephone numbers. Specifically, the Commission seeks comment on whether the thresholds and processing timelines for non-simple ports and projects are appropriate and whether the Commission should adopt the recommendation as a rule.

DATES: Comments must be filed on or before October 31, 2011 and reply comments on or before November 29, 2011.

ADDRESSES: Interested parties may submit comments, identified by WC Docket No. 07–244 and CC Docket No. 95–116, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* FCC Headquarters building located at 445 12th Street, SW., Room TW–A325, Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

All submissions received must include the agency name and WC Docket No. 07–244 and CC Docket No. 95–116. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, *marilyn.jones@fcc.gov* or Melissa Kirkel, *melissa.kirkel@fcc.gov*, of the Competition Policy Division, Wireline Competition Bureau, at (202) 418–1580.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 11–1558, released September 15, 2011. The full text of this document is available for public

inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com*.

On June 20, 2011, the NANC submitted a report on local number portability (LNP) Best Practice 67. The Report notes that since the inception of LNP, service providers have imposed varying thresholds, or limits, on the quantity of telephone numbers they will port within four business days—the porting interval for non-simple ports. To address these variations, Best Practice 67 recommends a set of standard thresholds and intervals for non-simple ports and ''projects''—port requests that involve a large quantity of telephone numbers. The NANC notes that at present, port requests above the service provider's maximum threshold can result in an undetermined due date that is ultimately negotiated between the old and new service providers. There is currently no industry-wide standard on what is considered a ''project'' by the old service provider for the purpose of porting numbers. Best Practice 67 addresses this issue. The NANC also recommends revisions to the NANC LNP Provisioning Flows in support of Best Practice 67.

The Commission seeks comment on Best Practice 67 and the proposed provisioning flows. Specifically, the Commission seeks comment on whether the thresholds and processing timelines for non-simple ports and projects are appropriate and whether the Commission should adopt Best Practice 67 as a rule.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by access the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the rules. In proceedings governed by § 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Sharon E. Gillett,

Chief, Wireline Competition Bureau.

[FR Doc. 2011–25282 Filed 9–29–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110620342–1597–02]

RIN 0648–BA66

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act of 1950, as amended, (Act) to implement decisions of the Inter-American Tropical Tuna Commission (IATTC). At its Eighty-second Meeting in July 2011, the IATTC adopted a number of resolutions, some of which require rulemaking to implement domestically in the United States. This proposed rule implements three of these decisions: the Resolution on Tuna Conservation 2011–2013 (C–11–01), the Resolution Prohibiting Fishing on Data Buoys (C–11–03), and the Resolution Prohibiting the Retention of Oceanic Whitetip Sharks (C–11–10). This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments must be submitted in writing by October 17, 2011. A public

hearing will be held at 9 a.m. to 12 p.m. PDT, October 17, 2011, in Long Beach, CA.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0160–0001, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0160–0001 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Heidi Hermsmeyer, NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier ''0648–BA66'' in the comments.
- *Fax:* 562–980–4047; Attn: Heidi Hermsmeyer.
- *Public hearing:* The public is welcome to attend a public hearing and offer comments on this rule on October 17, 2011 from 9 a.m. to 12 p.m. at 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The public may also participate in the public hearing via conference line: 888–282–9635; participant passcode: 11671.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS SWR and by e-mail to *OIRA_Submission@omb.eop.gov,* or faxed to (202) 395–7285. Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available at *http://swr.nmfs.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562–980–4036.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The 1949 Convention for the Establishment of an Inter-American Tropical Tuna (1949 Convention) entered into force in May 1949. The full text of the 1949 Convention is available at: *http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf.* The 1949 Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS, and has provisions related to non-target, associated, and dependent species in such fisheries. In 2003, the IATTC adopted a resolution that approved the Convention for Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica (Antigua Convention), a major revision of the 1949 Convention. The Antigua Convention includes various updates to the process and principles governing the international management of the HMS fisheries in the eastern Pacific Ocean (EPO), including a mandate to take a more ecosystem-based approach to management. The Antigua Convention entered into force on August 27, 2010, and may be found at: *http://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.* The United States has not ratified, and is not a party to, the Antigua Convention and continues to operate under the 1949 Convention. The IATTC Convention Area (Convention Area) includes the waters bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian.

The members of the IATTC are Belize, Canada, China, Chinese Taipei, Colombia, Costa Rica, Ecuador, El Salvador, European Union, France, Guatemala, Japan, Kiribati, Korea, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu, and Venezuela. Currently, the only cooperating non-member is the Cook Islands. Cooperating non-members are identified by the IATTC on a yearly basis and are expected to implement the decisions of the IATTC in the same manner as members.

International Obligations of the United States Under the Convention

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951–961) authorizes the Secretary of Commerce, after approval of IATTC recommendations by the Secretary of State, to promulgate such regulations as may be necessary to carry out the obligations of the United States. The authority to promulgate regulations has been delegated to NMFS.

IATTC Decisions in 2010 and 2011

At its 81st Meeting, in September 2010, the IATTC adopted three recommendations. The government of China objected to all formal resolutions that were proposed for political reasons beyond the scope of the IATTC. Consensus by all members of the IATTC is required to adopt a formal IATTC resolution, thus the remaining 19 members of the IATTC agreed to adopt recommendations in lieu of formal resolutions. The following three recommendations were adopted: (1) Recommendation on Tuna Conservation 2011–2013 (C–10–01); (2) Recommendation on Seabirds (C–10–02); and (3) Recommendation Prohibiting Fishing on Data Buoys (C–10–03). NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) on July 7, 2011 (76 FR 39808), to request public comment on implementing two of these recommendations (*i.e.,* C–10–01 and C–10–03), but did not receive any public comments. Meanwhile, the IATTC convened its 82nd Meeting in July 2011 and adopted by consensus twelve new resolutions, three of which replaced the previous non-binding recommendations with binding resolutions, and included some modifications to the language in the recommendations. Thus, the information regarding the tuna conservation measure and data buoy measure in this proposed rulemaking has been slightly modified from what was presented in the ANPR. This proposed rule would implement the following three resolutions adopted by the IATTC at the 82nd Meeting: The Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean in 2011–2013 (C–11–01), the Resolution Prohibiting Fishing on Data Buoys (C–11–03), and the Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (C–11–10). All of the other resolutions that were

adopted in 2011 either do not require further rulemaking or will be implemented in a separate subsequent rulemaking. All active resolutions and recommendations are available on the following IATTC Web site: *http://www.iattc.org/ResolutionsActiveENG.htm.*

Resolution C–11–01 is very similar to the tuna conservation measure adopted by the IATTC in 2009 (Resolution C–09–01). NMFS implemented Resolution C–09–01 at 50 CFR 300 subpart C (74 FR 61046, November 23, 2009). Similar to Resolution C–09–01, the main objectives of Resolution C–11–01 are to not increase the fishing mortality of yellowfin tuna (*Thunnus albacares*) and to reduce the fishing mortality of bigeye tuna (*Thunnus obesus*) in the Convention Area over the period 2011–2013. The measures are based in part on the recommendations and analysis of IATTC scientific staff and the 2011 stock assessments of bigeye and yellowfin tuna completed by IATTC staff. The differences between Resolution C–11–01 and Resolution C–09–01 that this rule, if made effective, would implement are: (1) A change to the duration of the purse seine closure of the Convention Area in 2011 and continuation of that closure period in 2012 and 2013; (2) continuation of the high seas time/area purse seine closure in 2012 and 2013; (3) continuation of the annual bigeye tuna quotas in the longline fishery for vessels over 24 meters in length in 2012 and 2013; and (4) renewal of the tuna catch retention requirements in the purse seine fishery. In addition, NMFS is proposing to give vessel owners the option of choosing between the two Convention Area purse seine closure periods that are listed in Resolution C–11–01 for each applicable year, rather than requiring the entire U.S. fleet to adhere to the later closure period as was implemented in 2009 and 2010. It appears that most, if not all, other members of the IATTC are implementing the closure period in this fashion since it provides fleets with greater flexibility.

The Resolution Prohibiting Fishing on Data Buoys (Resolution C–11–03) was adopted to reduce vandalism and damage to data buoys caused by fishing vessels that often leads to loss of data critical to weather forecasting, tsunami warnings, search and rescue efforts, and research of the marine environment. Resolution C–11–03 defines data buoys as floating devices, either drifting or anchored, that are deployed by governmental or recognized scientific organizations or entities for the purpose of electronically collecting environmental data, and not in support of fishing activities. The resolution (1) Prohibits fishing vessels from interacting with data buoys in the Convention Area, including, but not limited to, encircling the buoy with fishing gear, tying up to or attaching the vessel, fishing gear, or any part or portion of the vessel, to a data buoy, or cutting its anchor line; (2) prohibits longline and purse seine fishing vessels from deploying gear within one nautical mile of an anchored data buoy in the Convention Area; (3) prohibits fishing vessels from taking on board a data buoy, unless specifically authorized or requested to do so by a member or cooperating non-member of the IATTC or owner responsible for that buoy; (4) encourages fishing vessels operating in the Convention Area to keep watch for drifting data buoys at sea and to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with drifting data buoys; and (5) requires fishing vessels that become entangled with a data buoy to remove the entangled fishing gear with as little damage to the data buoy as possible. If a scientific research program notifies the IATTC, it may operate a fishing vessel within one nautical mile of a data buoy provided the vessel does not interact with the data buoy. The resolution also encourages members and cooperating non-members of the IATTC to require their fishing vessels to report to them all entanglements and provide the date, location, and nature of the entanglement, along with any identifying information on the data buoy.

The Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (Resolution C–11–10) was adopted to reduce the fishing pressure on oceanic whitetip sharks (*Carcharhinus longimanus*) which are caught incidentally and targeted in some oceanic and coastal fisheries. During the IATTC's 82nd Meeting, IATTC scientific staff showed estimates illustrating a dramatic decline in the catch per unit of effort of this species, which may be indicative of a decline in the population of this species in the EPO. The measure requires members and cooperating non-members of the IATTC with vessels operating in the Convention Area to (1) prohibit retaining onboard, transshipping, landing, storing, or offering for sale any part or whole carcass of oceanic whitetip sharks; (2) require vessels to promptly release unharmed, to the extent practicable, whitetip sharks when brought alongside the vessel; and (3) record *inter alia,* through the observer programs, the number of discards and releases of oceanic whitetip sharks with indication of status (dead or alive) and report it to the IATTC.

Proposed Action

Changes to Tuna Conservation Measures for 2011–2013

NMFS is proposing to change the duration of the closure period of the Convention Area for tuna purse seine vessels class sizes 4–6 (182 metric tons carrying capacity or greater) in 2011 from 73 days, which was established under Resolution C–09–01, to 62 days, which was established under Resolution C–11–01, and continue the closure period of 62 days in the years 2012 and 2013. The shorter closure period was agreed to by the members of the IATTC based on the 2011 bigeye and yellowfin tuna stock assessments. NMFS is also proposing to give applicable purse seine vessel owners the ability to choose between the two possible closure periods established by the IATTC for 2012 and 2013. In 2009, 2010, and 2011, NMFS chose the later closure period for the entire U.S. purse seine fleet based on historical fishing operations; however, other members of the IATTC are allowing vessel owners to choose between the two closure periods to give fleets greater flexibility. In order give comparable flexibility to the U.S. fleet, NMFS proposes to provide this choice to the U.S. fleet as well in 2012 and 2013. Therefore, NMFS proposes that the vessel owner of a purse seine vessel that is subject to these requirements would be required by July 1, 2012, and July 1, 2013, to notify the NMFS Southwest Regional Administrator of his or her choice of closure period for the year. The two options would be July 29 to September 28, or November 18 to January 18 of the following year for 2012 and 2013. This option would not be available for 2011 since the earlier closure period has already passed. If a vessel owner fails to notify the Regional Administrator of his or her choice by the July 1 deadline, the vessel would be subject to the later closure period (November 18 to January 18 of the following year) by default.

NMFS is also proposing to continue the high seas time/area closure for tuna purse seine vessels class sizes 4–6 in 2012 and 2013. The area consists of the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude. The high seas time/area closure was originally established under Resolution C–09–01 and has been in place since 2009.

In addition, NMFS is proposing to extend in 2012 and 2013 the annual bigeye tuna quota of 500 metric tons applicable to the bigeye catch in the Convention Area by U.S. longline vessels over 24 meters in length in accordance with the requirements in Resolution C–11–01. This quota has been in place since 2009 and has never been reached or exceeded. The members of the IATTC agreed to continue the bigeye tuna quotas in the Convention Area after review and analysis of the 2011 bigeye and yellowfin tuna stock assessments.

NMFS is also proposing to renew the tuna retention program that requires all bigeye, skipjack, and yellowfin tuna caught by a U.S. purse seine vessel of class sizes 4–6 be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size and the single exemption of this would be the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. This measure is meant to reduce discards of juvenile (undersized) bigeye, yellowfin, and skipjack tunas that are often caught by purse seine vessels that fish on fish aggregating devices (FADs), reduce overall catches of bigeye tuna, and provide an incentive to fishermen to avoid large catches of juvenile bigeye tuna. The catch retention requirement would go into effect on January 1, 2012, and remain in effect unless the members of the IATTC agree to remove the measure in 2013 or beyond. NMFS is proposing to not include an expiration date for this requirement because NMFS expects it to be included by the IATTC in future tuna conservation and management resolutions. If a decision is made to remove the measure, NMFS will take appropriate action to remove the regulation.

Prohibition on Fishing Around Data Buoys

NMFS is proposing to prohibit all U.S. fishing vessels that are used to target HMS in the Convention Area from interacting with data buoys, according to the definition of ''interaction'' included in Resolution C–11–03. According to the resolution, interactions include, but are not limited to, encircling the buoy with fishing gear, tying up to or attaching the vessel, fishing gear, or any part or portion of the vessel to a data buoy, or cutting its anchor line. In addition, the regulations would, if adopted, prohibit all U.S. longline and purse seine vessels that are used to fish for HMS in the Convention Area from using fishing gear within one nautical mile of an anchored data buoy. The one-nautical-mile distance would be measured from the data buoy to the nearest portion of the vessel or items associated with the vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. These measures would only apply to data buoys that have been identified to the IATTC. In addition, the Web site of NOAA's National Data Buoy Center (NDBC) at *http://www.ndbc.noaa.gov/* contains detailed information regarding data buoys maintained by NDBC and its partner organizations, including location and owner information. The Web site of the Observing System Monitoring Center, maintained by NOAA's Office of Climate Observations at *http://osmc.noaa.gov/Monitor/OSMC/OSMC.html,* also provides information regarding the location of data buoys. The Western and Central Pacific Fisheries Commission (WCPFC) also adopted a similar measure in December 2009 (CMM 2009–05) and issued an information package on May 18, 2010, that provides sample information on the type of data buoys that may be encountered by fishermen. The information package is available on the WCPFC's Web site at *http://www.wcpfc.int/conservation-and-management-measures.* The prohibition would not apply if the fishing vessel was operated as part of a scientific research program that notified the IATTC of its intent, or was conducting work on behalf of the IATTC.

Other proposed requirements include prohibiting U.S. fishing vessels used to target HMS in the Convention Area from taking onboard a data buoy unless specifically authorized or requested to do so by the entity responsible for the data buoy, requiring U.S. fishing vessels used for fishing for HMS in the Convention Area that become entangled with data buoys to remove the entangled fishing gear with as little damage to the data buoy as possible, and requires vessels to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with drifting data buoys. NOAA has also previously issued news releases asking the fishing, shipping, and boating communities to protect data buoys voluntarily by taking specific steps, such as: Never boarding or tying up to a buoy; never fishing around or under a buoy; and giving the buoy a wide berth to avoid entangling the mooring or other equipment suspended from the buoy—500 yards for vessels which are trailing gear and at least 20 yards for all others.

NMFS has determined that implementation of the provision in Resolution C–11–03 encouraging IATTC members to require fishing vessels to report all entanglements with data buoys in the Convention Area is not necessary at this time. Implementation and enforcement of the other provisions as specified in this proposed rule and the information provided in NOAA press releases, as specified in the paragraph above, should adequately reduce the risk of such entanglements.

Conservation of Oceanic Whitetip Sharks

NMFS is proposing to prohibit all U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks. All applicable U.S. vessels would also be required to release unharmed, to the extent practicable, oceanic whitetip sharks when brought alongside the vessel. NMFS has determined that the relevant observer programs already meet the requirements for data collection that are included in Resolution C–11–10. Members and cooperating non-members of the IATTC are required to implement Resolution C–11–10 by January 1, 2012.

Technical Correction to Vessel Capacity Regulations

NMFS is also proposing to make a technical change to 50 CFR 300.22(b)(7)(ii) to reflect changes made in a previous rulemaking on vessel capacity. The total capacity limitation for the U.S. purse seine fishery in the Convention Area is 31,775 cubic meters, but NMFS inadvertently failed to state that number into this paragraph when the change was made in 50 CFR 300.22(b)(4)(i)(A). NMFS is proposing to correct this oversight in this rulemaking.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy

of this analysis is available from NMFS (see **ADDRESSES**).

Data Buoy and Oceanic Whitetip Shark Measures

The data buoy and oceanic whitetip shark provisions in the proposed rule would apply to owners and operators of U.S. vessels targeting HMS in the Convention Area. This includes longline, purse seine, troll and baitboat, drift gillnet, harpoon, and commercial passenger fishing vessels. All of these vessels are considered small business entities except for the large purse seiners. Some of the data buoy provisions also specifically apply to longline and purse seine vessels. However, in the case of the data buoy provisions, it is unlikely that this rulemaking will result in a significant change in fishing operations as NMFS is unaware of U.S. fishing vessels interacting with data buoys in the Convention Area in the past, or U.S. longline or purse seine vessels deploying gear within one nautical mile of anchored data buoys in the Convention Area. If, in the past, there have been vessels fishing within one nautical mile of anchored data buoys, the longline and purse seine measures could result in some negligible effects to the operating costs of vessels in terms of a potential increase in search time if there is less fishing success when not fishing around anchored buoys. Also, such vessels would have to avoid fishing in areas where anchored data buoys are located, which would slightly reduce the available fishing grounds and could cause some shift in the spatial distribution of fishing effort. Operators and crew would also be required to take additional precautions when encountering data buoys anywhere in the Convention Area, which could create new burdens that could increase operating costs by increasing the time spent at sea. For example, the operator and crew of any vessel that has gear that becomes entangled with a data buoy would need to make sure to disentangle the gear carefully, in order to cause as little damage to the data buoys as possible. However, since the measures are limited to fishing around anchored data buoys and longline and purse seine vessels would still be able to fish in essentially the same fishing grounds as long as they avoid the circular 3.14 nm^2 prohibited fishing zone around each anchored data buoy, it is likely that there will be no real changes in fishing operations or associated revenues.

The longline and purse seine fleets that currently fish around anchored data buoys could also see some change in the composition of their catch due to no longer being allowed to fish around anchored data buoys that can act as fish aggregating devices; however, this is rather unlikely. This could lead to an increase in the proportion of yellowfin tuna and a decrease in the proportion of bigeye tuna, skipjack tuna, and other species that tend to be caught around floating objects. Some studies suggest that seabirds, sea turtles, and marine mammals aggregate in association with floating objects, so there could be some minor beneficial effects on protected resources from implementation of the proposed rule. However, this is difficult, if not impossible, to estimate and in all likelihood there will not be changes in fishing operations and catch compositions resulting from the proposed rule. In addition, purse seine vessels would still be able to fish using FADs that they deploy and it is presumed that longline vessels tend to avoid fishing in close proximity to anchored buoys to prevent damage and entanglement of gear.

NMFS compared the effects of the data buoy provisions proposed in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations to prohibit U.S. vessels targeting HMS in the Convention Area from interacting with data buoys as stipulated in Resolution C–11–03. Under this alternative, there would be no effects to vessel owners compared to the status quo. Vessel owners would potentially benefit from not implementing the data buoy provisions; however, the United States would not be implementing Resolution C–11–03 and would therefore not be satisfying its international obligations as a member of the IATTC.

The oceanic whitetip shark conservation measures are also unlikely to result in changes to fishing operations or significant economic impacts to small entities as U.S. fisheries that target HMS rarely retain, transship, land, or sell this species in the Convention Area. The Hawaii longline fishery (both deep-set and shallow-set sectors) catches the majority, if not all, of the oceanic whitetip sharks caught by U.S. fisheries that target HMS in the Convention Area. According to observer data from 1995–2010 for the U.S. longline fleet based out of Hawaii, the majority (90.1 percent) of observed sets caught zero oceanic whitetip sharks. On average, 0.141 oceanic whitetip sharks were caught per set during the same time period. Since 2000, there has been a national ban on shark finning, which has greatly increased the number of sharks, including oceanic whitetip sharks, that are released after being caught. From 2004–2006, only 4.9 percent and 1.7 percent of the oceanic whitetip sharks that were caught were retained in the deep-set and shallow-set longline fisheries, respectively. The overwhelming majority of the oceanic whitetip sharks (99.3 percent) caught on observed fishing trips in this fishery are caught outside of the Convention Area, west of 150° W. longitude. Thus, the proposed prohibition is expected to result in no change in fishing operations and only a de minimis reduction in associated revenues.

NMFS compared the effects of the oceanic whitetip provisions proposed in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations to prohibit U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip shark, as stipulated in Resolution C–11–10. Under this alternative, there would be no effects to vessel owners compared to the status quo. Vessel owners would potentially benefit from not implementing the oceanic whitetip provisions; however, the United States would not be implementing Resolution C–11–10 and would therefore not be satisfying its international obligations as a member of the IATTC.

In summary, all entities that have the potential to be affected by the data buoy and oceanic whitetip shark measures are believed to be small entities except the large purse seine vessels; however, it is likely that none of these entities would be significantly impacted by the proposed rule as fishing operations and revenues would most likely remain the same.

Tuna Conservation Measures

The tuna conservation measures would specifically affect longline vessels over 24 meters length overall and U.S. purse seine vessels class sizes 4–6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. This rule makes only slight adjustments to the existing tuna conservation measures, and extends the effective period for two additional fishing years, thus impacts to vessel owners are expected to be minimal. The bigeye tuna quota in the longline fishery will remain at 500 mt and remain in force for 2012 and 2013. This quota has not been reached in 2009 or 2010 and it is not expected to be reached in 2011. In addition, the purse seine closure in the Convention Area will be shortened by 11 days in 2011 and will remain in force for 2012 and 2013 and the purse seine

vessel owners will be given a choice as to when to implement the closure giving them greater flexibility while maintaining the same level of conservation, the high seas purse seine time/area closure will remain in force for 2012 and 2013, and the tuna catch retention measures will be extended to 2012 and beyond.

NMFS compared the effects of the tuna conservation measures proposed in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations to continue the bigeye tuna quota in 2012 and 2013 in the longline fishery, no changes to the purse seine closure periods, no option to select a preferred closure period, and no extension of the tuna retention measures as stipulated in Resolution C–11–01. Under this alternative, the longline and purse seine fisheries operating in the Convention Area would maintain the status quo. The longline vessel owners would benefit from not continuing the bigeye tuna quota; however, since this quota has not been reached in the past, the effects would likely be similar to the proposed measures. The purse seine vessel owners would be disadvantaged by not shortening the purse seine closure period in the Convention Area by 11 days in 2011 and not giving them the option to choose a preferred closure period; however, they would benefit if the closure period in the Convention Area and the high seas time/area closure were not continued in 2012 and 2013 and the tuna retention measures were not continued in 2012 and beyond. Under this alternative, the United States would not be fully implementing Resolution C–11–01 and would therefore not be satisfying its international obligations as a member of the IATTC. The total number of affected longline vessels is approximated by the average number of U.S. large-scale longline vessels that have caught bigeye tuna in the Convention Area in 2005–2010. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the Convention Area was 18, 8, 18, and 30, respectively. Thus, approximately 19 longline vessels on average have the potential to be affected by this proposed rule, if adopted. The majority of the longline vessels that may be affected by this proposed rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that would be affected by the proposed rule. These longline vessels target bigeye tuna using deep sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets.

Most of the Hawaii and American Samoa fleets' fishing effort has traditionally been outside of the Convention Area in the western and central Pacific Ocean (WCPO), but fishing has also taken place in the EPO. The proportion of the large-scale longline vessels annual bigeye tuna catches that were captured in the EPO from 2005 through 2009 ranged from about 5 percent to 26 percent, and averaged 19 percent. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2009 were about $63 million. Given the number of vessels active during that period (128, on average), this indicates an average of about $490,000 in annual revenue per vessel, thus all of the businesses affected by the longline measures would be considered small business entities.

For the purpose of projecting baseline conditions for the longline fishery under no action, this analysis relies on fishery performance from 2005 through 2010, since prior to 2005 the longline fishery regulations underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Bigeye tuna landings from 2005 through 2010 suggest that it is unlikely that the proposed limit would be reached in any of the years during which the limit would be in effect. The proposed limit, 500 mt, is less than the amount landed by large-scale longline vessels in 2005–2010. Large-scale longline vessels fishing in the Convention Area caught about 166, 51, 118, 325, 204, and 408 mt of bigeye tuna in 2005–2010, respectively. Thus, it is estimated that even with an increase in the catch rates of bigeye tuna in the Convention Area the 500 mt catch limit would not be reached in any of the applicable years (2011–2013).

In summary, all entities affected by the bigeye quota in longline fisheries are believed to be small entities, so small entities would not be disproportionately affected relative to large entities. In addition, this part of the proposed rule is not likely to have a significant impact on a substantial number of small entities because it is unlikely that the bigeye landings limit that would be imposed on large-scale longline vessels would be reached in any given year.

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4–6 authorized to fish in the Convention Area. As of August 2011, there were eight U.S. purse seine vessels listed on the IATTC Vessel Register; five are class size 6 (greater than 363 mt carrying capacity), one is class size 5 (273—363 mt carrying capacity), and two are class sizes 1–3 (less than 182 mt carrying capacity). Thus six purse seine vessels may be affected by the proposed rule in the near future. There is also the potential for other U.S. purse seine vessels based out of the WCPO to become authorized to fish in the EPO; however, there are capacity limits on purse seine vessels fishing in the EPO and it is estimated that at a maximum 15 additional vessels could be added to the current authorized list of active purse seine vessels. Purse seine vessels class sizes 5 and 6 usually fish outside U.S. waters and deliver their catch to U.S. (*e.g.,* American Samoa) or foreign (*e.g.,* Ecuador, Mexico, Colombia, Costa Rica) ports. Skipjack and yellowfin tuna are the primary target species in the purse seine fishery, and bigeye tuna is incidentally targeted. Class size 6 vessels are required to have 100 percent observer coverage, while class size 5 vessels are not required to carry an observer. Purse seine vessels class size 5 or smaller would be considered small business entities (revenues equal to or less than $4 million per year). It is estimated that from 2004–2010, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than $0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of $4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about $4 to $5 million per year.

It is estimated that purse seine sets would be prohibited for 17 percent of the year in 2011–2013 (62 day closure/365 days), thus catches would be expected to be affected accordingly unless effort was shifted to areas outside of the Convention Area during the closure period, or to different times of the year when there is no closure. The affected vessels are capable of fishing outside of the closure area (*i.e.,* in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round in the EPO, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. Fishing in the WCPO may produce additional costs to some of the affected vessels that are based out of the U.S. West Coast and primarily fish in the EPO due to the increase in costs associated with fishing further away from port. In addition, there is a FAD purse seine closure period in the WCPO from July 1 to

September 30 in 2011 that further constrains purse seine fishing effort in the WCPO. The closure may be extended into 2012 and beyond depending on the tuna conservation and management measures that are adopted by the WCPFC at their annual meeting in December 2011.

Other factors that have the potential to inhibit these vessels from fishing outside of the Convention Area include licensing availability and costs, and effort limits for purse seine vessels fishing in the WCPO. It is assumed that fishing in the WCPO is the only practical geographic alternative for these vessels. Purse seine vessels fishing in the WCPO under the South Pacific Tuna Treaty (SPTT) are required to license their vessels; the maximum number of licensed vessels allowed in the U.S. purse seine fishery in the WCPO is 40 and currently there are 37 licensed vessels as of September 2011. The vessel registration fee is about $3,250 per vessel. The five class size 6 purse seine vessels that are authorized to fish in the Convention Area are already registered under the SPTT. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of the smaller carrying capacity and the increased costs associated with fishing far from port.

In summary, one small business entity and five large business entities may be affected by the purse seine measures, thus small entities would not be disproportionately affected relative to large entities. In addition, the purse seine closure periods are not likely to have a significant impact on a substantial number of small entities because only one small business entity may be affected and it is estimated that its fishing effort will not change significantly from the status quo.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648–0387. Public reporting burden for Vessel Register annual notification is estimated to average 35 minutes per response, 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail 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 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 27, 2011.

John Oliver,

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

For the reasons set out in the preamble, 50 CFR part 300, subpart C is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

2. In § 300.21, a definition of ''Data buoy'' is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Data buoy means, for the purpose of § 300.25, a floating device, either drifting or anchored, which is deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not for the purpose of fishing activities, and which has been reported to the IATTC by a Member or Cooperating non-Member of the Commission.

* * * * *

3. In § 300.22, paragraph (b)(7)(ii) is revised as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

* * * * *

(b) * * *

(7) * * *

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 31,775 cubic meters and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

* * * * *

4. In § 300.24, paragraphs (e), (m) and (n) are revised, and new paragraphs (o) through (t) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.25(e)(1).

* * * * *

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(7).

(n) Use a fishing vessel of class size 4–6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1), (f)(2), (f)(5), or (6).

(o) Use a U.S. longline or purse seine fishing vessel used to fish for HMS within one nautical mile of an anchored data buoy while the fishing vessel is in the Convention Area in contravention of § 300.25(g)(1).

(p) Use a U.S. fishing vessel used for fishing for HMS, or any gear, equipment, or watercraft deployed by such a fishing vessel, to interact with a data buoy in the Convention Area in contravention of § 300.25(g)(2).

(q) Remove from the water a data buoy and place it on board or tow a data buoy with a U.S. fishing vessel used for fishing for HMS while the vessel is in the Convention Area without authorization by the owner of the data buoy or the owner's authorized representative in contravention of § 300.25(g)(3).

(r) In the event of an entanglement of a data buoy with a U.S. fishing vessel, or its fishing gear, equipment, or associated watercraft, used for fishing for HMS in the Convention Area, fail to promptly remove the data buoy with as little damage to the data buoy and its mooring and anchor lines as possible, in contravention of § 300.25(g)(4).

(s) Fail to take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys in contravention of § 300.25(g)(5).

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain onboard, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.25(e)(4).

5. In § 300.25, paragraphs (b), (e)(1), and (f) are revised, and new paragraphs (e)(4) and (g) are added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna quotas in the longline fishery in the Convention Area.* (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2011, 2012, and 2013, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the **Federal Register** announcing that the limit has been reached and that the restrictions described in paragraphs (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) *Bycatch reduction measures.* (1) As of January 1, 2012, bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(4) A fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (*Carcharhinus longimanus*) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(f) *Purse seine closures in the Convention Area.* (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 62 days in each of the years 2011, 2012, and 2013 during one of the following two periods:

(i) From 0000 hours on July 29 to 2400 hours on September 18, or

(ii) From 0000 hours on November 18 to 2400 hours on January 18 of the following year.

(2) For 2011, all U.S. purse seine vessels subject to the requirements under paragraph (f)(1) of this section shall adhere to the closure period under paragraph (f)(1)(ii) of this section.

(3) A vessel owner of a vessel that is subject to the requirements under paragraph (f)(1) of this section must in 2012 and 2013 provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (f)(1) of this section to which his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980–4047 and must be received no later than July 1 in each of the years 2012 and 2013. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) If written notification is not submitted per paragraph (f)(3) of this section for a vessel subject to the requirements under paragraph (f)(1) of this section, that vessel must adhere to the closure period under paragraph (f)(1)(ii) of this section.

(5) A vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(6) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2012 and 2013 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(7) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(6) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the

helicopter, if any must be tied down; and launches must be secured.

(g) *Restrictions on fishing in proximity to data buoys.* (1) A longline or purse seine fishing vessel of the United States may not be used to fish for HMS within one nautical mile of an anchored data buoy in the Convention Area. The one-nautical-mile distance shall be measured from the data buoy to the nearest portion of the fishing vessel or items associated with the fishing vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.

(2) A fishing vessel of the United States used to fish for HMS, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while the fishing vessel is in the Convention Area. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include but that are not limited to the following: encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring; cutting a data buoy anchor line.

(3) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS may not remove a data buoy or any parts thereof from the water and place it on board the fishing vessel or tow a data buoy when in the Convention Area unless authorized to do so by the owner of the data buoy or an authorized representative or agent of the owner. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (*e.g.,* fax, e-mail) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.

(4) In the event that a fishing vessel of the United States that is used to fish for HMS or any of its fishing gear, equipment, or associated watercraft, becomes entangled with a data buoy while the fishing vessel is in the Convention Area, the owner and operator of the fishing vessel must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible.

(5) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

[FR Doc. 2011–25275 Filed 9–29–11; 8:45 am]

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Notices

Federal Register

Vol. 76, No. 190

Friday, September 30, 2011

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Senior Executive Services (SES) Performance Review Board: Update

AGENCY: Office of Inspector General, U.S. Agency for International Development.

ACTION: Notice.

SUMMARY: This notice is hereby given of the appointment of members of the updated U.S. Agency for International Development, Office of Inspector General's Senior Executive Service Performance Review Board.

DATES: September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Robert S. Ross, Assistant Inspector General for Management, Office of Inspector General, U.S. Agency for International Development, 1300 Pennsylvania Avenue, NW., Room 8.08–029, Washington, DC 20523–8700; telephone 202–712–0010; FAX 202–216–3392; Internet E-mail address: *rross@usaid.gov* (for E-mail messages, the subject line should include the following reference—USAID OIG SES Performance Review Board).

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314 (b) (c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and Section 430.307 thereof in particular, one or more SES Performance Review Boards. The board shall review and evaluate the initial appraisal of each USAID OIG senior executive's performance by his or her supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. This notice updates the membership of the USAID OIG's SES Performance Review Board as it was last published on October 12, 2010.

Approved: September 13, 2011.

The following have been selected as regular members of the SES Performance Review Board of the U.S. Agency for International Development, Office of Inspector General:

Michael G. Carroll, Deputy Inspector General.

Howard I. Hendershot, Assistant Inspector General for Investigations.

Robert S. Ross, Assistant Inspector General for Management.

Lisa S. Goldfluss, Legal Counsel.

Alvin A. Brown, Assistant Inspector General, Millennium Challenge Corporation.

Melinda Dempsey, Deputy Assistant Inspector General for Audit.

Lisa Risley, Deputy Assistant Inspector General for Investigations.

Winona Varnon, Principal Deputy Assistant Secretary, Department of Education.

Robert Peterson, Assistant Inspector General for Inspections, Department of State.

Richard Clark, Deputy Assistant Inspector General, Investigations, Department of Labor.

Dated: September 13, 2011.

Donald A. Gambatesa,

Inspector General.

[FR Doc. 2011–25318 Filed 9–29–11; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 26, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Foreign Travel Proposal (Non-Federal).

OMB Control Number: 0596–0216.

Summary of Collection: Forest Service (FS) is seeking renewal approval to collect information from non-Federally employed individuals who are traveling outside the United States on behalf or at the request of the FS. The collection of this information is necessary to facilitate timely issuance of foreign travel authorizations. This information is shared with the USDA Foreign Agriculture Service; U.S. State Department; foreign embassies in Washington, DC; and U.S. embassies in all destination countries.

Need and Use of the Information: The FS, USDA, International Programs Travel Section uses FS–6500–1, Foreign Travel Proposal to collect the traveler's destination, purpose of trip, and dates of travel. Also collected are name, address, contact telephone numbers, passport information, security clearance, as well as contacts at each destination and hotel information. Without this information the FS cannot provide support to international programs or other countries who have requested assistance.

Description of Respondents: Individuals or households.

Number of Respondents: 150.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 50.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–25164 Filed 9–29–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 26, 2011.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Dates:

Comments regarding these information collections are best assured of having their full effect if received by October 31, 2011. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards) and 7 CFR part 62 Quality Systems Verification Programs (QSVP).

OMB Control Number: 0581–0124.

Summary of Collection: The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide consumers with voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. This is accomplished by providing meat and meat products that are uniform in quality. The Meat Grading and Certification (MGC) Branch provides these services under the authority of 7 CFR part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). The Agricultural Marketing Service (AMS) will collect information using forms LS–313 and LS–315.

The Quality Systems Verification Programs are a collection of voluntary, audit-based, user-fee programs that allow applicants to have program documentation and program processes assessed by AMS auditors and other USDA officials. The QSVP are user-fees based on the approved hourly rate established under 7 CFR, part 62.

Need and Use of the Information: The information AMS collects on LS–313, ''Application for Service,'' and LS–315, ''Application for Commitment Grading or Certification Service'' will enable the Agency to identify the responsible authorities in establishments requesting services and to initiate billing and collection accounts. A signed LS–313 or LS–315 form serves as a legal agreement between USDA users of the services, assures payment for services provided, and constitutes authorization for any employee of AMS to enter the establishment for the purpose of performing official functions under the regulations. Without a properly signed and approved form, AMS officials would not have the authority to enter the premises to provide grading and/or certification services.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 83.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,330.

Agricultural Marketing Service

Title: Child Nutrition Labeling Program.

OMB Control Number: 0581–0261.

Summary of Collection: The Child Nutrition Labeling Program is a voluntary technical assistance program administered by the Agricultural Marketing Service (AMS). The program is designed to aid schools and institutions participating in the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program by, determining the contribution a commercial product makes towards the meal pattern requirements. Legislative authority for the programs is covered under The National School Lunch Act (NSLA); Public Law 90–302 enacted in 1968 amended the NSLA establishing the Special Food Service Program for Children. In 1975 Congress separated the Child Care Food Program and Summer Food Service components of the SFAPFC and provided each with legislative authorization.

The Child Nutrition Labeling Program is implemented in conjunction with existing label approval programs administered by the Food Safety and Inspection Service (FSIS), and the U.S. Department of Commerce (DoC). To participate in the CN Labeling Program, industry submits labels to AMS of products that are in conformance with the FSIS label approval program (for meat and poultry), and the DoC label approval program (for seafood products).

Need and Use of the Information: AMS uses the information collected to aid school food authorities and other institutions participating in child nutrition programs in determining the contribution a commercial product makes towards the established meal pattern requirements. AMS uses all of the collected information to give the submitted label an approval status that indicates if the label can be used as part of the CN Labeling Program. Without the information CN Labeling Program would have no basis on which to determine how or if a product meets the meal pattern requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 110.

Frequency of Responses: Reporting: Other (as needed).

Total Burden Hours: 633.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–25162 Filed 9–29–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2012 Tariff-Rate Import Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces a fee of $170 to be charged for the 2012 tariff-rate quota (TRQ) year for each license issued to a person or firm by the U.S. Department of Agriculture (USDA) authorizing the importation of certain dairy articles, which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule (HTS) of the United States.

DATES: Effective September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1021, Washington, DC 20 250–1021; or by telephone at (202) 720–9439; or by e-mail at: *abdelsalam.el-farra@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Dairy Tariff-Rate Import Quota Licensing Regulation promulgated by USDA and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of such licenses is monitored by the Dairy Import Licensing Program, Import Programs and Export Reporting Division, Foreign Agricultural Service, USDA, and the U.S. Customs and Border Protection, U.S. Department of Homeland Security.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to defray USDA's costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2012 calendar year.

Notice: The total cost to USDA of administering the licensing system for 2012 has been estimated to be $440,280 and the estimated number of licenses expected to be issued is 2,594. Of the total cost, $315,000 represents staff and supervisory costs directly related to administering the licensing system, and $125,280 represents other miscellaneous costs, including travel, postage, publications, forms, and Automated Data Processing system support.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2012 calendar year, in accordance with 7 CFR 6.33, will be $170 per license.

Dated: August 30, 2011.

Ronald Lord,

Licensing Authority.

[FR Doc. 2011–25165 Filed 9–29–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–2011]

Foreign-Trade Zone 118—Ogdensburg, NY Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Ogdensburg Bridge and Port Authority, grantee of FTZ 118, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 20, 2011.

FTZ 118 was approved by the Board on June 3, 1985 (Board Order 304, 50 FR 24663, 06/12/85.

The current zone project includes the following sites: *Site 1* (40 acres)—Ogdensburg Bridge and Port Authority Commerce Park, Commerce Park Drive, Ogdensburg, New York; and, *Site 2* (32 acres)—Port of Ogdensburg, Lower Patterson Street, Ogdensburg, New York.

The grantee's proposed service area under the ASF would be St. Lawrence County, New York, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Ogdensburg Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include both of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 2 be so exempted. No usage-driven sites are being requested at this time.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 29, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 14, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: September 20, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–25306 Filed 9–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–4–2011]

Foreign-Trade Zone 77—Memphis, TN; Withdrawal of Request for Temporary/Interim Manufacturing Authority; Flextronics Logistics USA, Inc., (Cell Phone/Mobile Handset Kitting). Memphis, TN

Notice is hereby given of the withdrawal of the application of the City of Memphis, grantee of FTZ 77, requesting temporary/interim manufacturing authority on behalf of Flextronics Logistics USA, Inc. in Memphis Tennessee. The application was filed on August 19, 2011 (76 FR 53115, 08/25/2011).

The case has been closed without prejudice.

Dated: September 19, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–25304 Filed 9–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839, A–583–833]

Certain Polyester Staple Fiber From the Republic of Korea and Taiwan: Continuation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on certain polyester staple fiber from the Republic of Korea (Korea) and Taiwan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation for the antidumping duty orders.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2011, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on polyester staple fiber from Korea and Taiwan [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-Year (''Sunset'') Review,* 76 FR 11202 (March 1, 2011); see also *Certain Polyester Staple Fiber From Korea and Taiwan,* 76 FR 11268 (March 1, 2011).

As a result of the sunset reviews, the Department determined that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked. See *Certain Polyester Staple Fiber From the Republic of Korea and Taiwan: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 76 FR 38612 (July 1, 2011).

On August 30, 2011, pursuant to section 751(c) of the Act, the ITC determined that revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Certain Polyester Staple Fiber From Korea and Taiwan,* Inv. Nos. 731–TA–825 and 826 (Second Review), USITC Publication 4257 (September 13, 2011). See also *Certain Polyester Staple Fiber From Korea and Taiwan,* 76 FR 58040 (September 19, 2011).

Scope of the Orders

The product covered by the orders is polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the orders. Also specifically excluded from the orders are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the orders is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the orders is dispositive.

Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on PSF from Korea and Taiwan.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 23, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–25299 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] On May 25, 2000, the Department published the following antidumping duty orders: *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000); *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision,* 68 FR 74552 (December 24, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Fourth Administrative Review of Certain Activated Carbon From the People's Republic of China: Extension of Time Limit for the Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Palmer or Josh Startup, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone, (202) 482–9068 or (202) 482–5260, respectively.

Background

On May 27, 2011, the Department of Commerce (''Department'') published in the **Federal Register** a notice of initiation of an administrative review of certain activated carbon from the People's Republic of China (''PRC''), covering the period April 1, 2010, through March 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 30912, 30913 (May 27, 2011). On July 11, 2011, after receiving U.S. Customs and Border Protection (''CBP'') data, the Department selected the mandatory respondents and issued its antidumping questionnaire. The preliminary results of this administrative review are currently due on December 31, 2011.

Extension of Time Limits for the Preliminary Results

The Department determines that completion of the preliminary results of this review within the statutory time period is not practicable. The Department requires more time to gather and analyze surrogate country and value information, review questionnaire responses, and issue supplemental questionnaires. Therefore, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), we are extending the time period for issuing the preliminary results of review by 120 days until April 29, 2012.[1] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: September 26, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–25312 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] April 29, 2012, is a Sunday. Department practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533, 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–901]

Certain Lined Paper Products From People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 17, 2011, the Department of Commerce (''Department'') published its notice of initiation and preliminary results of changed circumstances review, and intent to revoke, in part, the antidumping duty order on certain lined paper products (''CLPP'') from the People's Republic of China (''PRC'').[1] We invited parties to comment and received no comments. Therefore, we are now revoking the order, in part, with respect to FiveStar® Advance™ notebooks and notebook organizers without polyvinyl chloride (''PVC'') coatings.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, the Department published in the **Federal Register** the antidumping duty order on CLPP from the PRC.[2] On June 30, 2011, the Department received a request from the Association of American School Paper Suppliers (''AASPS'')[3] to conduct a changed circumstances review for the purpose of revoking, in part, the antidumping duty order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. AASPS claimed that producers accounting for substantially all of the production of the domestic like product to which the order was issued no longer wish to maintain the order. We did not receive comments from any other party.

On August 17, 2011, we published in the **Federal Register** a combined notice of initiation and preliminary results of changed circumstances review, and intent to revoke, in part, the antidumping duty on CLPP from the PRC.[4] We invited parties to comment and received no comment.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement

[1] *See Certain Lined Paper Products from People's Republic of China: Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part,* 76 FR 50998 (August 17, 2011) (''*Intent to Revoke*'').

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (''*CLPP Order*'').

[3] AASPS is the domestic industry coalition that filed the underlying antidumping (''AD'') petition, and consists of three members—MeadWestvaco Corporation (''MWV''), Norcom, Inc., and Top Flight Inc.

[4] *See Intent to Revoke.*

purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto. Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: Pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;
- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2⅜ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction.

Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Final Results of Changed Circumstances Review, and Revocation of the AD Order in Part

At the request of AASPS, and in accordance with sections 751(b)(1) and (d)(1) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.216, the Department determined to initiate a changed circumstances review of the AD order on CLPP from the PRC to determine whether partial revocation of the order is warranted with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings.[5] In addition, we determined that expedited action was warranted and, consistent with 19 CFR 351.221(c)(3)(ii), we combined the notices of initiation and preliminary results.[6] Because AASPS, the petitioner in the underlying investigation, made an affirmative statement of no interest and claimed that parties accounting for more than 85 percent of production of the domestic like product support the partial revocation, we accepted their claim and, in accordance with section 751(b) of the Act and 19 CFR 351.222(g)(1)(i), and absent any evidence to the contrary, found that substantially all of the producers of the domestic like product expressed a lack of interest in maintaining the order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings. Based on the expression of no interest by companies accounting for substantially all of the production of the domestic like product to which the CLPP Order pertains, we preliminarily determined that the domestic producers of the like product have no interest in the continued application of the AD order on CLPP from the PRC to the merchandise that is subject to this request and that partial revocation of the order is appropriate. Accordingly, we notified the public of our intent to revoke, in part, the AD order with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings.[7] We did not receive any comments from parties objecting to the partial revocation. Therefore, the Department is partially revoking the AD order on CLPP from the PRC with respect to FiveStar® Advance™ notebooks and notebook organizers without PVC coatings.

As we stated in our *Intent to Revoke,* we will instruct U.S. Customs and Border Protection to end the suspension of liquidation for the merchandise covered by the revocation on the effective date of this notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4).

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This changed circumstances review, partial revocation of the AD order and notice are in accordance with sections 751(b) and (d), 777(i), and 782(h) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: September 23, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–25315 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, *telephone:* (202) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2011, through June 30, 2011.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: September 22, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
27 European Union Member States [3]	European Union Restitution Payments	$ 0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	0.36	0.36
Norway	Indirect (Milk) Subsidy	0.00	0.00

[5] *See Intent to Revoke.*

[6] *See id.*

[7] *See id.*

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
	Consumer Subsidy	*0.00*	*0.00*
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2011–25301 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Panel of Judges

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Panel of Judges of the Malcolm Baldrige National Quality Award will meet on Monday, November 14, 2011, 8:30 a.m. to 5:30 p.m., Tuesday, November 15, 2011, 8:30 a.m. to 5:30 p.m., Wednesday, November 16, 2011, 8:30 a.m. to 5:30 p.m., Thursday, November 17, 2011, 8:30 a.m. to 5:30 p.m., and Friday, November 18, 2011, 8:30 a.m. to 5:30 p.m. The Panel of Judges is composed of twelve members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to conduct final judging of the 2011 applicants. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene November 14, 2011, at 8:30 a.m. and adjourn November 18, 2011 at 5:30 p.m. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room E, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige Performance Excellence Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 7, 2011, that the meeting of the Judges Panel may be closed in accordance with 5 U.S.C. 552b(c)(4) because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential and 5 U.S.C. 552b(c)(9)(B) because for a government agency the meetings are likely to disclose information that could significantly frustrate implementation of a proposed agency action. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend the 2011 Baldrige Award recipients, may be closed to the public.

Dated: September 23, 2011.

Phillip Singerman

Associate Director for Innovation & Industry Services.

[FR Doc. 2011–25261 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA737

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Charter Management Implementation Committee will meet October 26, 2011 in Anchorage, AK.

DATES: The meeting will be held on October 26, 2011, 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Clarion Suites, Heritage Room, 1110 West 8th Avenue, Anchorage AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff; *telephone:* (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee agenda is limited to (1) reviewing a draft discussion paper of potential management measures that could replace the most restrictive measure under the proposed Halibut Catch Sharing Plan (also known as the ''CSP'') for the charter and commercial Pacific halibut sectors and (2) developing recommendations for the Council to consider as alternative management approaches to the bag limit of one fish of a maximum size, which is currently proposed under the management tier of the CSP that is associated with the lowest level of halibut abundance. The committee's recommendation will be reported to the North Pacific Council at its December 2011 meeting in Anchorage, Alaska. A discussion paper with background information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/.*

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–25203 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA720

Gulf of Mexico Fishery Management Council; Public Meeting; Correction

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

ACTION: Notice of an addendum to a Council meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Shrimp and Special Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meeting will convene at 1 p.m. on Tuesday, October 11, 2011 and conclude by 12 p.m. on Thursday, October 13, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: This notice was originally published in the **Federal Register** on September 22, 2011 (76 FR 58783). This notice is being republished in its entirety due to an additional agenda item.

The Standing and Special Shrimp SSC will meet jointly on Tuesday, October 11, 2011 to review benchmark stock assessments on brown shrimp, white shrimp and pink shrimp, and may consider recommending definitions of overfishing limit (OFL) and acceptable biological catch (ABC) based on those assessments. The remainder of the meeting will be a joint meeting of the Standing and Special Reef Fish SSC. The Standing and Special Reef Fish SSC will review and make recommendations on the SEDAR stock assessment schedule. The SSC will then review update assessments of gray triggerfish and vermilion snapper, and will recommend OFL and ABC for those stocks based on the assessments. The SSC will also discuss data needs from the Southeast Fisheries Science Center in order to reevaluate the 2012 red snapper annual catch limit during their next meeting. A representative from the Southeast Regional Office will present the methodology used to calculate the length of the red snapper recreational season, and will review a set of Excel spreadsheets used as decision tools for evaluating commercial and recreational greater amberjack management measures under Reef Fish Amendment 35. SSC members who attended the October 4–6, 2011 National SSC meeting in Williamsburg, VA will give a report on that meeting, and the Chair of the Ecosystem SSC will present a summary of the September 15, 2011 Ecosystem SSC webinar. The SSC will review the tentative schedule of SSC meetings planned for 2012.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–25248 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA720

Gulf of Mexico Fishery Management Council; Public Meeting; Correction

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

ACTION: Council to convene public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Reef Fish Advisory Panel (AP).

DATES: The meeting will convene at 1 p.m. on Thursday, October 13, 2011 and conclude by 12 p.m. on Friday, October 14, 2011.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: This notice originally published in the **Federal Register** on September 22, 2011 (76 FR 58783). It is being republished in its entirety due to an agenda change.

The AP will review actions by the Scientific and Statistical Committee (SSC) which meets immediately prior to the AP meeting. The AP will also receive presentations from representatives of the SSC on how acceptable biological catch is set, and on how stock assessments are done. The AP will then review presentations on update assessments for vermilion snapper and gray triggerfish, and will make recommendations on management of those stocks. The AP will review its ABC recommendation for greater amberjack and will draft Reef Fish Amendment 35, which contains actions to modify the rebuilding plan and management measures for greater amberjack. The AP will also discuss red snapper issues relating to the five year review of the red snapper individual fishing quota program, and to the data collection programs for the recreational red snapper fishery.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be

restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 27, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–25247 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA629

Marine Mammals; File No. 15471–01

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 15471 has been issued to Michael Adkesson, D.V.M., Chicago Zoological Society, 3300 Golf Rd., Brookfield, IL 60527.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On August 11, 2011, notice was published in the **Federal Register** (76 FR 49736) that a request for an amendment to Permit No. 15471 to import specimens from South American fur seals (*Arctocephalus australis*) and South American sea lions (*Otaria flavescens*) for scientific research had been submitted by the above-named applicant. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit has been amended to increase the total number of individuals to 765 and include samples from up to 200 male South American fur seals that can be received, imported, or exported over the duration of the permit. In addition, the permit holder is authorized to receive, import, or export samples from up to 400 adult and pup South American sea lions over the duration of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 26, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–25272 Filed 9–29–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Notice; Adoption of Operational Name for Agency

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final Notice; adoption of operational name for agency.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled has deliberated and voted to adopt U.S. AbilityOne Commission as its operational name. The operational name change will not affect the statutory name of the agency; however, the name change will allow the Committee to take advantage of the strong and unified AbilityOne® name. The Committee has decided to adopt an operational name in order to ensure greater recognition and transparency as a federal agency responsible for implementing and administering a federal statute.

DATES: *Effective Date:* October 1, 2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Notice

The Javits-Wagner-O'Day (JWOD) Act (Pub. L. 92–28), established an agency to be known as the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee). The purpose of the JWOD Act is to generate employment and training opportunities for people who are blind or have other severe disabilities in the manufacture and delivery of products and services to the federal government. The law requires federal agencies to procure certain products and services that are produced and provided by community-based nonprofit agencies that are dedicated to training and employing persons who are blind or have other severe disabilities.

The Committee is an independent federal agency and consists of fifteen members appointed by the President (11 from specific federal agencies and four private citizens). The Committee works closely and collaboratively with two designated (non-governmental) central nonprofit agencies (CNAs): National Industries for the Blind (NIB) and NISH (creating employment opportunities for people with significant disabilities) to operate the program. In addition, the JWOD Act authorizes the Committee to make rules and regulations necessary to carry out the Act.

In 1938, Congress passed the Wagner-O'Day Act so people who are blind could manufacture mops and brooms to sell the federal government. In 1971, the JWOD Act expanded the Wagner-O'Day Act to include people who had severe disabilities and to authorize the program to provide services to the government. For decades, the program operated as the ''NIB/NISH Program'' and/or the ''JWOD Program.'' In 2006, the program changed its name to AbilityOne® in order to build a descriptive and powerful brand identity, to better convey its employment mission, and to link participating nonprofit agencies.

The name change to AbilityOne has been a tremendous success and has resulted in a stronger, more unified program. However, there still exists confusion and misunderstanding among federal agencies and non-federal entities, regarding the status and

purpose of the Committee. In addition, the name (Committee for Purchase From People Who Are Blind or Severely Disabled) does not independently identify it as a federal agency, and the term ''Committee'' is commonly associated as being in an advisory capacity.

Consequently, in order to enhance the ease of identification of the Committee as a federal agency responsible for administering the JWOD Act, the Committee has voted to adopt U.S. AbilityOne Commission as an operational name. In order to ensure that all federal agencies and non-governmental entities that are familiar with the Committee name are able to recognize and transfer their support to the new operational name, the U.S. AbilityOne Commission will continue to use the statutory name in appropriate circumstances. The dual use will enable the Committee to use existing business materials that contain the statutory name and to begin using the new name as materials and supplies are refreshed in the normal supply cycle.

II. Administrative Procedure Act

Because this notice merely implements an operational name change of a government agency, it relates only to agency organization, procedure or practice, and, accordingly, requirements for prior notice and public comment do not apply. 5 U.S.C. 553(b)(3)(A). The Committee for good cause finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public comment thereon are unnecessary. In addition, and for the same reasons, the Committee finds, for good cause, pursuant to 5 U.S.C. 553(d)(3), that this notice should take effect immediately.

III. Paperwork Reduction Act

This final notice does not include a collection of information as defined in 44 U.S.C. 3502(3) of the Paperwork Reduction Act of 1995. Required changes in the references to the agency name are not substantive or material modifications to the existing collections of information. The applicability date for this change should further limit any associated burden. Accordingly, the modifications to this collection of information have not been submitted to OMB for review.

IV. Regulatory Flexibility Act

Because this notice is being promulgated without a proposal and an opportunity for public comments, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply. In any event, the technical amendments made by this notice will not have a significant impact on a substantial number of small entities.

V. Congressional Review Act

This notice is a notice of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties. It is therefore not subject to the Congressional Review Act pursuant to 5 U.S.C. 801 and 804(1).

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–25270 Filed 9–29–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 10/31/2011

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/1/2011 (76 FR 38641–38642) and 8/5/2011 (76 FR 47565–47566), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 8940–00–NIB–0094—Soup, Shelf-Stable, Cream of Mushroom, Low Sodium.

NSN: 8940–00–NIB–0095—Soup, Shelf-Stable, Cream of Chicken.

NPA: Cambridge Industries for the Visually Impaired, Somerset, NJ.

Contracting Activity: Department of Agriculture, Agricultural Marketing Service, Washington, DC.

Coverage: C–List for 100% of the requirement of the Department of Agriculture, as aggregated by the Department of Agriculture, Agricultural Marketing Service, Washington, DC.

Services

Service Type/Locations: Grounds Maintenance. National Weather Service Weather Forecast Office, 587 Aero Drive, Buffalo, NY. Radar Data Acquisition Site, 3 North Airport Drive, Cheektowaga, NY. Upper-Air Observatory, Amherst Villa Road, Cheektowaga, NY.

NPA: Suburban Adult Services, Inc., Elma, NY.

Contracting Activity: National Oceanic and Atmospheric Administration, Norfolk, VA.

Service Type/Location: Transient Aircraft Services. Moody AFB, GA.

NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.

Contracting Activity: Dept of the Air Force, FA4830 23 CONS CC, Moody AFB, GA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–25269 Filed 9–29–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a service previously furnished by such agency.

Comments Must Be Received On Or Before: 10/31/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 2510–01–210–2748—Door Assembly, Heater/Defroster, HMMWV series M998.
NPA: Opportunities, Inc. of Jefferson County, Fort Atkinson, WI.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Land and Maritime, Columbus, OH.
NSN: 1670–01–578–6776—Deployment Bag, Parachute, 24 Feet (T–10).
NSN: 1670–01–578–6771—Deployment Bag, Parachute, 35 Feet (T–10R).
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC.
Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Aviation, Richmond, VA.

Services

Service Type/Location: Custodial Service. Whiteman AFB, MO.
NPA: Portco, Inc., Portsmouth, VA.
Contracting Activity: Dept of the Air Force, FA4625 509 CONS CC, Whitman AFB, MO.
Service Type/Locations: Custodial Services. Radiological and Environmental Sciences Laboratory (RESL), IF Buildings 601 and 683, 2351 North Boulevard, Idaho Falls, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Department of Energy, Idaho Operations Office, Idaho Falls, ID.

DELETION

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial. U.S. Federal Building and Customhouse, 721 19th Street, Denver, CO.
NPA: Platte River Industries, Inc., Denver, CO.
Contracting Activity: General Services Administration, FPDS Agency Coordinator, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–25268 Filed 9–29–11; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection, Copies of Crop and Market Information Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on crop and market information.

DATES: Comments must be submitted on or before November 29, 2011.

ADDRESSES: Comments may be mailed to Gary Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, (202) 418–5209; *FAX:* (202) 418–5527; *e-mail: gmartinaitis@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Registration under the Commodity Exchange Act (OMB Control No. 3038–0015). This is a request for

extension of a currently approved information collection.

Abstract: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Copies of Crop and Market Information Reports, OMB control number 3038–0015—Extension.

The information collected pursuant to this rule, 17 CFR 1.40, is in the public interest and is necessary for market surveillance.

Burden Statement:

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of Respondents	Total annual responses	Hours per response	Total hours
1.40	15	15	0.17	2.5

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: September 26, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011–25309 Filed 9–29–11; 8:45 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 5, 2011; 11 a.m.–12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 27, 2011.

Todd A Stevenson,

Secretariat.

[FR Doc. 2011–25333 Filed 9–28–11; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, October 5, 2011, 10 a.m.–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Decisional Matter: Table Saws Advance Notice of Proposed Rulemaking.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 27, 2011.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2011–25332 Filed 9–28–11; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Notice of Advisory Committee Closed Meeting; U.S. Strategic Command Strategic Advisory Group; Correction

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee closed meeting; date correction.

SUMMARY: On August 23, 2011 (76 FR 52642), the United States Strategic Command Strategic Advisory Group gave notice of a meeting to be held on November 1, 2011, from 8 a.m. to 5 p.m. Central Daylight Time and November 2, 2011, from 8 a.m. to 11:30 a.m. Central Daylight Time at the Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt Air Force Base (AFB), Nebraska 68113. Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given that this meeting has been rescheduled.

The new dates are: December 12, 2011 from 8 a.m. to 5 p.m. Central Standard Time and December 13, 2011 from 8 a.m. to 11:30 a.m. Central Standard Time at the Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

Dated: September 27, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–25264 Filed 9–29–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board (DBB); Meeting Notice

AGENCY: Department of Defense (DoD).

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, October 20, 2011, from 8:30 a.m. to 9:30 a.m.

ADDRESSES: Room 3D557 in the Pentagon, Washington, DC (Escort required; see guidance in the **SUPPLEMENTARY INFORMATION** section, ''Public's Accessibility to the Meeting.'')

FOR FURTHER INFORMATION CONTACT: Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate draft findings and recommendations from the ''Information Technology Modernization'' Task Group. The Board will also receive an update from the ''Re-engineering the Requirements Process'' Task Group. The mission of the Board is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense.

Agenda:

Public Session

8:30 a.m.–9:15 a.m. Deliberation of Task Group Draft Recommendations
—*Information Technology Modernization.*

9:15 a.m.–9:30 a.m. Task Group Update
—*Re-engineering the Requirements Process.*

End of Public Session

Availability of Materials for the Meeting: A copy of the agenda for the October 20, 2011 meeting and the terms of reference for the Task Groups may be obtained at the meeting or from the Board's web site at *http://dbb.defense.gov/meetings.html* under ''Upcoming Meetings: 20 October 2011.''

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, part of this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public session of the meeting must contact Ms. Debora Duffy at the number listed in this notice no later than noon on Wednesday, October 12 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance in time to complete security screening by no later than 8 a.m. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Committee's Designated Federal Officer: The Board's Designated Federal Officer (DFO) is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Phyllis.ferguson@osd.mil,* 703–695–7563.

Procedures for Providing Public Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public session.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in this notice in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: September 27, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–25267 Filed 9–29–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0105]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Notice to Alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on October 31, 2011, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number 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.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon,

Washington, DC 20301–1155, or by phone at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 26, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 26, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V5–01

SYSTEM NAME:

Investigative Records Repository (April 30, 2009, 74 FR 19944).

CHANGES:

Delete entry and replace with ''DMDC 11 DoD.''

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Manpower Data Center (DMDC), 1137 Branchton Road, Boyers, PA 16020–0168.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military personnel who are active duty; applicants for enlistment or appointment; members of Reserve units; National guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from non-appropriated funds who have DoD affiliation; Reserve Officers' Training Corps (ROTC) cadets; former military personnel; and individuals residing on, have authorized official access to, or conducting or operating any business or other functions at any DoD installation or facility and had an investigation initiated by the Defense Security Service before 3 February 2006.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name; Social Security Number (SSN); date of birth; gender; aliases; official reports of investigation (ROIs) prepared by DoD, Federal, state, or local official investigative activities; industrial security administrative inquiries (AISs).

Attachments to ROIs or AISs including exhibits, subject or interviewee statements, police records, polygraph technical reports, medical records, credit bureau reports, employment records, education records, release statements, summaries of, or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but which serve as the basis for investigation, or which serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case; and documents initiated by the subject.

Defense Manpower Data Center file administration and management documents accounting for the disclosure of, control of, and access to a file.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 615, Armed Forces, Information furnished to selection boards; E.O. 10450, Security Requirements for Government Employment; DoD Directive 5200.2, Department of Defense Personnel Security Program; DoD Directive 5200.27 (Section IV A and B), Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program; DoD Instruction 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP–ESI Program for Contractor Employees; DoD Instruction 5210.91, Polygraph and Credibility Assessment (PCA) Procedures; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To ensure that the acceptance or retention of persons in sensitive DoD positions or granting individuals, including those employed in defense industry, access to classified information is clearly consistent with national security.

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to defense information and facilities.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces.

For use in criminal law enforcement investigations, including statutory violations and counterintelligence as well as counterespionage and other security matters.

For use in military boards selecting military members for promotion to grades above 0–6.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper file folders, microfiche, and electronic storage media.''

* * * * *

RETENTION AND DISPOSAL:

DELETE ENTRY AND REPLACE WITH ''RETENTION OF CLOSED INVESTIGATIVE FILES IS AUTHORIZED FOR 15 YEARS, EXCEPT AS FOLLOWS:

(1) Files which have resulted in final adverse action against an individual will be retained 25 years;

(2) Polygraph technical reports and physiological test data are disposition pending. Until the National Archives and Records Administration approves a retention and disposal schedule, records will be treated as permanent.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy Director for Identity and Personnel Assurance, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington VA 22209–2593.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should send written inquiries to: DMDC Boyers, Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name and SSN of the subject individual, along with a return address.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that

individual for their representative to act on their behalf.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system must send written signed inquiries to DMDC Boyers, Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name and SSN and address where the records are to be returned.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

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Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Office of the Secretary of Defense/Joint Staff rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.''

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with ''Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.''

DMDC 11 DoD

SYSTEM NAME:

Investigative Records Repository.

SYSTEM LOCATION:

Defense Manpower Data Center (DMDC), 1137 Branchton Road, Boyers, PA 16020–0168.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel who are active duty; applicants for enlistment or appointment; members of Reserve units; National guardsmen; DoD civilian personnel who are paid from appropriated funds; industrial or contractor personnel who are working in private industry in firms which have contracts involving access to classified DoD information or installations; Red Cross personnel and personnel paid from non-appropriated funds who have DoD affiliation; Reserve Officers' Training Corps (ROTC) cadets; former military personnel; and individuals residing on, have authorized official access to, or conducting or operating any business or other functions at any DoD installation or facility and had an investigation initiated by the Defense Security Service before 3 February 2006.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date of birth; gender; aliases; official reports of investigation (ROIs) prepared by DoD, Federal, state, or local official investigative activities; industrial security administrative inquiries (AISs).

Attachments to ROIs or AISs including exhibits, subject or interviewee statements, police records, polygraph technical reports, medical records, credit bureau reports, employment records, education records, release statements, summaries of, or extracts from other similar records or reports.

Case control and management documents which are not reports of investigation, but which serve as the basis for investigation, or which serve to guide and facilitate investigative activity, including documents providing the data to open and conduct the case; and documents initiated by the subject.

Defense Manpower Data Center file administration and management documents accounting for the disclosure of, control of, and access to a file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 615, Armed Forces, Information furnished to selection boards; E.O. 10450, Security Requirements for Government Employment; DoD Directive 5200.2, Department of Defense Personnel Security Program; DoD Directive 5200.27 (Section IV A and B), Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense; DoD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program; DoD Instruction 5220.28, Application of Special Eligibility and Clearance Requirements in the SIOP–ESI Program for Contractor Employees; DoD Instruction 5210.91, Polygraph and Credibility Assessment (PCA) Procedures; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To ensure that the acceptance or retention of persons in sensitive DoD positions or granting individuals, including those employed in defense industry, access to classified information is clearly consistent with national security.

To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for access to defense information and facilities.

To determine the eligibility and suitability of individuals for entry into and retention in the Armed Forces.

For use in criminal law enforcement investigations, including statutory violations and counterintelligence as well as counterespionage and other security matters.

For use in military boards selecting military members for promotion to grades above 0–6.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT OF 1974, THESE RECORDS CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

For maintenance and use by the requesting activity when collected during reciprocal investigations conducted for other DoD and Federal investigative elements.

For dissemination to Federal agencies or other DoD components when information regarding personnel

security matters is reported by Information Summary Report.

The DoD 'Blanket Routine Uses' published at the beginning of the Office of the Secretary of Defense compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders, microfiche, and electronic storage media.

RETRIEVABILITY:

Information is retrieved by SSN.

SAFEGUARDS:

Completed investigative records are stored in secured areas accessible only to authorized DMDC personnel who have a need-to-know. Paper records and microfiche are maintained in safes and locked rooms and electronic records are protected from access by 'fail-safe' system software. The entire building housing these records is protected by guards 24-hours a day, and all visitors must register through the site security office.

RETENTION AND DISPOSAL:

RETENTION OF CLOSED INVESTIGATIVE FILES IS AUTHORIZED FOR 15 YEARS, EXCEPT AS FOLLOWS:

(1) Files which have resulted in final adverse action against an individual will be retained 25 years;

(2) Polygraph technical reports and physiological test data are disposition pending. Until the National Archives and Records Administration approves a retention and disposal schedule, records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Identity and Personnel Assurance, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should send written inquiries to: DMDC Boyers, Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name and SSN of the subject individual, along with a return address.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system must send written signed inquiries to DMDC Boyers, Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name and SSN and address where the records are to be returned.

IN ADDITION, THE REQUESTER MUST PROVIDE A NOTARIZED STATEMENT OR AN UNSWORN DECLARATION MADE IN ACCORDANCE WITH 28 U.S.C. 1746, IN THE FOLLOWING FORMAT:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense/Joint Staff rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subjects of investigations; records of other DoD activities and components; Federal, state, county, and municipal records; employment records of private business and industrial firms; educational and disciplinary records of schools, colleges, universities, technical and trade schools; hospital, clinic, and other medical records.

Records of commercial enterprises such as real estate agencies, credit bureaus, loan companies, credit unions, banks, and other financial institutions which maintain credit information on individuals.

The interview of individuals who are thought to have knowledge of the subject's background and activities.

The interview of witnesses, victims, and confidential sources.

The interview of any individuals deemed necessary to complete the investigation.

Directories, rosters, and correspondence.

Any other type of record deemed necessary to complete the investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2011–25175 Filed 9–29–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Legislative Environmental Impact Statement (LEIS) for the Limestone Hills Training Area Land Withdrawal, Montana Army National Guard (MTARNG)

AGENCY: National Guard Bureau (NGB), Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Final LEIS prepared

by NGB (lead agency) and the Bureau of Land Management (BLM) of the Department of Interior (DOI) (cooperating agency). The LEIS analyzed the proposed withdrawal of 18,644 acres of federal land within the Limestone Hills Training Area (LHTA) from BLM administration. The LEIS proposes that Congress authorize BLM to transfer administrative responsibility of all federal land within the LHTA to the Army for military training use by the MTARNG. No new facilities are proposed in this LEIS. The LEIS is the detailed statement required by the National Environmental Policy Act to be included in a recommendation or report on a legislative proposal to Congress.

DATES: The waiting period will end 30 days after publication of a notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or questions should be forwarded by mail to Ms. Sundi West, MTARNG, Fort Harrison, 1956 MT Majo Street, P.O. Box 4789, Helena, Montana 59636–4789, via telephone at (406) 324–3088, or via e-mail at *Sundi.West@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Sherri Lionberger, BLM, 106 North Parkmont, Butte, Montana 59701, via telephone at (406) 533–7671, or via e-mail at *slionber@blm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the LEIS is to provide comprehensive analysis of the proposed action and alternatives to the Secretaries of Interior and Army so findings and recommendations can be forwarded to Congress regarding the proposed land withdrawal. The study area for the environmental analysis is resource dependent. It includes Lewis and Clark County and Broadwater County for socioeconomic resources, MTARNG facilities for military mission, and the LHTA for biological and mineral resources.

The LEIS analyzes potential environmental effects of three action alternatives and a No Action Alternative. Action Alternatives 2 and 3 were developed as a result of the LEIS scoping process.

Alternative 1: This was the MTARNG's original proposed action. Under the proposed action, management responsibility for all resources, except for mineral resources, would be shifted from the BLM to the MTARNG. Under this alternative, the Department of the Army could exercise its authority to condemn private land, and/or terminate any mineral claim or grazing permits.

Alternative 2: Under this alternative, the MTARNG and BLM would share resource management responsibilities. MTARNG would manage most resources in the LHTA's closure area. BLM would manage most resources in the non-closure area. The closure area is the portion of the LHTA that restricts access without prior approval of the MTARNG. The non-closure area is the portion of LHTA that is open to public access for surface use only.

Alternative 3: (Preferred Alternative): Under this alternative, the LHTA would be withdrawn from BLM jurisdiction with modifications based on scoping comments and stakeholder recommendations. The proposed withdrawal area is approximately 18,644 acres of federal land that encloses state-owned and private land which is not included in the withdrawal.

Under the No Action Alternative, the BLM's current right-of-way grant for military use of the LHTA by MTARNG would not be renewed. The current right-of-way grant expires in 2014.

This LEIS is a component of the legislative proposal package that BLM will submit to DOI and the Office of Management and Budget. After agency review and concurrence, the DOI will transmit the proposed legislation to Congress.

Significant Issues: The LHTA is a 23,110 acre parcel of land with private and state-owned in-holdings totaling approximately 2,666 acres. The BLM manages 20,444 acres of the total acreage and allows the MTARNG to conduct military training on its property through the right-of-way grant. The public land is also used for grazing, mining, recreation, transportation, utility right-of-ways, and wildlife management. A limestone mine is currently operating within the LHTA. All federally-managed LHTA land falls within one of seven grazing allotments. In addition, the MTARNG is currently engaged in clearing unexploded ordnance from an LHTA range that is no longer in use.

Issues considered in the LEIS include the following: (1) Continued ability of Graymont Western's Indian Creek Limestone Mine to extract and process ore within the LHTA; (2) allocation and management of grazing allotments; (3) public access to the LHTA; (4) noise and dust generated during training exercises, and by vehicular traffic; (5) impacts to Broadwater County due to possible termination of BLM payments in lieu of taxes if the withdrawal is granted; (6) potential impacts to wildlife in the Elkhorn Management Area; (7) consistency of land management policies after transfer of administrative responsibilities; (8) potential impacts to range management and cleanup activities; (9) owner access to, and use of, in-holdings; and (10) impacts to the local economy and MTARNG training under the no action alternative.

Potentially significant adverse impacts to socioeconomics are expected under Alternative 1 and the No Action Alternative. There are no potentially significant adverse impacts expected under Alternatives 2 or 3.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–25204 Filed 9–29–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Thursday, October 27, 2011.

3. *Time:* 12:30 p.m.—3 p.m. Members of the public wishing to attend the meeting will need to show photo identification in order to gain access to the meeting location. All participants are subject to security screening.

4. *Location:* Jefferson Hall Library, Haig Room. West Point, NY.

5. *Purpose of the Meeting:* This is the 2011 Annual Meeting of the USMA Board of Visitors (BoV). Members of the Board will be provided updates on Academy issues.

6. *Agenda:* The Academy leadership will provide the Board updates on the following: the Academic program, Honor and Respect Programs and the Annual Report writing process.

7. *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.

8. *Committee's Designated Federal Officer or Point of Contact:* Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

SUPPLEMENTARY INFORMATION: Any member of the public is permitted to file a written statement with the USMA Board of Visitors. Written statements should be sent to the Designated Federal Officer (DFO) at: United States Military Academy, Office of the Secretary of the General Staff (MASG), 646 Swift Road, West Point, NY 10996–1905 or faxed to the Designated Federal Officer (DFO) at (845) 938–3214. Written statements must be received no later than five working days prior to the next meeting in order to provide time for member consideration. By rule, no member of the public attending open meetings will be allowed to present questions from the floor or speak to any issue under consideration by the Board.

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Joy A. Pasquazi, (845) 938–5078, *Joy.Pasquazi@us.army.mil.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–25223 Filed 9–29–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 29, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 27, 2011

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: College Affordability and Transparency Explanation (CATE) Form 2011–2014.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 532.

Total Estimated Annual Burden Hours: 1,596.

Abstract:. The National Center for Education Statistics (NCES) is seeking a three-year clearance for a new survey data collection for the College Affordability and Transparency List Explanation (CATE) form. The collection of this information is necessary pursuant to the Higher Education Opportunity Act (HEOA) Section 111, Part C (20 U.S.C. 1015a) with the goal of increasing transparency of college tuition prices for consumers. The clearance should start with the 2011–12 collection year and extend through the 2012–13 and 2013–14 collections. Part C of Section 111 of HEOA included provisions for improved transparency in college tuition for consumers. In response to these provisions, the Department of Education created The College Affordability and Transparency Center (CATC) which can be accessed through College Navigator. The CATC includes information for students, parents, and policymakers about college costs at America's colleges and universities. The CATC also includes several lists of institutions based on the tuition and fees and/or net prices (the price of attendance after considering all grant and scholarship aid) charged to students, including a list of institutions that are in the five percent of institutions in their institutional sector that have the highest increases, expressed as a percentage change, over the three-year time period for which the most recent data are available. The clearance being requested is to survey the institutions on this list using the College Affordability and Transparency Explanation form to collect follow-up information. The lists appearing in CATC are generated using data collected by the NCES through the Integrated Postsecondary Education Data System (IPEDS). IPEDS is a mandatory data collection for institutions that participate in or are applicants for participation in any federal student financial aid program authorized by Title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1094, Section 487(a)(17) and 34 CFR 668.14(b)(19)). The additional information to be collected will be used to write a summary report for Congress which will also be posted on the College Navigator website. The report will summarize the general and sector specific findings from the CATE using descriptive statistics. The main cost areas showing the highest increases will be identified using the percent change information provided by institutions. The most commonly reported plans to reduce the increases in those cost increases will also be indicated. Finally, the extent to which institutions participate in setting tuition and fees and net prices for students will be described and the agencies outside of the institutions that decide those student charges will be identified.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4729. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information

should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–25300 Filed 9–29–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–57–000]

Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC, Entergy Texas, Inc.; Notice of Amended Complaint

Take notice that on September 16, 2011, pursuant to sections 206 and 306 of the Federal Power Act 16 U.S.C. 824e and 825(e) and 18 CFR 386.206 of the Commission's Rules of Practice and Procedures, the Louisiana Public Service Commission (Complainant) filed an amended and supplemental complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC (Respondents), seeking a remedy to allocate and assign the Little Gypsy Repowering Project cancellation costs among all the Entergy Operating Companies, based on their 12–Coincident Peak demands at the time of the cancellation of the project or, alternatively, to change the Entergy rough equalization bandwidth formula found in Service Schedule MSS–3 of the Entergy System Agreement to include the Little Gypsy Repowering Project cancellation costs.

The Complainant certifies that copies of the complaint were served on the contacts for Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 6, 2011.

Dated: September 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25213 Filed 9–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14220–000]

Draper Irrigation Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14220–000.

c. *Date Filed:* June 27, 2011, and supplemented on September 9, 2011.

d. *Applicant:* Draper Irrigation Company.

e. *Name of Project:* Big Willow Hydroelectric Project.

f. *Location:* The Big Willow Hydroelectric Project is located adjacent to Draper Irrigation Company's water treatment plant on the plant's raw municipal waterline in Sandy City, Salt Lake County, Utah. The land on which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Bryan Bryner, Smith Hartvigsen, PLLC, 175 South Main Street, Suite 300, Salt Lake City, Utah 84111; (801) 413–1600.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for Filing Responsive Documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must

also serve a copy of the document on that resource agency.

l. *Description of Project:* The Big Willow Hydroelectric Project consists of: (1) A building containing one turbine generating unit having an installed capacity of 511 kilowatts; and (2) appurtenant facilities. The project's average annual generation is 1,414,329 kilowatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14220, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions To Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS; '' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-Filing Consultation:* On March 9, 2011, the applicant requested the agencies to support the waiver of the Commission's consultation requirements under 18 CFR 4.38(c). On April 5 and May 11, 2011, the U.S. Fish and Wild Life Service and the Utah Resource Development Coordinating Committee, respectively, concurred with this request. Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: September 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25216 Filed 9–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4626–000]

Mt. Poso Cogeneration Company, 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 Mt. Poso Cogeneration Company, 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 October 17, 2011.

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 14 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 e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25214 Filed 9–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

MISO Planning Advisory Committee, September 28, 2011, 10 a.m.–4 p.m., Local Time.

The above-referenced meeting will be held at:

MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *http://www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3728, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: September 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25215 Filed 9–29–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD10–8–000]

North American Electric Reliability Corporation; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will hold a staff-led Technical Conference to discuss issues related to the interpretations of Reliability Standard CIP–006–2 in the above-referenced docket. The Technical Conference will be held on Tuesday, October 25, 2011, from 9 a.m. to 1 p.m. (EST) in the Commission Meeting Room at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426. The Technical Conference will be open for the public to attend and advance registration is not required.

The Technical Conference will explore the risks of leaving dial-up intelligent electronic devices that are part of the Bulk-Power System and that use non-routable protocols physically unprotected. The Commission is interested in: (1) Information on the number of Bulk-Power System assets that are networked using non-routable protocols; (2) the proportion of those assets that are currently physically unprotected; (3) the risks associated with leaving such assets physically unprotected; and (4) methods for mitigating such risks.

The Technical Conference will also explore monitoring physical access not only when authorized personnel enter a controlled access area, such as the physical security perimeter to critical cyber assets, but also when authorized personnel leave the controlled access area. The Commission is interested in the level of security attained by monitoring both physical ingress and egress into controlled access areas.

Those interested in speaking at the conference should notify the Commission by close of business October 7, 2011 by completing an online form describing the topics that they wish to address: *https://www.ferc.gov/whats-new/registration/naerc-10-25-speaker-form.asp.* Due to time constraints, we may not be able to accommodate all those interested in speaking. The Commission will issue a subsequent notice that will provide the detailed agenda, including panel speakers.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For further information please contact Sarah McKinley at (202) 502–8368 or *sarah.mckinley@ferc.gov.*

Dated: September 26, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25212 Filed 9–29–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9473–6; Docket ID No. EPA–HQ–ORD–2011–0050]

Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the second external review draft of a document titled, ''Second External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' (EPA/600/R–10/076B). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for ozone.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate Federal Register notice). The draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. EPA will consider any public comments submitted in response to this notice when revising the document.

DATES: Comments must be received on or before November 29, 2011.

ADDRESSES: The ''Second External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Marieka Boyd by *telephone:* 919–541–0031; *fax:* 919–541–5078; or *e-mail: boyd.marieka @epa.gov* to request either of these. Please provide your name, your mailing address, and the document title, ''Second External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' (EPA/600/R–10/076B) to facilitate processing of your request.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FURTHER INFORMATION: For information on the public comment period, contact the Office of Environmental Information Docket; *telephone:* 202–566–1752; *facsimile:* 202–566–1756; or *e-mail: ORD.Docket@epa.gov.*

For technical information, contact Dr. James Brown, National Center for Environmental Assessment; *telephone:* 919–541–0765; *facsimile:* 919–541–1818; or *e-mail: Brown.James@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108 (a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109 (d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Ozone (O_3) is one of six principal (or ''criteria '') pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109 (d) (2) of the Clean Air Act, is charged with the independent scientific review of EPA's air quality criteria.

On September 29, 2008 (73 FR 56581), EPA formally initiated its current review of the air quality criteria for ozone, requesting the submission of recent scientific information on specified topics. A draft of EPA's ''Integrated Review Plan for the Ozone National Ambient Air Quality Standards Review'' (EPA/452/P–09/001) was made available in September 2009 for public comment and was discussed by the CASAC via a publicly accessible teleconference on November 13, 2009 (74 FR 54562). In August 2010, EPA held a workshop with invited scientific experts to discuss initial draft materials prepared in the development of the ISA (75 FR 42085). The first external review draft ISA for Ozone and Related Photochemical Oxidants was released on March 4, 2011 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm ?deid=217463*). The CASAC panel held a public meeting on May 19, 2011 to review the draft ISA (76 FR 23809). Subsequently, on August 10, 2011, the CASAC panel provided a consensus review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f9385 2572410080d786/45A59F1BC8 912FEE852578E80066021C/$File/EPA-CASAC-11-009-unsigned.pdf*).

The second external review draft ''Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' will be discussed at a public meeting for review by the CASAC, and public comments received will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0050 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *E-mail: ORD.Docket@epa.gov;*
- *Fax:* 202–566–1753;
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–566–1752; or
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0050. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment

that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 20, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–25298 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/19/2011 Through 09/23/2011

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110325, Final EIS, FHWA, 00, I–69 Corridor—Section of Independent Utility (SIU) No. 14, Construction from Junction 1–20 near Haughton, LA to U.S. 82 near EL Dorado, AR, Bossier, Claiborne and Webster Parishes, LA and Columbia and Union Counties, AR, Review Period Ends: 11/10/2011, Contact: Christi Wilson 504–837–6326.

EIS No. 20110326, Final EIS, USA, MT, Limestone Hills Training Area (LHTA) Withdrawal Project, To Withdraw Federal Lands from within the LHTA from DOI, Bureau of Land Management for Transfer to Montana Army National Guard for Military Training Use, Broadwater County, MT, Review Period Ends: 10/31/2011, Contact: Sundi West 406–324–3088.

EIS No. 20110327, Draft EIS, BR, 00, Klamath Facilities Removal Project, Advance Restoration of the Salmonid Fisheries Klamath Basin, Siskiyou County, CA and Klamath County, OR, Comment Period Ends: 11/21/2011, Contact: Elizabeth Vasqueuz 916–978–5055.

EIS No. 20110328, Draft EIS, NPS, CA, Drakes Bay Oyster Company (DBOC) Special Use Permit (SUP) for the Period of 10 Years for its Shellfish Operation, which Consists of Commercial Production, Harvesting, Processing, and Sale of Shellfish at Point Reyes National Seashore, CA, Comment Period Ends: 11/21/2011, Contact: Cicely Muldoon 415–464–5101.

EIS No. 20110329, Draft EIS, FHWA, NC, U.S.–70 Havelock Bypass Project, Construction of a New Location, 10-mile, Four Land Divided, Controlled-Access Freeway for U.S.–70 around the Southwest Side of the City of Havelock and the Cherry Point U.S. Marine Corps Air Station (MCAS), Craven County, NC, Comment Period Ends: 11/14/2011, Contact: Mark Pierce 919–707–6035.

EIS No. 20110330, Draft EIS, USFS, 00, Kiowa, Rita Blanca, Black Kettle, and McClellan Creek National Grasslands Land and Resource Management Plan, Implementation, Mora, Harding, Union, and Colfax Counties, NM; Dallam, Hemphill, and Gray Counties, TX; and Cimarron and Rogers Mills Counties, OK, Comment Period Ends: 12/28/2011, Contact: Champe Green 505–346–3900.

EIS No. 20110331, Final EIS, NPS, MI, Isle Royale National Park Wilderness and Backcountry Management Plan, Implementation, MI, Review Period Ends: 10/31/2011, Contact: Phyllis Green 906–482–0986.

Dated: September 27, 2011.

James D. Gavin,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–25297 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0282; FRL–8887–9]

Registration Review; Pesticide Dockets Opened for Review and Comment and Other Docket Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. EPA is also announcing that the docket for methyl nonyl ketone (MNK), which was planned for September 2011, has been delayed to FY 2012 (Q3). This document also announces the Agency's intent not to open a registration review docket for puccinia thlaspeos (case number 6013). This pesticide does not currently have any actively registered pesticide products and is not, therefore, scheduled for review under the registration review program.

DATES: Comments must be received on or before November 29, 2011.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact:* The Chemical Review Manager (CRM) or Regulatory Action Leader (RAL) identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

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

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with

widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration review case name and No.	Docket ID No.	Chemical review manager or RAL, telephone No., e-mail address
1H-Pyrazole-1-methanol, 3,5-dimethyl-, 5035	EPA–HQ–OPP–2011–0619	Eliza Blair, (703) 308–7279, *blair.eliza@epa.gov*
Alkyl imidazodincs, 3010	EPA–HQ–OPP–2011–0620	Eliza Blair, (703) 308–7279, *blair.eliza@epa.gov*
Amines, C10–16-alkyldimethyl,N-oxides, 5003	EPA–HQ–OPP–2011–0616	Seiichi Murasaki, (703) 347–0163, *murasaki.seiichi@epa.gov*
Aviglycine Hydrochloride (AVG), 6070	EPA–HQ–OPP–2011–0691	John Fournier, (703) 308–0169, *fournier.john@epa.gov*
Bacilius thuringiensis, 0247	EPA–HQ–OPP–2011–0705	Kathleen Martin, (703) 308–2857, *martin.kathleen@epa.gov*
Bensulfuron methyl, 7216	EPA–HQ–OPP–2011–0663	Maia Tatinclaux, (703) 347–0123, *tatinclaux.maia@epa.gov*
Flower Oils, 8202	EPA–HQ–OPP–2011–0628	Menyon Adams, (703) 347–8496, *adams.menyon@epa.gov*
Glycine, N-(hydroxymethyl)-monosodium salt, 5030.	EPA–HQ–OPP–2011–0615	Rebecca von dem Hagen, (703) 305–6785, *vondem-hagen.rebecca@epa.gov*
Imiprothrin, 7426	EPA–HQ–OPP–2011–0692	Andrea Mojica, (703) 308–0122, *mojica.andrea@epa.gov*
Methyl Anthranilate, 6056	EPA–HQ–OPP–2011–0678	Chris Pfeifer, (703) 308–0031, *pfeifer.chris@epa.gov*
Metsulfuron, 7205	EPA–HQ–OPP–2011–0375	Jill Bloom, (703) 308–8019, *bloom.jill@epa.gov*
Nuclear Polyhedrosis and Granulosis Viruses (Insect Viruses), 4106.	EPA–HQ–OPP–2011–0694	Jeannine Kausch, (703) 347–8920, *kausch.jeannine@epa.gov*
Propamocarb, 3124	EPA–HQ–OPP–2011–0662	Christina Scheltema, (703) 308–2201, *scheltema.christina@epa.gov*
Pyriproxyfen, 7424	EPA–HQ–OPP–2011–0677	Khue Nguyen, (703) 347–0248, *nguyen.khue@epa.gov*
Pyrithiobac sodium, 7239	EPA–HQ–OPP–2011–0661	Kylie Rothwell, (703) 308–8055, *rothwell.kylie@epa.gov*
Spinetoram, 7448	EPA–HQ–OPP–2011–0666	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov*
Spinosad, 7421	EPA–HQ–OPP–2011–0667	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov*
Starlicide, 2610	EPA–HQ–OPP–2011–0696	Monica Wait, (703) 347–8019, *wait.monica@epa.gov*
Tanol derivs. (furanone), 3138	EPA–HQ–OPP–2011–0682	James Parker, (703) 306–0469, *parker.james@epa.gov*
Tralkoxydim, 7237	EPA–HQ–OPP–2011–0706	Katherine St. Clair, (703) 347–8778, *st.clair.katherine@epa.gov*

EPA is also announcing that it will not be opening a docket for puccinia thlaspeos (''strain woad'' pc code 006489), because this pesticide is not included in any products registered under either FIFRA section 3 or section 24 (c).

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides.

The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 13, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–24819 Filed 9–29–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9474–1; Docket ID No. EPA–HQ–ORD–2011–0738]

Draft Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period and Listening Session.

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment entitled, ''Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/004A). The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register**. Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the disposition of public comments. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

The listening session will be held on Thursday, November 17, 2011, during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants would like EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public comment period begins September 30, 2011, and ends November 29, 2011. Comments should be in writing and must be received by EPA by November 29, 2011.

The listening session on the draft assessment for vanadium pentoxide will be held on Thursday, November 17, 2011, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time, or when the last presentation has been completed. To attend the listening session, interested parties should register no later than Thursday, November 10, 2011. To present at the listening session, indicate in your registration that you would like to make oral comments at the session and provide the length of your presentation. The following are instructions for registering: To attend the listening session, register by contacting Ms. Stephanie Sarraino of Versar, Inc. via e-mail at *ssarraino@versar.com* (subject line: Vanadium Pentoxide Listening Session), or by phone: 703–750–3000 extension 737 (please reference the ''Vanadium Pentoxide Listening Session'' and mention your name, title, affiliation, full address and contact information). When you register, please indicate if you will need audio-visual equipment (*e.g.*, laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by Thursday, November 10, 2011, the listening session will be cancelled, and EPA will notify those registered of the cancellation.

ADDRESSES: The draft report ''Toxicological Review of Vanadium Pentoxide: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8561; *facsimile:* 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov*, by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft vanadium pentoxide assessment will be held at the EPA offices at Potomac Yard (North Building), Room 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, you must have photo identification and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, you should provide the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188, and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the vanadium pentoxide listening session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross by phone at 703–347–8592 or by e-mail at *IRISListeningSession@epa.gov.* To request accommodation for a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Additional Information: For information on the docket, *http://www.regulations.gov*, or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8592; *facsimile:* 703–347–8689; or *e-mail: IRISListeningSession@epa.gov.*

For information on the draft assessment, please contact Maureen Gwinn, National Center for Environmental Assessment (Mail code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 730–347–8565; *facsimile:* 703–347–8693; or *e-mail: FRN_Questions@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information about IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How To Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0738, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0738. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://*

www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov_index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 27, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–25290 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9473–9; Docket ID No. EPA–HQ–ORD–2011–0739]

Draft Toxicological Review of Biphenyl: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Public Comment Period and Listening Session

SUMMARY: EPA is announcing a 60-day public comment period and a public listening session for the external review draft human health assessment titled, ''Toxicological Review of Biphenyl: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–11/005C). The draft assessment was prepared by the National Center for Environmental Assessment (NCEA) within the EPA Office of Research and Development (ORD). EPA is releasing this draft assessment solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This draft assessment has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. After public review and comment, an EPA contractor will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The external peer review meeting will be scheduled at a later date and announced in the **Federal Register.** Public comments submitted during the public comment period will be provided to the external peer reviewers before the panel meeting and considered by EPA in the disposition of public comments. Public comments received after the public comment period closes will not be submitted to the external peer reviewers and will only be considered by EPA if time permits.

The listening session will be held on Wednesday, November 16, 2011, during the public comment period for this draft assessment. The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties attending the listening session. EPA welcomes the comments that will be provided to the Agency by the listening session participants. The comments will be considered by the Agency as it revises the draft assessment after the independent external peer review. If listening session participants would like EPA to share their comments with the external peer reviewers, they should also submit written comments during the public comment period using the detailed and established procedures described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The public comment period begins September 30, 2011, and ends November 29, 2011. Comments should be in writing and must be received by EPA by November 29, 2011.

The listening session on the draft assessment for biphenyl will be held on Wednesday, November 16, 2011, beginning at 9 a.m. and ending at 4 p.m., Eastern Standard Time, or when all presentations have been completed. To attend the listening session, interested parties should register no later than Wednesday, November 9, 2011. To present at the listening session, indicate in your registration that you would like to make oral comments at the session and provide the length of your presentation. The following are instructions for registering: To attend the listening session, register by contacting Ms. Bethzaida Colon of Versar, Inc. via e-mail at *bcolon@versar.com* (subject line: Biphenyl Listening Session), or by phone: 703–642–6727 (please reference the ''Biphenyl Listening Session'' and mention you name, title, affiliation, full address and contact information). When you register, please indicate if you will need audio-visual equipment *(e.g.,* laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by Wednesday, November 9, 2011, the listening session will be cancelled, and EPA will notify those registered of the cancellation.

ADDRESSES: The draft ''Toxicological Review of Biphenyl: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the NCEA home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team (Address: Information Management Team, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8561; *facsimile:* 703–347–8691). If you request a paper copy, please provide your name, mailing address, and the draft assessment title.

Comments may be submitted electronically via *http://www.regulations.gov,* by e-mail, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

The listening session on the draft biphenyl assessment will be held at the EPA offices at Two Potomac Yard (North Building), Rm. 7100, 2733 South Crystal Drive, Arlington, Virginia 22202. Please note that to gain entrance to this EPA building to attend the meeting, you must have photo identification and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, you should provide the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188, and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the biphenyl listening session and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross by phone at 703–347–8592 or by e-mail at *IRISListeningSession@epa.gov.* To request accommodation for a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Additional Information: For information on the docket, *www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* 202–566–1752; *facsimile:* 202–566–1753; or *e-mail: ORD.Docket@epa.gov.*

For information on the public listening session, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment (Mail Code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8592; *facsimile:* 703–347–8689; or *e-mail: IRISListeningSession@epa.gov.*

For information on the draft assessment, please contact Zheng (Jenny) Li, National Center for Environmental Assessment (Mail code: 8601P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8577; *facsimile:* 703–347–8689; or *e-mail: FRN_Questions@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. How to Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0739, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Facsimile:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0739. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* website is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send e-mail comments directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: September 27, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–25289 Filed 9–29–11; 8:45 am]

BILLING CODE 6560–50–P

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 burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) 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 (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 29, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

OMB Approval Number: 3060–0329.

Title: Section 2.955, Equipment Authorization-Verification (Retention of Records).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,655 respondents; 5,655 responses.

Estimated Time per Response: 18 hours (average).

Frequency of Response: One time and on occasion reporting requirements, recordkeeping requirement; and Third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4(i), 302, 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. sections 154(i), 302 and 303(r).

Total Annual Burden: 101,790 hours.

Total Annual Cost: $1,131,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Commission rules require equipment testing to determine performance and compliance with FCC standards. This testing is typically done by independent testing laboratories whose measurement facility has been reviewed by the Commission, or by an accrediting organization recognized by the Commission.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements), after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

Section 2.955 describes for each equipment device subject to verification, the responsible party, as shown in 47 CFR 2.909 shall maintain the records listed as follows:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the requirements of § 2.953.

(2) A record of the procedures used for production inspection and testing (if tests were performed) to insure the conformance required by § 2.953. (Statistical production line emission testing is not required.)

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations in this chapter. The record shall:

(i) Indicate the actual date all testing was performed;

(ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests;

(iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used;

(iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT;

(v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number;

(vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing;

(vii) Contain at least two drawings or photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used;

(viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations in this chapter;

(ix) Include all of the data required to show compliance with the appropriate regulations in this chapter; and

(x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in § 2.909.

(4) For equipment subject to the provisions in part 15 of this chapter, the records shall indicate if the equipment was verified pursuant to the transition provisions contained in § 15.37 of this chapter.

(b) The records listed in paragraph (a) of this section shall be retained for two years after the manufacture of said equipment item has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the manufacturer or importer is officially notified that an investigation or any other administrative proceeding involving his equipment has been instituted.

The Commission needs and requires the information under FCC Rules at 47 CFR Parts 15 and 18, that RF equipment manufacturers (respondents) ''self determine'' their responsibility for adherence to these rules, as guided by the following criteria:

(a) Whether the RF equipment device that is being marketed complies with the applicable Commission Rules; and

(b) If the operation of the equipment is consistent with the initially documented test results, as reported to the Commission.

The information collection is essential to controlling potential interference to radio communications.

(a) Companies that manufacture RF equipment are the anticipated respondents to this information collection.

(b) This respondent ''public'' generally remains the same, although the types of equipment devices that they manufacture may change in response to changing technologies and to new spectrum allocations made by the Commission.

(c) In addition, the Commission may establish new technical operating standards in response to these changing technologies and in allocation spectrum, which these RF equipment manufacturers must meet to receive their equipment authorization from the FCC.

(d) However, the process that RF equipment manufacturers must follow to verify their compliance, as mandated by 47 CFR Section 2.955 of FCC Rules, will not change despite new technical standards established for specific equipment.

This information collection, therefore, applies to a variety of equipment, which is currently manufactured in the future, and that operates under varying technical standards.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–25149 Filed 9–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 11–146; DA 11–1513]

Auction of FM Broadcast Construction Permits Scheduled for March 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 93

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain FM broadcast construction permits scheduled to commence on March 27, 2012. This document also seeks comment on competitive bidding procedures for this auction designated as Auction 93.

DATES: Comments are due on or before October 7, 2011, and reply comments are due on or before October 17, 2011.

ADDRESSES: All filings in response to this public notice must refer to AU Docket No. 11–146. The Wireless Telecommunications and Media Bureaus strongly encourage interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction93@fcc.gov*. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Lynne Milne at (202) 418–0660; for general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2868. *Audio Division, Media Bureau:* for FM service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 93 Comment Public Notice* released on September 12, 2011. The complete text of the *Auction 93 Comment Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. *The Auction 93 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 11 –1513. The *Auction 93 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/93/,* or by using the search function for AU Docket No. 11–146 on the Commission's Electronic Comment Filing System (ECFS) Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications and Media Bureaus (the Bureaus) announce an auction of certain FM broadcast construction permits and seek comment on the procedures to be used for this auction. This auction is scheduled to commence on March 27, 2012, and is designated as Auction 93.

II. Construction Permits in Auction 93

2. Auction 93 will offer 123 construction permits in the FM

broadcast service. The construction permits to be auctioned are for 123 new FM allotments, including 17 construction permits that were offered but not sold or were defaulted upon in prior auctions. Attachment A of the *Auction 93 Comment Public Notice* lists the specific vacant FM allotments for which the Federal Communications Commission (FCC or Commission) will offer construction permits, along with the reference coordinates for each vacant FM allotment. These comprise FM channels added to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, and designated for use in the indicated communities. An applicant may apply for any vacant FM allotment listed in Attachment A of the *Auction 93 Comment Public Notice.* If two or more short-form applications (FCC Form 175) specify the same FM allotment, they will be considered mutually exclusive, and the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, then, even if only one applicant for a particular construction permit in Auction 93 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing, but fails to timely submit an upfront payment, will retain its status as an applicant in Auction 93 and will remain subject to the rules prohibiting certain communications but, having purchased no bidding eligibility, will not be eligible to bid.

III. Due Diligence

3. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for broadcast facilities that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. *The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.*

4. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which it plans to bid. A *Report and Order* adopted in an FM allotment rulemaking proceeding may include anomalies such as site restrictions or expense reimbursement requirements. Additionally, each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 93 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

5. The Bureaus strongly encourage each applicant to conduct its own research prior to Auction 93 in order to determine the existence of pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decisions regarding participation in the auction.

6. The Bureaus strongly encourage participants in Auction 93 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 93 Comment Public Notice* do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

IV. Bureaus Seek Comment on Auction 93 Procedures

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

7. The Bureaus propose to auction all construction permits included in Auction 93 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Bidding Rounds

8. Auction 93 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. Details on viewing round results, including the location and format of downloadable round results files, will be included in the same public notice.

9. The Commission will conduct Auction 93 over the Internet using the Commission's Integrated Spectrum Auction System (FCC Auction System). Bidders will also have the option of placing bids by telephone through a dedicated Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

10. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureaus seek comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iii. Stopping Rule

11. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 93, the Bureaus propose to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid, applies a

proactive waiver, or, if bid withdrawals are permitted in this auction, withdraws any provisionally winning bid which is a bid that would become a final winning bid if the auction were to close in that given round. Unless the Bureaus announce alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all construction permits until bidding stops on every construction permit. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

12. Further, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 93: (a) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if withdrawals are permitted in this auction), or places any new bids on a construction permit that is not FCC held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an FCC-held construction permit) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b) above; (d) Declare the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close; and (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids (if withdrawals are permitted in this auction). The effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

13. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus propose to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

14. Pursuant to 47 CFR 1.2104(i), the Bureaus propose that they may delay, suspend, or cancel Auction 93 in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureaus will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureaus may, in their sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

15. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar construction permits. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments that are related to the specific construction permits being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these considerations in mind, the Bureaus propose the upfront payments set forth in Attachment A of the *Auction 93 Comment Public Notice.* The Bureaus seek comment on the upfront payments specified in Attachment A of the *Auction 93 Comment Public Notice.*

16. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureaus propose to assign each construction permit a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed in Attachment A of the *Auction 93 Comment Public Notice.* The number of bidding units for a given construction permit is fixed and does not change during the auction as prices change. A bidder may place bids on multiple construction permits, provided that the total number of bidding units associated with those construction permits does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureaus request comment on these proposals.

ii. Activity Rule

17. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on one hundred (100) percent of its bidding eligibility. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Failure to maintain the requisite activity level will result in the use of an activity rule

waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction. The Bureaus seek comment on this proposal.

iii. Activity Rule Waivers and Reducing Eligibility

18. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

19. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required, unless (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

20. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

21. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn (if bid withdrawals are permitted in this auction), the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals (if bid withdrawals are permitted in this auction), or proactive waivers will not keep the auction open.

22. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from taking any other bidding-related action in that round, including placing any bids in that round or withdrawing bids (if bid withdrawals are permitted in this auction). Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

23. The Bureaus propose that at the start of Auction 93, each bidder will have three activity rule waivers to use at its discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

24. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. The Bureaus do not propose to establish separate reserve prices for the construction permits to be offered in Auction 93. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted.

25. The Bureaus propose to establish minimum opening bid amounts for Auction 93. The Bureaus believe that a minimum opening bid amount, which has been used in other broadcast auctions, is an effective bidding tool for accelerating the competitive bidding process.

26. For Auction 93, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed broadcast facility, and recent broadcast transaction data. Attachment A of the *Auction 93 Comment Public Notice* lists a proposed minimum opening bid amount for each construction permit available in Auction 93. The Bureaus seek comment on the minimum opening bid amounts specified in Attachment A of the *Auction 93 Comment Public Notice.*

27. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. The Bureaus ask commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on factors that could reasonably have an impact on valuation of the broadcast spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and any other relevant factors.

v. Bid Amounts

28. The Bureaus propose that, in each round, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts, if the bidder has sufficient eligibility to place a bid on the particular construction permit. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer than nine acceptable bid amounts for the construction permit.

29. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be a certain percentage higher. That is, the FCC will calculate the minimum acceptable bid amount by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded using the Commission's standard rounding procedure for auctions. If bid withdrawals are permitted in this auction, in the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.

30. The FCC will calculate the eight additional bid amounts using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable

bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureaus will round the results using the Commission's standard rounding procedures for auctions.

31. For Auction 93, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent. The Bureaus seek comment on these proposals.

32. The Bureaus retain the discretion, if the Bureaus determine that circumstances so dictate, to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors the Bureaus should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

vi. Provisionally Winning Bids

33. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines a provisionally winning bid for each construction permit based on the highest bid amount received. If identical high bid amounts are submitted on a construction permit in any given round (*i.e.* , tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

34. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted in this auction). The Bureaus remind bidders that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

35. For Auction 93, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to bid withdrawals, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

viii. Bid Withdrawal

36. The Bureaus also seek comment on whether bid withdrawals should be permitted in Auction 93. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted in this auction, is subject to the bid withdrawal payment provisions of 47 CFR 1.2104(g) and 1.2109.

37. Based on guidance provided by the Commission in several competitive bidding rulemaking proceedings and on the experience of the Bureaus with past auctions of FM broadcast construction permits, the Bureaus propose to prohibit bidders from withdrawing any bids after the close of the round in which bids were placed. The Bureaus make this proposal in light of the site-specific nature and wide geographic dispersion of the permits available in this auction, which suggests that potential applicants for this auction may have fewer incentives to aggregate permits through the auction process (as compared with bidders in many auctions of wireless licenses). The Bureaus believe that it is unlikely that bidders will have a need to withdraw bids in this auction. The Bureaus also remain mindful that bid withdrawals, particularly those made late in this auction, could result in delays in licensing new FM stations and attendant delays in the offering of new broadcast service to the public. The Bureaus seek comment on this proposal to prohibit bid withdrawals.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

38. If bid withdrawals are allowed in Auction 93, the Bureaus propose the interim bid withdrawal payment be 20 percent of the withdrawn bid. A bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the FCC cannot calculate the final withdrawal payment until that construction permit receives a higher bid or winning bid in a subsequent auction. In such cases, when that final withdrawal payment cannot

yet be calculated, the FCC imposes on the bidder responsible for the withdrawn bid an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed.

39. The amount of the interim bid withdrawal payment may range from three percent to twenty percent of the withdrawn bid amount, with the percentage generally being higher where there is greater risk of bid withdrawals being used for anti-competitive purposes, such as when there is little need for bidders to aggregate permits. Because the Bureaus anticipate little need for bidders to aggregate permits in Auction 93, the Bureaus propose to use the maximum interim bid withdrawal payment percentage allowed by 47 CFR 1.2104(g)(1) in the event bid withdrawals are allowed in this auction. The Bureaus request comment on using twenty percent for calculating an interim bid withdrawal payment amount in Auction 93. Commenters advocating the use of bid withdrawals should also address the percentage of the interim bid withdrawal payment.

ii. Additional Default Payment Percentage

40. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.* , fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 93 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

41. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the construction permits being offered.

42. For Auction 93, the Bureaus propose to establish an additional default payment of twenty percent. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional twenty percent default payment will be more effective in deterring defaults than the three percent used in some earlier auctions. In light of these considerations, the Bureaus propose for Auction 93 an additional default payment of twenty percent of the relevant bid. The Bureaus seek comment on this proposal.

V. Ex Parte Rules

43. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2011–25277 Filed 9–29–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 26, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10396	Bank of the Commonwealth	Norfolk	VA	9/23/2011
10397	Citizens Bank of Northern California	Nevada City	CA	9/23/2011

[FR Doc. 2011–25252 Filed 9–29–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: October 5, 2011–10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting will be held in Open Session.

Matters To Be Considered

1. Staff Recommendation Concerning Proposed Modification of 46 CFR

530.8(c)(2) for Index-based Service Contracts.

2. Update and Discussion of PierPass Traffic Mitigation Fee.

3. Initial Discussion of Factors that May Impact Diversion of U.S.-Bound Cargo from U.S. Ports to Canadian and Mexican Ports.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–25338 Filed 9–28–11; 11:15 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by e-mail at *OTI@fmc.gov.*

A & D International Logistics, Corp. (NVO), 248 NW., 62nd Avenue, Miami, FL 33126, *Officers:* Diana Espinal Acevedo, Vice President/Secretary (Qualifying Individual), Aleido J. Cabrera, President/Treasurer, Application Type: New NVO License.

A.J. Worldwide Services Inc. (NVO & OFF), 501 Penhorn Avenue, Unit 8, Secaucus, NJ 07094, *Officers:* Shahryar Haq, Vice President (Qualifying Individual), Vivek Vellore, President/Secretary/Treasurer, Application Type: New NVO & OFF License.

American Red Ball International, Inc. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, *Officers:* Beverly Franklin, CFO/Secretary (Qualifying Individual), Jim Gaw, Vice President & General Manager (Qualifying Individual), Application Type: QI Change.

American Royal International, Inc. (OFF), 1021 Washington Street, San Carlos, CA 94070, *Officers:* Khosrow Khorraminejad, President (Qualifying Individual), Negin Hakimian, Secretary, Application Type: New OFF License.

American Vanpac Carriers, Inc. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, *Officers:* Jim Gaw, Vice President/General Manager (Qualifying Individual), Beverly Franklin, CFO/Secretary (Qualifying Individual), Application Type: QI Change.

Arocean Logistcs Inc (NVO & OFF), 13935 Lemoli Avenue, #20, Hawthorne, CA 90250, *Officer:* Anouvanh Pasasouk, CEO/Secretary/CFO (Qualifying Individual), Application Type: New NVO & OFF License.

Atlas Van Lines International Corp. (NVO & OFF), 9750 3rd Avenue NE., #200, Seattle, WA 98115, *Officers:* Beverly Franklin, Assistant Secretary (Qualifying Individual), Jim Gaw, Vice President/General Manager (Qualifying Individual), Application Type: QI Change.

CN Worldwide Inc. (NVO), 935 de La Gauchetiere Street, West Montreal, Quebec H2B 2M9 Canada, *Officers:* Kelly Levis, Vice President—USA (Qualifying Individual), Keith Reardon, President/Director, Application Type: QI Change.

Cruises Logistic USA, Inc. (NVO & OFF), 11825 NW. 100th Road, #1–3, Medley, FL 33178, *Officers:* Ivonne Zani, Vice President (Qualifying Individual), Application Type: New NVO & OFF License.

Den Hartogh Americas Inc. (NVO), 2727 Allen Parkway, Suite 1700, Houston, TX 77019, *Officers:* Michael W. Milner, Vice President (Qualifying Individual), Pieter den Hartogh, President, Application Type: New NVO License.

Draco Freight Logistics Corporation (NVO & OFF), 8544 NW. 93rd Street, Medley, FL 33166, *Officer:* Leonardo Capra, President (Qualifying Individual), Application Type: New NVO & OFF License.

D.T. Gruelle Company Group, LLC (NVO & OFF), 301 Moon Clinton Road, Coraopolis, PA 15108, *Officers:* Marco T. Gruelle, Manager/Director/Corporate Secretary (Qualifying Individual), Durard T. Gruelle, Member/Manager/President/CEO/CEM (Qualifying Individual), Application Type: QI Change & License Transfer.

Export Forwarders LLC (OFF), 3509 Vicky Circle, Kennesaw, GA 30144, *Officers:* David R. Ashford, Member (Qualifying Individual), Application Type: New OFF License.

Jaguar Worldwide Logistics, Inc. (NVO & OFF), 10 E. Merrick Road, Suite 204, Valley Stream, NY 11580, *Officers:* Arden S. Chan, Director/Secretary (Qualifying Individual), Cooper Chao, Director/President, Application Type: New NVO & OFF License.

MidEast Shipping LLC (NVO), 443 W. Linden Drive, Orange, CA 92865, *Officers:* Abdelrahman Albarq, President (Qualifying Individual), Kimberly J. Albarq, Secretary, Application Type: New NVO License.

NIK Transport, Inc. (NVO & OFF), 17360 Colima Blvd., Suite 161, Rowland Heights, CA 91748, *Officer:* Stephanie L. Fang, President/VP/Treasurer/Secretary (Qualifying Individual), Application Type: QI Change.

OQ Enterprises, Inc. (NVO), 2535 W. Winton Avenue, #4P, Hayward, CA 94545, *Officers:* Oscar M. Quiambao, President (Qualifying Individual), Christine B. Quiambao, Secretary/Treasurer, Application Type: New NVO License.

RD International Forwarder Corp. (NVO & OFF), Amelia Industrial Park, Guaynabo, PR 00968, *Officers:* Rebeca Negron, President (Qualifying Individual), Daniel Freire, Controller, Application Type: New NVO & OFF License.

Safeway Global Shipping LLC (NVO), 9630 Clarewood Street, Building D6, Houston, TX 77054, *Officers:* Houston S. Lopez, Vice President/Exports (Qualifying Individual), Sunday K. Oyeniran, President, Application Type: New NVO License.

Sentry Cargo International, Inc. (OFF), 8322 NW. 68 Street, Miami, FL 33166, *Officer:* Eduardo del Pozo, President/Secretary (Qualifying Individual), Application Type: New OFF License.

World Maritime Limited Liability Company (NVO), 2081 Raritan Road, Scotch Plains, NJ 07076–4711, *Officers:* Robin Lynch, Managing Member (Qualifying Individual), Cutberto J. Parra Mendoza, Member, Application Type: New NVO License.

Zenith Logistics (USA) Inc. (NVO), 175–01 Rockaway Blvd., Suite 218, Jamaica, NY 11434, *Officers:* Xiao Jun He, Vice President (Qualifying Individual), Xuemei Ma, President/Treasurer, Application Type: New NVO License.

Zimmer Worldwide Logistics, Inc. (NVO & OFF), 530 Wells Fargo Drive, #218, Houston, TX 77090, *Officers:* Thomas R. Shaw, Vice President (Qualifying Individual), Margaret J. Zimmer, President, Application Type: Add NVO Service.

Zur-Go, Inc (NVO & OFF), 6907 NW., 82nd Avenue, Miami, FL 33166, *Officers:* Rafael M. Leonardi, President (Qualifying Individual), Carmen E. Vargas, Secretary, Application Type: New NVO & OFF License.

Dated: September 26, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–25170 Filed 9–29–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
022017N	Shinyoung Express Inc., 1490 Beachey Place, Carson, CA 90746	August 13, 2011.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–25172 Filed 9–29–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 003512N.

Name: Urie Transportation Management, Incorporated, dba U.S. Northwest Express, dba USNW Express.

Address: 5150 Village Park Drive SE., Suite 100, Bellevue, WA 98006.

Date Revoked: August 22, 2011.

Reason: Failed to maintain a valid bond.

License Number: 021094N.

Name: Amid Logistics, LLC.

Address: 10 Florida Park Drive N., Suite D–1A, Palm Coast, FL 32137.

Date Revoked: May 23, 2011.

Reason: Voluntarily surrendered license.

License Number: 021268F.

Name: Scan Global Logistics, Inc.

Address: 650 Atlanta South Parkway, Suite 109, Atlanta, GA 30349.

Date Revoked: August 19, 2011.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2011–25171 Filed 9–29–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 27, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Prime Banc Corp., Dieterich, Illinois; to acquire 100 percent of the voting shares of Red Bud Bancorp, Inc., and thereby indirectly acquire voting shares of First State Bank of Red Bud, both in Red Bud, Illinois.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Adam Bank Group, Inc., Tampa, Florida; to acquire 100 percent of the voting shares of Brazos Valley Bank, National Association, College Station, Texas.

September 27, 2011.

Board of Governors of the Federal Reserve System.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–25235 Filed 9–29–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0164; Docket 2011–0079; Sequence 20]

Federal Acquisition Regulation; Information Collection; Contractor Business Ethics Compliance Program and Disclosure Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning contractor business ethics compliance program and disclosure requirements.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 29, 2011.

ADDRESSES: Submit comments identified by Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements'', on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements.

Instructions: Please submit comments only and cite Information Collection 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Robinson, Procurement Analyst, Acquisition Policy Division, GSA (202) 501–2658 or e-mail *Anthony Robinson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The collection applies to the FAR requirements for a contractor code of business ethics and conduct, an internal control system, and disclosure to the Government of certain violations of criminal law, violations of the civil False Claims Act, or significant overpayments.

The 60 hour burden estimate reflects what was published in the November 12, 2008, final rule (73 FR 67064). In response to public comments the Government stated the initial estimate of 3 hours was inadequate and revised the estimated burden hours to 60 per response. The change particularly considers the hours that would be required for the collection within a company, prior to release to the Government.

B. Annual Reporting Burden

Respondents: 284.

Responses per Respondent: 1.

Total Responses: 284.

Hours per Response: 60.

Total Burden hours: 17,040.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Branch (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0164, Contractor Business Ethics Compliance Program and Disclosure Requirements, in all correspondence.

Dated: September 26, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy Office of Acquisition Policy.

[FR Doc. 2011–25219 Filed 9–29–11; 8:45 am]

BILLING CODE 6820–EP–P

GOVERNMENT ACCOUNTABILITY OFFICE

Debarment, Suspension, and Ineligibility of Contractors

AGENCY: Government Accountability Office.

ACTION: Proposed policy statement with request for comments.

SUMMARY: The Government Accountability Office (GAO) is providing notice of its intent to adopt the policies and procedures contained in the Federal Acquisition Regulation (FAR) regarding the debarment, suspension, and ineligibility of government contractors. As a legislative branch agency, GAO is not subject to the requirements of the FAR. However, it is GAO's general policy to follow the FAR, as appropriate and applicable. Mandatory application of the FAR is not to be inferred from GAO's adoption of this policy.

GAO's procurement rules are not contained in the Code of Federal Regulations, but instead are contained in an internal GAO document referred to as ''Government Accountability Office Procurement Guidelines'' (hereinafter, GAO's Procurement Order). As such, the proposed policy regarding debarment and suspension will be added as a chapter to GAO's Procurement Order. However, persons or entities seeking government contracts could potentially be adversely affected if, pursuant to the proposed policy, they were debarred, suspended, or proposed for debarment by GAO. As such, GAO is providing interested persons an opportunity for notice and comment on this proposed policy.

DATE: Comments must be received on or before November 14, 2011.

GAO will publish the effective date of the proposed policy when responding to comments in a future **Federal Register.**

ADDRESSES: Address all comments concerning this proposed policy to Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street, NW., Washington, DC 20548; or e-mail, *bielecj@gao.gov*.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Assistant General Counsel, 202–512–2846.

SUPPLEMENTARY INFORMATION: GAO is not subject to the Administrative Procedure Act and accordingly, is not required by law to seek comments before issuing a policy that has general applicability and legal effect. However, GAO has decided to invite interested persons to comment on this proposed

policy by submitting written comments. Application of the Administrative Procedure Act to GAO is not to be inferred from this invitation for comments.

GAO will consider all comments received on or before the closing date for comments. GAO may change the proposed policy based on the comments received.

Under GAO's proposed policy, GAO will follow FAR Subpart 9.4. GAO's Procurement Order, GAO Order 0625.1, states that it is GAO's policy to follow the FAR and GAO has long-maintained procedures, consistent with FAR Subpart 9.4, that ensure that it contracts only with those entities and individuals (hereinafter, contractors) who are responsible. However, GAO's Procurement Order has not explicitly referenced the debarment and suspension procedures contained in FAR Subpart 9.4. To make clear that FAR Subpart 9.4 applies, GAO is amending its Procurement Order to formally and explicitly adopt FAR Subpart 9.4.

Except as provided in FAR Subpart 9.4, GAO will not solicit offers from, award contracts to, or consent to subcontracts with, contractors who are listed on the Excluded Parties List System (EPLS), which is maintained by the General Services Administration. Further, if GAO debars, proposes for debarment, or suspends a contractor, GAO will, consistent with FAR Subpart 9.4, list that contractor in the EPLS. Given that GAO is a legislative branch agency, the listing of a contractor in the EPLS by GAO will have mandatory effect only as to GAO. Consistent with FAR 9.405–1, GAO may continue an existing contract with a contractor despite the fact that the contractor has subsequently been debarred, proposed for debarment, or suspended.

Consistent with the definitions of ''debarring official'' and ''suspending official'' contained at FAR 9.403, the Comptroller General, as the head of GAO, will serve as the debarring official and suspending official (hereinafter, debarment/suspension official). The Comptroller General may designate another GAO official to serve as the debarment/suspension official. The Comptroller General will also be responsible for deciding whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

GAO's Acquisition Management office (AM), which is responsible for the majority of GAO's contracting activities, will be designated as the GAO unit with primary responsibility for investigating and referring potential debarment and suspension actions to the debarment/suspension official for his or her consideration. GAO's procurement activities are largely centralized in AM, which is staffed by contracting officers and other acquisition professionals. As such, AM staff has the required technical knowledge to handle debarment and suspension referrals and is in the best position to learn of matters that may warrant debarment and/or suspension. Moreover, AM is the first point of contact for Contracting Officer's Representatives, who have direct knowledge of any problems with contractor performance. Thus, individuals—including GAO employees and members of the public—who believe that there may be grounds to debar or suspend a contractor should contact AM and provide them with all relevant information. Whenever AM learns of information that indicates there may be grounds for debarring or suspending a contractor, AM will gather appropriate information and refer the matter to the debarment/suspension official. All such referrals will include a recommendation by the Director of AM as to a proposed course of action. Likewise, AM will have responsibility for recommending to the Comptroller General whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

Given its central role in GAO's procurement process, AM, in consultation with GAO's Office of General Counsel, will also be responsible for establishing written procedures that address the key aspects of GAO's debarment/suspension program.

Accordingly, the Government Accountability Office proposes to adopt the following policy and incorporate it into GAO's Procurement Order:

GAO will follow the policies and procedures contained at FAR Subpart 9.4—Debarment, Suspension, and Ineligibility. GAO will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System (EPLS), except as otherwise provided for in FAR Subpart 9.4. GAO will report to the EPLS any contractor GAO debars, suspends, or proposes for debarment. Such action will have mandatory application only to GAO. Notwithstanding the debarment, suspension, or proposed debarment of a contractor, GAO may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the Comptroller General (CG) directs otherwise.

The CG or a designee will serve as the debarring official and suspending official (debarment/suspension official). The CG will also decide whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

Acquisition Management (AM) will have primary responsibility for investigating and referring potential debarment/suspension actions to the debarment/suspension official for consideration. As such, any person who believes that there may be grounds to debar or suspend a person or entity from contracting with GAO should contact AM and provide them with all relevant information.

AM will also have responsibility for recommending to the CG whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment. In consultation with the Office of General Counsel, AM will establish and maintain written procedures for:

(1) The prompt reporting, investigation, and referral to the debarment/suspension official of matters appropriate for that official's consideration. All debarment/suspension referrals shall include a recommendation by the Director of AM as to a proposed course of action;

(2) The debarment decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment;

(3) The suspension decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension;

(4) Recommending to the CG whether or not to solicit offers from, award contracts to, or consent to subcontracts

with a contractor who is debarred, suspended, or proposed for debarment; and

(5) Recommending to the CG whether or not to continue current contracts with a contractor or subcontractor who is debarred, suspended, or proposed for debarment.

OGC will review for legal sufficiency:

(1) Referrals by AM to the debarment/suspension official;

(2) Recommendations by AM to the CG that GAO solicit offers from, award contracts to, or consent to subcontracts with a contractor who is listed in the EPLS debarred, suspended, or proposed for debarment;

(3) Recommendations by AM to the CG to terminate a current contract because a contractor or subcontractor was subsequently debarred, suspended, or proposed for debarment; and

(4) Notices of proposed debarment, notices of suspension, or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment.

Lynn H. Gibson,

General Counsel, U.S. Government Accountability Office.

[FR Doc. 2011–25228 Filed 9–29–11; 8:45 am]

BILLING CODE 1610–02–P

OFFICE OF GOVERNMENT ETHICS

Updated OGE Senior Executive Service Performance Review Board

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the updated OGE Senior Executive Service (SES) Performance Review Board.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT: Barbara Mullen-Roth, Deputy Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; Telephone: 202–482–9300; TYY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and 430.310 thereof in particular, one or more Senior Executive Service (SES) performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, the designated members of OGE's SES Performance Review Board are being drawn, as in the past, in large measure from the ranks of other agencies. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of OGE's SES Performance Review Board as it was most recently published at 75 FR 62540 (October 12, 2010).

Approved: September 26, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

The following officials have been appointed members of the SES Performance Review Board of the Office of Government Ethics:

Barbara Mullen-Roth [Chair], Deputy Director, Office of Government Ethics;

Leigh Bradley, Director, Standards of Conduct Office, Office of General Counsel, Office of the Secretary of Defense;

Melinda Loftin, Director, Departmental Ethics Office, Department of Interior;

David Maggi, Chief, Ethics Law and Program Division, Office of the Assistant General Counsel for Administration, Department of Commerce; and

Robert Shapiro, Associate Solicitor for Legal Counsel, Department of Labor.

[FR Doc. 2011–25222 Filed 9–29–11; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: 4150–30; 60-day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: The Office of Adolescent Health (OAH) Pregnancy Prevention Approaches Evaluation Baseline Data Collection-Transferring from ACF OMB No. 0970–0360 to OS OMB No. OS–0990–NEW.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

The Evaluation of Adolescent Pregnancy Prevention Approaches (PPA) is one of these efforts. PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. The findings from the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH proposed baseline data collection activity as part of the PPA evaluation. A core baseline data collection instrument was approved on July 26, 2010. The project has worked in recent months to secure grantees as evaluation sites, and as part of this effort the project has undertaken making revisions to the baseline instrument with each site. These revisions were undertaken because each site has unique features (*e.g.* target population;

curriculum; objectives) and the baseline instruments were tailored to take these features into account. Emergency clearance of the site-specific baseline package was approved August 17, 2011 (ICR Reference No: 201107–0970–003).

ESTIMATED ANNUALIZED BURDEN TABLE

Site/Program (and name of baseline instrument)	Annualized number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours (annual)
Chicago Public Schools/Health Teacher	1518	1	36/60	911
Children's Hospital of Los Angeles/Project AIM	467	1	42/60	327
Oklahoma Institute of Child Advocacy/Power Through Choices	360	1	36/60	216
Engender Health/Gender Matters	375	1	36/60	225
Ohio Health/T.O.P.P	200	1	42/60	140
Live the Life Ministries/WAIT Training	533	1	42/60	373
Princeton Center for Leadership Traning (PCLT)/TeenPEP	533	1	36/60	320
Total	3986			2512

Keith Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–25152 Filed 9–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Thursday, October 27, 2011 from 9 a.m. to 5 p.m. and Friday, October 28, 2011 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. *Phone:* 240–453–2882 *Fax:* 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include the state of health care reform implementation and the engagement of communities of color; the state of the health care safety net and priority strategies for assuring health equity, and new and enhanced opportunities to improve minority health resulting from the Affordable Care Act with national and local leaders. Also, updates on the National Partnership for Action to End Health Disparities and the National Stakeholders Strategy will be provided.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business October 21, 2011.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2011–25294 Filed 9–29–11; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Million Hearts Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: The ''Million Hearts Challenge'' is a multidisciplinary call to innovators and developers to create an application that activates and empowers patients to take charge of their cardiovascular disease. Winning entries have the potential to help patients combat the nation's leading cause of death through medication adherence, a healthier diet, and a more active lifestyle while promoting the goals of the Million Hearts campaign.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. No. 111–358).

DATES: Effective on September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866. Wil Yu, 202–690–5920.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: This challenge encourages multidisciplinary teams to develop a user-friendly application (optimized for mobile web access) that engages sufferers of cardiovascular disease in their own care using the Million Hearts' ABCs framework (*A*spirin for people at high risk, *B*lood pressure control, *C*holesterol management, and *S*moking cessation). The application should allow patients to enter relevant information about their health including age, body mass index, blood pressure, cholesterol level, smoking status, pertinent medical

history, aspirin and cholesterol-lowering agent use; use the patient-reported data and ABCs framework to generate targeted recommendations, based on information from the American Heart Association and CDC Million Hearts websites; be able to send patient information to electronic health records; and provide information about the Million Hearts campaign.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this challenge, an individual or entity:

(1) Shall have registered to participate in the competition under the rules promulgated by Office of the National Coordinator for Health Information Technology;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of the Office of the National Coordinator for Health Information Technology, for claims by—

(1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(2) the Federal Government for damage or loss to Government property resulting from such an activity.

Participants must be teams of at least two people.

All participants are required to provide written consent to the rules upon or before submitting an entry.

DATES:

- Submission Period Begins: 12:01 a.m., E.D.T., September 26, 2011.
- Submission Period Ends: 11:59 p.m., E.D.T., December 31, 2011.

Registration Process for Participants:

To register for this challenge participants should:

- Access the *http://www.challenge.gov* Web site and search for the ''Million Hearts Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2challenge.org/category/onc/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize:

- *First Prize:* $50,000.
- *Second Prize:* $20,000.
- *Third Prize:* $5,000.

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected:

The judging panel will make selections based upon the following criteria:

1. Patient engagement.
2. Actionable and accessible information.
3. Links to online communities.
4. Innovativeness and usability.

Additional Information:

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: September 26, 2011.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2011–25296 Filed 9–29–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''popHealth Tools Development Challenge''

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

Authority: 15 U.S.C. 3719.

SUMMARY: The ''popHealth Tools Development Challenge'' tasks developers with creating applications that leverage the popHealth open source framework, existing functionality, standards, and sample datasets to improve patient care and provide greater insight into patient populations. Winning entries will extend the capabilities of popHealth, increasing its value to healthcare providers and EHR vendors.

The statutory authority for this challenge competition is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES: Effective on September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Adam Wong, 202–720–2866.
Wil Yu, 202–690–5920.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition: popHealth is a valuable platform for reporting Meaningful Use quality measures, as well as being a powerful tool for providers to analyze their patient populations. With additional functionality, popHealth can become even more essential, driving adoption among healthcare providers and EHR vendors. Developers have the leeway to create popHealth applications and extensions based on any or all of the following concepts: Help providers improve patient safety; help providers use the quality measure calculations to better engage with patients; help providers address disparities in the care they provide to their patient populations; help providers engage patients and families; aggregate data from across multiple sites to allow public health entities to develop a more clearly defined picture of the health status and risk factors within their communities; visualize information in

the popHealth system related to meaningful use measures; and/or target patients with high disease burden in need of early intervention.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this challenge, an individual or entity:

(1) Shall have registered to participate in the competition under the rules promulgated by Office of the National Coordinator for Health Information Technology;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States; and

(4) May not be a Federal entity or Federal employee acting within the scope of their employment.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

Registered participants shall be required to agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in a competition, whether the injury, death, damage, or loss arises through negligence or otherwise.

Participants shall be required to obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of the Office of the National Coordinator for Health Information Technology, for claims by—

(1) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition, with the Federal Government named as an additional insured under the registered participant's insurance policy and registered participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities; and

(2) the Federal Government for damage or loss to Government property resulting from such an activity.

Participants must be teams of at least two people.

All participants are required to provide written consent to the rules upon or before submitting an entry.

DATES:

- Submission Period Begins: 12:01 a.m., EDT, September 26, 2011.
- Submission Period Ends: 11:59 p.m., EDT, February 3, 2012.

Registration Process for Participants:

To register for this challenge participants should:

- Access the *http://www.challenge.gov* Web site and search for the ''popHealth Tools Development Challenge''.
- Access the ONC Investing in Innovation (i2) Challenge Web site at:
  - *http://www.health2challenge.org/category/onc/.*
  - A registration link for the challenge can be found on the landing page under the challenge description.

Amount of the Prize:

- *First Prize:* $75,000.
- *Second Prize:* $20,000.
- *Third Prize:* $5,000.

Awards may be subject to Federal income taxes and HHS will comply with IRS withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected:

The judging panel will make selections based upon the following criteria:

1. Ability to integrate with popHealth system and build upon existing functionality.
2. Impact on stakeholders.
3. Usability and design.
4. Creativity and Innovation.

Additional Information:

Ownership of intellectual property is determined by the following:

- Each entrant retains title and full ownership in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under the challenge agreement.
- By participating in the challenge, each entrant hereby irrevocably grants to Sponsor and Administrator a limited, non-exclusive, royalty free, worldwide, license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the challenge.

Dated: September 26, 2011.

Farzad Mostashari,

National Coordinator for Health Information Technology.

[FR Doc. 2011–25295 Filed 9–29–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–9042, CMS–10374, CMS–10385, CMS–10402 and CMS–10396]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Accelerated Payments and Supporting Regulations 42 CFR, Section 412.116(f), 412.632(e), 413.64(g), 413.350(d), and 484.245; *Use:* This information is used by the contractor to determine the provider's eligibility for accelerated payments. If this information were not furnished with an accelerated payment request, the contractor would not be able to assess whether the provider's financial difficulties justified the accelerated payment; *Form Number:* CMS–9042 (OMB # 0938–0269); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 37,804; *Total Annual Responses:* 945; *Total Annual Hours:* 473. (For policy

questions regarding this collection contact Leonard Fisher at 410–786–4574 TTY. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection of information; *Title of Information Collection:* Training Needs Assessment, Evaluation/Survey—Question Compilation; *Use:* The intent of this information collection is to assist in the creation and enhancement of training for Federal and State health care surveyors and certification specialists. The purpose of the collection is to gather information for training needs assessment, training analysis, related demographic, psychographics and technographics to support the development and enhancement of training and training aids; *Form Number:* CMS–10374 (OMB # 0938–New); *Frequency:* Half-year (2 per year); *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 2,161; *Total Annual Responses:* 4,322; *Total Annual Hours:* 1,430. (For policy questions regarding this collection contact Etolia Biggs at 410–786–8664. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Expedited Checklist: Medicaid Eligibility & Enrollment Systems—Advance Planning Document (E&E–APD); *Use:* Under sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Social Security Act, CMS has issued new standards and conditions that must be met by States for Medicaid technology investments (including traditional claims processing systems, as well as eligibility systems) to be eligible for enhanced match funding. The Checklist will be submitted by States to the E&E APD National Coordinator for review and coordination in the Eligibility/Enrollment Systems APD approval assignment. The information requested on the Checklist will be used to determine and approve enhanced FFP to States and to determine how States are complying with the seven standards and conditions; *Form Number:* CMS–10385 (OMB#: 0938–1125); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 168; *Total Annual Hours:* 204. (For policy questions regarding this collection contact Richard Friedman at 410–786–4451. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medicaid State Plan Preprint for Use by States When Implementing Section 6401 of the Patient Protection and Affordable Care Act under the Medicaid Program; *Use:* The Secretary, in consultation with the Department of Health of Human Services' Office of the Inspector General, is required to establish procedures under which screening is conducted with respect to providers of medical or other items or services and suppliers under Medicare, Medicaid, and CHIP. The Secretary is also required to impose a fee on each institutional provider of medical or other items or services or supplier that would be used by the Secretary for program integrity efforts. States are required to comply with the process of screening providers and suppliers as established by the Secretary under 1866(j)(2) of the Affordable Care Act. The Office of General Counsel through guidance, is requiring that States use the Medicaid State Plan Preprint to assure CMS compliance with the law. CMS will use the information to review and approve the State plan. States would refer to the State plan on an as needed basis to manage and operate their Medicaid programs under Title XIX of the Social Security Act; *Form Number:* CMS–10402 (OMB # 0938–New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 14. (For policy questions regarding this collection contact Richard Friedman. at 410–786–4451. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Medication Therapy Management Program Improvements—Standardized Format. *Use:* The Medicare Modernization Act of 2003 (MMA) under title 42 CFR Part 423, Subpart D, established the requirements that Part D sponsors must meet with regard to medication therapy management (MTM) programs. Beginning in 2010, sponsors must offer an interactive, person-to-person comprehensive medication review (CMR) by a pharmacist or other qualified provider at least annually. A CMR is a review of a beneficiary's medications, including prescription and over-the-counter (OTC) medications, herbal therapies, and dietary supplements, which is intended to aid in assessing medication therapy and optimizing patient outcomes. Sponsors must summarize the CMR and provide an individualized written or printed summary to the beneficiary. The burden associated with the time and effort necessary for Part D sponsors to conduct CMRs with written summaries was estimated previously under OMB Control Number 0938–0964 as 937,500 hours with total labor cost of $112.5 million.

The Affordable Care Act (ACA) under Section 10328 specifies that the Secretary, in consultation with relevant stakeholders, develop a standardized format for the action plan and written or printed summary that are given to beneficiaries as a result of their CMRs. The standardized format will replace whatever formats Part D sponsors are using for their written CMR summaries and action plans prior to 2013. Beginning in January, 2013, Part D sponsors will collect information required by the new standardized format, and provide that information to Medicare beneficiaries after their CMRs on forms that comply with the requirements specified by CMS for the standardized format. The use of the standardized format will increase the burden associated with providing the CMRs with written summaries and action plans as described in this submission. The use of the standardized format will support a uniform and consistent level of MTMP communications with beneficiaries, improve the ability of beneficiaries to understand and manage their medications safely and effectively, and support improved healthcare outcomes and lower overall healthcare costs. The final standardized format will be posted in the 2013 Call Letter for implementation by Part D sponsors in January 2013. *Form Number:* CMS–10396 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other For-profits; *Number of Respondents:* 673; *Number of Responses:* 1,875,000; *Total Annual Hours:* 1,179,894. (For policy questions regarding this collection, contact Gary Wirth at 410–786–3997. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *October 31, 2011.*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: September 27, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–25271 Filed 9–29–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10241, CMS–10412, CMS–R–263, CMS–R–262, CMS–10142 and CMS–855(O)]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Survey of Retail Prices: Payment and Utilization Rates, and Performance Rankings; *Use:* CMS will develop a National Average Drug Acquisition Cost (NADAC) for States to consider when developing reimbursement methodology. The NADAC is a new pricing benchmark that will be based on the national average costs that pharmacies pay to acquire Medicaid covered outpatient drugs. It is intended to provide States with a more accurate reference price to base reimbursement for prescription drugs and will be based on drug acquisition costs collected directly from pharmacies through a nationwide survey process. This survey will be conducted on a monthly basis to ensure that the NADAC reference file remains current and up-to-date. A NADAC Survey Request for Information has been developed to send to random pharmacies for voluntary completion. CMS proposes to add the survey to an existing collection, ''Annual State Report and Annual State Performance Rankings.'' The requirements and burden associated with the annual report/rankings are unaffected by this proposed action; *Form Number:* CMS–10241 (OCN: 0938–1041); *Frequency:* Biennially, Once; *Affected Public:* Private Sector; Business or other for-profits; *Number of Respondents:* 30,000; *Total Annual Responses:* 30,000; *Total Annual Hours:* 15,000. (For policy questions regarding this collection contact Lisa Ferrandi at 410–786–5445. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Section 1115 Demonstration: Long Term Services and Supports and Other Service Models for Individuals with Disabilities and Chronic Conditions; *Use:* Section 1115 of the Social Security Act provides the Secretary of Health and Human Services broad authority to authorize experimental, pilot, or demonstration projects likely to assist in promoting the objectives of the Medicaid statute. Flexibility under Section 1115 is sufficiently broad to allow states to test substantially new ideas of policy merit. States seeking interventions for individuals needing LTSS to lower costs, improve care and improve health can utilize the 1115 demonstration to test and deliver innovative services and approaches to better and more efficiently meet the needs of this population. Section 1115 demonstrations provide a vehicle for innovations in both care delivery and payment methodologies. Demonstrations must be ''budget neutral'' over the life of the project, meaning they cannot be expected to cost the Federal government more than it would cost without the waiver. State Medicaid agencies are responsible for developing section 1115 demonstration applications and submitting them to CMS; *Form Number:* CMS–10412 (OCN: 0938–New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 2,240. (For policy questions regarding this collection contact Adrienne Delozer at 410–786–0278. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Site Investigation for Durable Medical Equipment (DME) Suppliers; *Use:* CMS is mandated to identify and implement measures to prevent fraud and abuse in the Medicare program. To meet this challenge, CMS has moved forward to improve the quality of the process for enrolling suppliers into the Medicare program by establishing a uniform application for enumerating suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Implementation of enhanced procedures for verifying the enrollment information has also improved the enrollment process. As part of this process, verification of compliance with supplier standards is necessary. The site investigation form has been used in the past to aid the Medicare contractor (the National Supplier Clearinghouse and/or its subcontractors) in verifying compliance with the required supplier standards found in 42 CFR 424.57(c). The primary function of the site investigation form is to provide a standardized, uniform tool to gather information from a DMEPOS supplier that tells us whether it meets certain qualifications to be a DMEPOS supplier (as found in 42 CFR 424.57(c)) and where it practices or renders its services.

This site investigation form collects the same information as its predecessor, with the exception of one new yes/no question under the ''Records and Telephone'' section (question 11(a)) used to verify if the DMEPOS supplier maintains physician ordering/referring records for the supplies and/or services it renders to Medicare beneficiaries (if applicable). This information is required by Section 1833(q) of the Social Security Act which states that all physicians and non-physician practitioners that meet the definitions at section 1861(r) and 1842(b)(18)(C) be uniquely identified for all claims for services that are ordered or referred. Other information collected on this site investigation remains unchanged, but has been reformatted for greater functionality. *Form Number:* CMS–R–263 (OCN: 0938–0749); *Frequency:* Once; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 30,000; *Total Annual Responses:* 30,000; *Total Annual Hours:* 15,000. (For policy questions regarding this collection contact Kimberly McPhillips at 410–

786–5374. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, CMS uses the PBP and formulary data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval.

CMS is requesting to continue its use of the PBP software and formulary submission for the collection of benefits and related information for CY 2013 through CY 2015. CMS estimates that 571 MA organizations and 64 PDP organizations will be required to submit the plan benefit package information in CY 2013. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. *Form Number:* CMS–R–262 (OCN: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 635; *Total Annual Responses:* 6,015; *Total Annual Hours:* 53,291. (For policy questions regarding this collection contact Kristy Holtje at 410–786–2209. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS).

MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year.

CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (i.e., payment and premium) proposed by each organization. CMS is requesting to continue its use of the BPT for the collection of information for CY2013 through CY2015. *Form Number:* CMS–10142 (OCN: 0938–0944); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 530; *Total Annual Responses:* 4,770; *Total Annual Hours:* 143,100. (For policy questions regarding this collection contact Diane Spitalnic at 410–786–5745. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Registration Application; *Use:* The CMS 855O allows a physician to receive a Medicare identification number (without being approved for billing privileges) for the sole purpose of ordering and referring Medicare beneficiaries to Medicare approved providers and suppliers. This new Medicare registration application form allows physicians who do not provide services to Medicare beneficiaries to be given a Medicare identification number without having to supply all the data required for the submission of Medicare claims. It also allows the Medicare program to identify ordering and referring physicians without having to validate the amount of data necessary to determine claims payment eligibility (such as banking information), while continuing to identify the physician's credentials as valid for ordering and referring purposes. Since the physicians and non-physician practitioners submitting this application are not enrolling in Medicare to submit claims but are only registering with Medicare as eligible to order and refer, CMS believes changing the title from Medicare Enrollment Application to Medicare Registration Application better captures the actual purpose of this form.

Where appropriate, CMS has changed all references to enrollment or enrolling to registration and registering and Medicare billing number to National Provider Identifier. CMS also added a check box to allow physicians and non-physician practitioners to withdraw from the ordering and referring registry. A section to collect information on professional certifications was added for those practitioners who are not professionally licensed. Editorial and formatting corrections were made in response to prior comments received during the approval of the current version of this application. Other minor editorial and formatting corrections were made to better clarify the purpose of this application. *Form Number:* CMS–855(O) (OCN: 0938–1135); *Frequency:* Occasionally; *Affected Public:* Individuals; *Number of Respondents:* 48,500; *Total Annual Responses:* 48,500; *Total Annual Hours:* 24,125. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments must be received by November 29, 2011, and submitted in one of the following ways:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following

address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: *September 27, 2011.*

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–25274 Filed 9–29–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Refugee Data Submission System for Allocation of Formula Funds.

OMB No.: 0970–0043.

Description: The Refugee Data Submission System for Allocation of Formula Funds is designed to satisfy the statutory requirements of the Immigration and Naturalization Act (INA). Section 412(a)(3)of the Act requires that the Director of the Office of Refugee Resettlement (ORR) make a periodic assessment of the needs of refugees for assistance and services and the resources available to meet those needs. This assessment includes compiling and maintaining data on secondary migration of refugees within the United States after arrival. Further, INA 412(c)(1)(B)states that formula funds shall be allocated based on the total number of refugees in each State, taking into account secondary migration.

In order to meet these statutory requirements, ORR requires each State to submit disaggregated individual records containing certain data elements for eligible populations. ORR uses the information collected through the Web site to determine secondary migration for the purposes of formula funds allocation to States.

The submission of individual records via the Refugee Data Submission System for Allocation of Formula Funds is a reliable and secure process for collecting data for the purposes of tracking secondary migration and allocating formula funds. Data submitted by the States via the Web site are also compiled and analyzed for inclusion in ORR's Annual Report to Congress.

Respondents: States, Wilson/Fish Alternative Projects, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Refugee Data Submission for Formula Funds Allocations	50	1	20	1,000

Estimated Total Annual Burden Hours: 1,000.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–25210 Filed 9–29–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0691]

Draft Guidance on Media Fills for Validation of Aseptic Preparations for Positron Emission Tomography Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Media Fills for Validation of Aseptic Preparations for Positron Emission Tomography (PET) Drugs.'' This draft guidance is intended to help manufacturers of PET drugs meet the requirements for the Agency's current good manufacturing practice regulations for PET drugs.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft

guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 29, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6155, Silver Spring, MD 20993–0002, 301–796–3416.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Media Fills for Validation of Aseptic Preparations for Positron Emission Tomography (PET) Drugs.'' Most PET drugs are designed for parenteral administration and are produced by aseptic processing. The goal of aseptic processing is to make a product that is free of micro-organisms and toxic microbial byproducts, most notably bacterial endotoxins. The media fill is the performance of an aseptic manufacturing procedure using a sterile microbiological growth medium in place of the drug solution to test whether the aseptic procedures are adequate to prevent contamination during actual drug production. This draft guidance takes the form of questions and answers written specifically to help manufacturers comply with the Agency's current good manufacturing practices for PET drugs (part 212 (21 CFR part 212)) regarding media fills.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on media fills and process simulations for PET drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed 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.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 212 have been approved under OMB control number 0910–0667.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: September 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25196 Filed 9–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 4, 2011, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, 2 Montgomery Village Ave, Gaithersburg, MD 20879. The hotel's telephone number is 301–948–8900.

Contact Person: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6639, *Shanika.Craig@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 4, 2011, the committee will provide advice and recommendations on the following issues: (1) Proposed changes to the Mammography Quality Standard Act (MQSA) policies and inspection procedures; (2) accreditation body review of soft copy mammography images; and (3) reporting breast density on mammography reports and patient lay summaries. The committee will also receive updates on the MQSA program and the status of the Full Field Digital Mammography universal quality control manual.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views,

orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 21, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. immediately following lunch. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 13, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 14, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, at *James.Clark@fda.hhs.gov* or 301–796–5293, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 26, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–25148 Filed 9–29–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, FGF23 Physiology.

Date: November 7, 2011.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee:National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bariatric Surgery Ancillary Studies.

Date: November 9, 2011.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Gene Networks in Macrophage-Adipocyte Interactions P01.

Date: November 30, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Intestinal Inflammation P01.

Date: December 7, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–25245 Filed 9–29–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3338–EM; Docket ID FEMA–2011–0001]

Vermont; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Vermont (FEMA–3338–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 29, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Vermont resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Vermont.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Vermont have been designated as adversely affected by this declared emergency:

The entire State of Vermont for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25141 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3336–EM; Docket ID FEMA–2011–0001]

Delaware; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Delaware (FEMA–3336–EM), dated August 28, 2011, and related determinations.

DATES: *Effective Date:* August 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Delaware resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Delaware.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Delaware have been designated as adversely affected by this declared emergency:

The entire State of Delaware for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25167 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3334–EM; Docket ID FEMA–2011–0001]

Rhode Island; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an

emergency for the State of Rhode Island (FEMA–3334–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Rhode Island resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Rhode Island.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Gracia B. Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Rhode Island have been designated as adversely affected by this declared emergency:

Providence, Kent, Washington, Newport, and Bristol Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25173 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3335–EM; Docket ID FEMA–2011–0001]

Maryland; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Maryland (FEMA–3335–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Maryland resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Maryland.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Maryland have been designated as adversely affected by this declared emergency:

The counties of Baltimore, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester and Baltimore City for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program at 75 percent Federal funding.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25169 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3337–EM; Docket ID FEMA–2011–0001]

District of Columbia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the District of Columbia (FEMA–3337–EM), dated August 28, 2011, and related determinations.

DATED: *Effective Date:* August 28, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in the District of Columbia resulting from Hurricane Irene beginning on August 26, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the District of Columbia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kim R. Kadesch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the District of Columbia to have been adversely affected by this declared emergency:

Emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program for the District of Columbia.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–25142 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; Form I–130; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review; Form I–130, Petition for Alien Relative; OMB Control No. 1615–0012.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until November 29, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–130. Should USCIS decide to revise Form I–130 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form I–130.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *uscisfrcomment@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0012 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of an existing information collection.

(2) *Title of the form/collection:* Petition for Alien Relative.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–130; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This Form allows citizens or lawful permanent residents of the United States to petition on behalf of certain alien relatives who wish to immigrate to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 690,520 responses at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,035,780 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: September 26, 2011.

Evadne Hagigal,

Management and Program Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–25178 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day notice and request for comments; Extension of an existing collection of information: 1651–0058.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Documents Required Aboard Private Aircraft. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before November 29, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total of capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Form Number: None.

Abstract: In accordance with 19 CFR 122.27, a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) A pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration, which is also called a ''pink slip'' and is a duplicate copy of the Aircraft Registration Application (FAA Form AC 8050–1). The information on these documents is used by CBP officers as an essential part of the inspection process for private aircraft arriving from a foreign country. This collection of information is authorized by 19 U.S.C. 1433, as amended by Public Law 99–570.

Current Actions: CBP proposes to extend the expiration date of this information collection with a decrease to the burden hours as a result of revised estimates by CBP concerning the number of responses.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents: 120,000.

Estimated Number of Annual Responses: 120,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 1,992.

Dated: September 27, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–25321 Filed 9–29–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–98]

Notice of Submission of Proposed Information Collection to OMB Land Survey Report for Insured Multifamily Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Borrowers submit a land survey and related information to secure a marketable title and title insurance for multifamily project mortgage insurance.

The submission is made at application and at closing.

DATES: *Comments Due Date: October 31, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0010) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov, fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at Colette. *Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title Oo Proposal: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Form Numbers: HUD 92457.

Description Of The Need For The Information And Its Proposed Use: Borrowers submit a land survey and related information to secure a marketable title and title insurance for multifamily project mortgage insurance. The submission is made at application and at closing.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	800	2		0.5		800

Total Estimated Burden Hours: 800.

Status: Revision of a currently approved collection

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 23, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–25307 Filed 9–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–C–99]

Notice of Submission of Proposed Information Collection to OMB; Housing Choice Voucher Program Administrative Fee Study Pretest

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Correction

This request is for the clearance of on-site data collection from public housing agencies (PHAs) to test the methodology for the Housing Choice Voucher (HCV) Program Administrative Fee study. The purpose of the study is to collect accurate information on the costs of administering the HCV program across a representative sample of high performing and efficient PHAs and to use this information to develop a new administrative fee allocation formula for the HCV program. The study is proceeding in multiple phases. This request is for data collection to test the methodology for estimating program costs in the study. We propose to use two main methods for collecting cost data: (1) Measuring the time that front line staff spend working on the program and translating that time into costs using the salaries and benefits of the staff doing the work and adjusting for market factors; and (2) collecting information via interviews and document review on the overhead costs and other costs related to HCV program administration that cannot be captured by measuring staff time spent on the program. We will test these data collection approaches at between 5 and 10 PHAs across the country. The results of the pretest will be used to refine the methodology used for the full study of administrative fees with a larger sample of PHAs.

DATES: *Comments Due Date:* October 31, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0267) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail *OIRA–Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Choice Voucher Program Administrative Fee Study Pretest.

OMB Approval Number: 2528–0267.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This request is for the clearance of on-site data collection from public housing agencies (PHAs) to test the methodology for the Housing Choice Voucher (HCV) Program Administrative Fee study. The purpose of the study is to collect accurate information on the costs of administering the HCV program across a representative sample of high performing and efficient PHAs and to use this information to develop a new administrative fee allocation formula for the HCV program. The study is proceeding in multiple phases. This request is for data collection to test the methodology for estimating program costs in the study. We propose to use two main methods for collecting cost data: (1) Measuring the time that front line staff spend working on the program and translating that time into costs using the salaries and benefits of the staff doing the work and adjusting for market factors; and (2) collecting information via interviews and document review on the overhead costs and other costs related to HCV program administration that cannot be captured by measuring staff time spent on the program. We will test these data collection approaches at between 5 and 10 PHAs across the country. The results of the pretest will be used to refine the methodology used for the full study of administrative fees with a larger sample of PHAs.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	12	294		0.348		1,248

Total Estimated Burden Hours: 1,248.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 27, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–25305 Filed 9–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 22, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–24836 Filed 9–29–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Regional Tribal Consultation on Implementation of Indian Land Consolidation Program Under Cobell Settlement

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Tribal Consultation Meeting and Extension of Comment Deadline.

SUMMARY: The Office of the Secretary is announcing that it will conduct an additional tribal consultation meeting with Indian tribes in Rapid City, South Dakota, to obtain oral and written comments concerning the implementation of the Indian Land Consolidation Program (ILCP) under the terms of the *Cobell* Settlement. Six consultation meetings in other regional locations were announced by a previous notice in the **Federal Register.** This notice also announces an extension of the comment deadline. See the **SUPPLEMENTARY INFORMATION** section of this notice for details.

DATES: The tribal consultation meeting will take place on October 26, 2011, in Rapid City, South Dakota. Comments for all aforementioned consultations must be received by November 1, 2011.

ADDRESSES: Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary —Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104.

FOR FURTHER INFORMATION CONTACT: Michele F. Singer, telephone (505) 563–3805; fax (505) 563–3811 or access additional details for each consultation via the DOI Cobell Web site at *http://www.doi.gov/cobell.*

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Indian Affairs' ILCP purchases fractionated interests of individually owned trust lands and transfers those consolidated interests into tribal ownership. The Indian Claims Resolution Act of 2010, Public Law 111–291, makes available $1.9 billion for the Secretary to operate the ILCP with the purpose of preventing further fractionation. The Act requires consultation with Indian tribes to

identify fractional interests that should be prioritized for purchase through the ILCP.

Information and statistics regarding the issue of land fractionation will be distributed to the federally recognized Indian tribes prior to the consultations. The information will also be made available to attendees on the day of the consultation.

To date, the Office of the Secretary held five tribal consultation meetings: Friday, July 15, 2011, in Billings, Montana; Thursday, August 18, 2011, in Minneapolis, Minnesota; Friday, September 16, 2011, in Seattle, Washington; Tuesday, September 27, 2011, in Albuquerque, New Mexico; and Thursday, September 29, 2011, in Phoenix, Arizona. These meetings were announced in previous **Federal Register** notices. 76 FR 35009, 76 FR 41808.

II. Meeting Details

The Office of the Secretary will hold its last two tribal consultation meetings on the following schedule:

Date	Time	Location
Thursday, October 6, 2011	8 a.m.–4 p.m	Best Western Saddleback Inn and Conference Center, 4300 Southwest Third, Oklahoma City, OK 73108, (405) 947–7000. *http://www.bestwestern.com/saddlebackinn*
October 26, 2011	8 a.m.–4 p.m	Best Western Ramkota Hotel and Conference Center, Rushmore Room, 2111 N LaCrosse Street, Rapid City, SD 57701, (605) 343–8550. *http://rapidcity.bwramkota.com/*

Written comments will be accepted through November 1, 2011, and may be sent to the official listed in the **ADDRESSES** section above.

Dated: September 27, 2011.

David J. Hayes,

Deputy Secretary of the Interior.

[FR Doc. 2011–25291 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

[Docket ID: BOEM–2011–0011; OMB Number 1010–0151]

Information Collection Activities; Plans and Information; Submitted for OMB Review; Comment Request

ACTION: 30-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart B, Plans and Information, and related documents. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by October 31, 2011.

ADDRESSES: Submit comments by either fax (202) 395–5806 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0151). Please also submit a copy of your comments to BOEMRE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0011 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. BOEMRE will post all comments.
- E-mail *cheryl.blundon@boemre.gov.* Mail or hand-carry comments to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0151 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review). You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations and forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart B, Plans and Information.

Forms: BOEMRE forms 0137, 0138, 0139, 0141, and 0142.

OMB Control Number: 1010–0151.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-use and easement, or unit. Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas or sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) to the Secretary for approval prior to commencing these activities. As a Federal agency, we have a continuing affirmative duty to comply with the Endangered Species Act (ESA). This includes a substantive duty to carry out any agency action in a manner that is not likely to jeopardize protected species as well as a procedural duty to consult with the Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) before engaging in a discretionary action that may affect a protected species.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Several requests for approval required in subpart B are subject to cost recovery, and BOEMRE regulations specify service fees for these requests.

Regulations implementing these responsibilities are under 30 CFR part 250, subpart B. Responses are mandatory. No questions of a sensitive nature are asked. BOEMRE will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552), under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection,'' and 30 CFR part

252, ''Outer Continental Shelf (OCS) Oil and Gas Information Program.''

BOEMRE and other Federal agencies (*e.g.,* FWS, NOAA Fisheries, etc.) analyze and evaluate the information and data collected under subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment; and will conserve the resources of the OCS. We use the information to: (a) Make an informed decision on whether to approve the proposed exploration or development and production plans as submitted, or whether modifications are necessary without the analysis and evaluation of the required information. The affected States also review the information collected to determine consistency with approved Coastal Zone Management (CZM) plans, and (b) report annually to NOAA Fisheries the effectiveness of mitigation, any adverse effects of the proposed action, and any incidental take, in accordance with 50 CFR 402.14(i)(3).

Respondents are required to submit several BOEMRE forms: 0137 (Plan Information Form) is submitted to summarize plan information and we use the information to assist in data entry and review of submitted OCS plans; 0138 (GOM Air Emission Calculations for Exploration Plans), and, 0139 (GOM Air Emission Calculations for Development Operations Coordination Documents (DOCDs)) are submitted to standardize the way potential air emissions are estimated and approved as part of the OCS plan. BOEMRE uses the data from these forms to determine the effect of air emissions on the environment; 0141 (ROV Survey Report) is submitted to report the observations and information recorded from two sets of ROV monitoring surveys to identify high-density benthic communities that may occur on the seafloor in deep water; and 0142 (Environmental Impact Analysis Worksheet) is submitted to identify the environmental impact-producing factors (IPFs) for the listed environmental resources. We use the information to help assess impacts and determine compliance with the National Environmental Policy Act.

Also, per Secretarial Orders 3299 and 3022, on October 1, 2011, the oil, gas, and renewable energy-related management functions of BOEMRE will be transferred to a new bureau, Bureau of Ocean Energy Management (BOEM). Therefore, after October 1, the forms associated with this collection will be designated as BOEM forms; *e.g.,* BOEMRE Form 0137 will be designated as BOEM–0137.

Frequency: On occasion, semi-monthly, and varies by section.

Description of Respondents: Potential respondents comprise Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 190,480 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

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Citation 30 CFR 250 Subpart B and NTLs	Reporting &Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses Annual	Burden Hours
		Non-Hour Costs		
200 thru 206	General requirements for plans and information.	Burden included with specific requirements below.		0
201 thru 206; 211 thru 228: 241 thru 262;	BOEMRE posts on FDMS, EPs/DPPs/DOCDs, and receives public comments in preparation of EAs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
Ancillary Activities				
208 NTL	Notify BOEMRE in writing and other users of the OCS before conducting ancillary activities.	11	25 notices	275
210(a)	Submit report summarizing & analyzing data/ information obtained or derived from ancillary activities.	2	25 reports	50
210(b)	Retain ancillary activities data/information; upon request, submit to BOEMRE.	2	25 records	50
		2.5	1 submittal	3 (rounded)
		Subtotal	**76 responses**	**378 hours**
Contents of Exploration Plans (EP)				
209; 231(b); 232(d); 234; 23 281(d)(3); 283; 284; 285; NTL 2010 N-06	Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP; withdraw your EP.	150	276 changed plans	41,400
209; 211 thru 228; NTL 2010 N-06	Submit EP and all required information (including, but not limited to, submissions required by BOEMRE forms 0137, 0138, 0142 used in GOMR; withdrawals; lease stipulations; reports; H2S; G&G; etc.) and provide notifications.	600	70 plans	42,000
		$3,442 x 225* EP surface locations = $774,450		
		Subtotal	**346 responses**	**83,400 hours**
			$774,450 Non-Hour Costs	
Review and Decision Process for the EP				
235(b); 272(b); 281(d)(3)(ii)	Appeal State's objection.	Burden exempt as defined in 5 CFR 1320.4(a)(2), (c)		0

Contents of Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD)				
266(b); 267(d); 272(a); 273; 281(d); 283(a-b); 284(b); 285(a-b); 209; NTL 2010 N-06	Submit amended, modified, revised, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD.	235	214 changed plans	50,290
241 thru 262; 209; NTL 2010 N-06, and others	Submit DPP/DOCD and accompanying/supporting information (including, but not limited to, submissions required by BOEMRE Forms 0137, 0139, 0142 used in GOMR; lease stipulations; withdrawals, etc); provide notifications.	700	40 plans	28,000
		$3,971 x 158* DPP/DOCD wells = $627,418.		
		Subtotal	**254 responses**	**78,290 hours**
			$627,418 non-hour costs	
Review and Decision Process for the DPP or DOCD				
267(a)	Once BOEMRE deemed DPP/DOCD submitted; Governor of each affected State, local government official; etc., submit comments/recommendations.	1	1 submittal	1
267(b)	General public comments/recommendations submitted to BOEMRE re DPPs or DOCDs.	Not considered IC as defined in 5 CFR 1320.3(h)(4).		0
269(b)	Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities.	3	1 response	3
		Subtotal	**2 responses**	**4 hours**
Post-Approval Requirements for the EP, DPP, and DOCD				
280	Request departure from your approved EP, DPP, or DOCD.	Burden covered under 1010-0114.		0
281(a)	Submit various applications.	Burdens included under appropriate subpart or form (1010-0050; 1010-0059; 1010-0141; 1010-0149).		0
282	Retain monitoring data/information; upon request, make available to BOEMRE.	4	300 records	1,200
	Submit monitoring plan for approval	2	12 plans	24
282(b)	Submit monitoring reports and data (including BOEMRE Form 0141 used in GOMR).	3	24 reports	72
284(a)	Submit updated info on activities conducted under approved EP/DOCD.	4	56 updates	224
		Subtotal	**392 responses**	**1,520 hours**

Submit DWOPs and CIDs				
287 thru 289	Submit a Conceptual Plan for approval.	200	8 plans	1,600
291; 292	Submit DWOP and accompanying/supporting information.	750	12 plans	9,000
		$3,336 x 12 = $40,032		
294	Submit a combined Conceptual Plan and DWOP for approval.	950	3 plans	2,850
295	Submit a revised Conceptual Plan or DWOP for approval.	100	35 plan revisions	3,500
296(a); 297	Submit CID and accompanying/supporting information.	375	13 documents	4,875
		$25,629 x 13 = $333,177		
296(b); 297	Submit a revised CID for approval.	100	3 revisions	300
		Subtotal	**74 responses**	**22,125 hours**
			$373,209 non-hour costs	
Seismic Survey Mitigation Measures and Protected Species Observer Program NTL				
NTL; 211 thru 228; 241 thru 262	Submit to BOEMRE observer training requirement materials and information.	1.5 hours	2 sets of material	3
	Training certification and recordkeeping.	1 hour	1 new trainee	1
	During seismic acquisition operations, submit daily observer reports semi-monthly.	1.5 hours	344 reports	516
	If used, submit to BOEMRE information on any passive acoustic monitoring system prior to placing it in service.	2 hour	6 submittals	12
	During seismic acquisition operations, submit to BOEMRE marine mammal observation report(s) semi-monthly or within 14 hours if air gun operations were shut down.	1.5 hours	1,976 reports	2,964
	During seismic acquisition operations, when air guns are being discharged, submit daily observer reports semi-monthly.	1.5 hours	344 reports	516
	Observation Duty (3 observers fulfilling an 8 hour shift ea for 365 calendar days x 4 vessels = 35,040 man-hours). This requirement is contracted out; hence the non-hour cost burden.	3 observers x 8 hrs x 365 days = 8,760 hours x 4 vessels observing = 35,040 man-hours x $52/hr = $1,822,080.		
		Subtotal	**2,673 responses**	**4,012**
			$1,822,080 Non-Hour Costs	
Vessel Strike Avoidance and Injured/Protected Species Reporting NTL				
NTL; 211 thru 228; 241 thru 262	Notify BOEMRE within 24 hours of strike, when your vessel injures/kills a protected species (marine mammal/sea turtle)	1 hour	1 notice	1
		Subtotal	**1 response**	**1 hour**

Marine Trash and Debris Awareness/Elimination NTL				
NTL; 211 thru 228; 241 thru 262	Submit request for training video.	1 hour	100 requests	100
	Submit annual report to BOEMRE on training process and certification.	1 hour	200 records	200
	Training recordkeeping; make available upon request.	2 hours	200 records	400
	Post placards on vessels and structures (exempt from information collection burden because BOEMRE is providing exact language for the trash and debris warning, similar to the "Surgeon General's Warning" exemption).			0
		Subtotal	**500 responses**	**700 hours**
200 thru 299	General departure and alternative compliance requests not specifically covered elsewhere in subpart B regulations.	2	25 requests	50
Subtotal			**25 responses**	**50 hours**
			$373,209 Non-Hour Costs	
TOTAL BURDEN			**4,343 Responses**	**190,480 Hours**
			$3,597,157 Non-Hour Costs	

* You may have multiple locations and/or wells for each EP, EPP, or DOCD.

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Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified four non-hour costs associated with this information collection that are cost recovery fees. They consist of fees being submitted with EP's ($3,442), DPP's or DOCD's ($3,971), DWOP's ($3,336), and CID's ($25,629). There is also one non-hour cost burden associated with the Protected Species Observer Program. The cost associated with this program is due to observation activities that are usually subcontracted to other service companies with expertise in these areas. Since all of the observation duty and reporting would be done while on the vessel and by contractors, these requirements were calculated as non-hour cost burdens. We estimate that the annual total non-hour cost burden is $3,597,157, and we have not identified any other non-hour cost burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on July 6, 2011, we published a **Federal Register** notice (76 FR 39419) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations and form. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to the **Federal Register** notice. The first comment, from the Marine Mammal Commission, supported our request to OMB. The second comment, from the Center for Regulatory Effectiveness, requested that we should state that we are not submitting any ICRs for seismic regulations that are more stringent than current regulations, including NTL 2007–G02. Response: For the renewal of this ICR, we are not requesting anything more stringent than in current NTL 2007–G02 and 30 CFR part 250, subpart B regulations, which are covered under OMB Control Number 1010–0151. We have no plans, at this time, to change the content of or the resultant burdens imposed by NTL 2007–G02. Therefore, BOEMRE should move forward with the required information collection to ensure compliance with OMB deadlines. If the lawsuit settlement or resulting decree requires changes to the NTL and/or DOI regulations, information collection coordination and OMB approval will occur before any NTL is reissued or regulations are promulgated.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or

disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 31, 2011.

Public Availability of Comments: Before including your address, phone number, e-mail 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.

BOEMRE Information Collection Clearance Officer: Arlene Bajusz (703) 787–1025.

Dated: September 22, 2011.

Amy C. White,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2011–25262 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N204; 96300–1671–0000–P5]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA law requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before October 31, 2011.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov (e-mail).*

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail 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.

II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Los Angeles Zoo and Botanical Gardens, Los Angeles, CA; PRT 52827A

The applicant requests an amendment to the permit to increase the number of live, captive-born komodo monitors (*Varanus komodoensis*) from eight to ten for export to Germany, for the purpose of enhancement of the survival of the species.

Applicant: Ivan Schwab, University of California, Department of Ophthalmology, Sacramento, CA; PRT–48306A

The applicant requests a permit to import one head, including eyes, lacrimal glands, and brain of one stranded dead wild leatherback sea turtle (*Dermochelys coriacea*) from the Canadian Sea Turtle Network, Halifax, Nova Scotia, Canada, for the purpose of scientific research.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Daniel Cabela, Dripping Springs, TX; PRT–52963A

Applicant: Woolsey Caye, Louisville, KY; PRT–50923A

Applicant: Carlos Ramirez, Houston, TX; PRT–52683A

Applicant: Wesley Bryant, Globe, AZ; PRT–53794A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–25236 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2011–N181; 94140–1336–0000–N5]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species Task Force (ANS Task Force). The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information. The meeting is open to the public.

DATES: The ANS Task Force will meet from 8:30 a.m. to 5 p.m. on Wednesday, November 2, and from 8 a.m. to 3 p.m. on Thursday, November 3, 2011.

ADDRESSES: The ANS Task Force meeting will take place at the Department of Commerce Building at 1401 Constitution Avenue, NW., Washington, DC 20230. For more information about the meeting location, call 301–427–8655. You may inspect minutes of the meeting at the office of the Chief, Division of Fisheries and Aquatic Resource Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, during regular business hours, Monday through Friday. You may also view the minutes on the ANS Task Force Web site at *http://anstaskforce.gov/meetings.php.*

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Executive Secretary, ANS Task Force, by telephone at (703) 358–2466, or by e-mail at *Susan_Mangin@fws.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces meetings of the Aquatic Nuisance Species (ANS) Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 106–580, as amended). The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic nuisance species; to monitor, control and study such species; and to disseminate related information.

Agenda

Topics that the ANS Task Force plans to cover during the meeting include:

- Commercial harvest of aquatic invasive species,
- State Aquatic Nuisance Species Management Plans,
- ANSTF Strategic Plan, and
- Asian clams.

The agenda and other related meeting information are on the ANS Task Force Web site at *http://anstaskforce.gov/meetings.php.*

Accessibility Information

The meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting.

Authority

We publish this notice under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.).

Dated: September 22, 2011.

Jeffrey Underwood,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 2011–25144 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N205; 96300–1671–0000–P5]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with both Endangered Species and Marine Mammal. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
41278A	U.S. Geological Survey	76 FR 51051; August 17, 2011.	September 22, 2011.
48645A	Valley Zoological Society dba Gladys Porter Zoo	76 FR 51051; August 17, 2011.	September 22, 2011.

MARINE MAMMALS

48293A	Red Rock Films	76 FR 48880; August 9, 2011.	September 14, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to:

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–25232 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW176141]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176141, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW176141 for land in Crook County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW176141 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25251 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW176210]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176210, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW176210 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW176210 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25257 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW176209]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176209, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW176209 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW176209 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates

cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25259 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW176211]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176211, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW176211 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW176211 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25260 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW176212]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW176212, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW176212 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at (307) 775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16–⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW176212 effective February 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2011–25258 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM–113413, NMNM–117541]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 113413 and NMNM 117541

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management received a petition for reinstatement of oil and gas leases NMNM 113413 and NMNM 117541 from the lessee Three Rivers Acquisition, LLC, for lands in Lea County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the leases terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at (505) 954–2142. 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 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: No valid lease has been issued that affects the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16–⅔ percent, respectively. The lessee paid the required $500 administrative fee for the reinstatement of the leases and $166 cost for publishing this Notice in the **Federal Register**. The lessee met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate leases NMNM 113413 and NMNM 117541, effective the date of termination, March 1, 2011, under the original terms and conditions of the

lease and the increased rental and royalty rates cited above.

Margie Dupre,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2011–25255 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM–113397, NMNM–113398]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NMNM 113397 and NMNM 113398

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management received a petition for reinstatement of oil and gas leases NMNM 113397 and NMNM 113398 from the lessees Three Rivers Acquisition, LLC, and Cimarex Energy Co., for lands in Lea County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the leases terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at (505) 954–2142. 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 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: No valid lease has been issued that affects the lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre or fraction thereof, per year, and 16–⅔ percent, respectively. The lessees paid the required $500 administrative fee for the reinstatement of the leases and $166 cost for publishing this Notice in the **Federal Register**. The lessees met all the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate leases NMNM 113397 and NMNM 113398, effective the date of termination, March 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Margie Dupre,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2011–25256 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMNM 113399]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMNM 113399

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the Class II provisions of Title IV, Public Law 97–451, the Bureau of Land Management received a petition for reinstatement of oil and gas lease NMNM 113399 from the lessees Three Rivers Acquisition LLC, ABO Petro Corp, MYCO Industries, Inc., OXY Y–1 Co., and Yates Petro Corp., for lands in Eddy County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Margie Dupre, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at (505) 954–2142. 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 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: No valid lease has been issued that affects the lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre or a fraction thereof, per year, and 16–⅔ percent, respectively. The lessees paid the required $500 administrative fee for the reinstatement of the lease and $166 cost for publishing this Notice in the **Federal Register**. The lessees met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 88). We are proposing to reinstate lease NMNM 113399, effective the date of termination, March 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Margie Dupre,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2011–25253 Filed 9–29–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK–963000–L1410000–FQ0000; AA–5964]

Public Land Order No. 7780; Extension and Correction of Public Land Order No. 6892; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 6892 for an additional 20-year period. The extension is necessary to continue to protect the recreational values of the United States Forest Service's Sixmile Creek Recreation Area. This order also corrects the acreage discrepancy in the original order.

DATES: *Effective Date:* October 18, 2011.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513; 907–271–4682. 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 purpose for which the withdrawal was first made requires this extension to continue to protect the recreational values of the Sixmile Creek Recreation Area. The withdrawal extended by this order will expire on October 17, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary of the Interior determines that the withdrawal shall be further extended. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810 of the Alaska National

Interest Lands Conservation Act, 16 U.S.C. 3120.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6892 (56 FR 52210 (1991)), which withdrew approximately 834 acres of National Forest System lands from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch 2), but not from leasing under the mineral leasing laws, to protect the recreational values of the Sixmile Creek Recreation Area, is hereby extended for an additional 20-year period until October 17, 2031.

Correction

2. Public Land Order No. 6892, published in the **Federal Register** on October 18, 1991, in FR Doc. 291–25194, on page 52210, second column, second line of the ''Summary'' paragraph ''approximately 473 acres'' should read ''approximately 834 acres'', and in the third column, end of paragraph 1(b), reads: ''The areas described aggregate approximately 473 acres.'' should read ''The areas described aggregate approximately 834 acres.''

Authority: 43 CFR 2310.4.

Dated: September 6, 2011.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2011–25254 Filed 9–29–11; 8:45 am]

BILLING CODE 3410–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–726]

Certain Electronic Imaging Devices; Notice of Commission Determination To Review-in-Part a Final Determination of No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review certain portions of the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on December 16, 2010 finding no violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 8, 2010, based on a complaint filed by Flashpoint Technology, Inc. (''Flashpoint'') of Peterborough, New Hampshire. 75 FR 39971 (Jul. 8, 2010). The complaint alleges violations of Section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic imaging devices by reason of infringement of claims 1, 11, and 21 of U.S. Patent No. 6,134,606 (''the '606 patent''), claims 1–7, 11–13, 16–23, 26, 30–32, 40, and 41 of U.S. Patent No. 6,262,769 (''the '769 patent''), and claims 1–14 and 16 of U.S. Patent No. 6,163,816 (''the '816 patent''). On April 7, 2011, the ALJ issued Order No. 36 terminating the investigation as to all claims of the '606 patent. The proposed respondents are Nokia Corporation of Espoo, Finland and Nokia, Inc. of Irving, Texas (collectively, ''Nokia''); Research In Motion of Waterloo, Ontario, Canada and Research In Motion Corp. of Irving, Texas (collectively, ''RIM''); LG Electronics, Inc. of South Korea, LG Electronic U.S.A., Inc. of Englewood Cliffs, New Jersey, and LG Electronics MobileComm U.S.A. of San Diego, CA (collectively, ''LG''); and HTC Corporation of Taiwan and HTC America, Inc. of Bellevue, Washington (collectively, ''HTC''). Nokia, RIM, and LG were terminated from the investigation on the basis of settlement agreements.

On March 8, 2011, the Commission determined not to review the ALJ's Order No. 18 granting Flashpoint's motion for summary determination that it has satisfied the economic prong of the domestic industry requirement. On July 28, 2011, the ALJ issued the subject ID finding no violation of Section 337 by HTC. Specifically, the ALJ found that the accused HTC Android smartphones and the accused HTC Windows Phone 7 (''WP7'') smartphones do not infringe the asserted claims of the '769 patent or the asserted claims of the '816 patent. The ALJ also found that HTC has not established that the asserted claims of the '769 patent are invalid for obviousness in view of the prior art and that Flashpoint has not established that the asserted claims of the '769 patent are entitled to an earlier date of invention than that of the patent's filing date. The ALJ further found that HTC has not established that the asserted claims of the '816 patent are anticipated by the prior art, but that HTC has established that the asserted claims of the '816 patent are invalid under the on-sale bar of 35 U.S.C. 102(b). On July 10, 2011, Flashpoint, HTC and the Commission investigative attorney each filed a petition for review.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review (1) infringement of the asserted claims of the '769 patent by the accused HTC Android smartphones, (2) infringement of the asserted claims of the '769 patent by the accused HTC WP7 smartphones, (3) the technical prong of the domestic industry requirement for the '769 patent with respect to the licensed Motorola smartphones, (4) the technical prong of the domestic industry requirement for the '769 patent with respect to the licensed Apple smartphones, and (5) the enforceability of the asserted patents under the doctrines of implied license and exhaustion. The Commission has also determined to review and to take no position on (a) anticipation of the asserted claims of the '816 patent under 35 U.S.C. 102 in view of the prior art references and (b) obviousness of the asserted claims of the '816 patent under 35 U.S.C. 103 in view of the prior art references. Finally, the Commission has determined to deny complainant's request for oral argument.

The parties should brief their positions on the issues on review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

Question 1: The ALJ construed ''a first orientation associated with the image'' of claims 1 and 18 as ''a first direction with respect to an axis with a portrait or landscape aspect ratio (*i.e.,* right portrait, left portrait, upright landscape, or inverted landscape) associated with the image based on the orientation of the image capture unit.'' *See* ID at 25. The ALJ construed ''at capturing of the image'' of claims 1 and 18 as ''the time period following the determination by the image capture unit that an image is to be captured and before the completion of generating image data from the image sensor.'' Id. Assume that the accused EVO 4G smartphones determine ''a first direction with respect to an axis'' associated with the image based on the orientation of the image capture unit during the time period of ''at capturing of the image'' under the ALJ's construction of the time period. Does the EVO 4G also determine ''a landscape or portrait aspect ratio'' associated with the image based on the orientation of the image capture unit during the time period of ''at capturing of the image'' under the ALJ's construction of the time period? Please cite to the evidentiary record.

Question 2: The ALJ found that ''the accused Android products do not determine a first direction with respect to an axis with a portrait or landscape aspect ratio * * * associated with the image *based on the orientation of the image capture unit at capturing of the image.*'' *See* ID at 61 (emphasis added). One basis for this finding was the ALJ's finding that ''there could be up to a 200 millisecond delay'' between when the Android products' determine the orientation of the image capture unit and when the picture is taken. *See* ID at 61 (emphasis added). Is the more relevant question for infringement purposes whether the Android products ''could'' take a picture without such a delay (*e.g.,* if the timing of the Android's orientation determination in a given case fell within the time period of image capture)? Please cite to the evidentiary record as appropriate.

Question 3: The ALJ construed the limitation ''storing the information relating to the first orientation'' as ''saving an indication of the first orientation to memory.'' *See* ID at 27. Assume that the EVO 4G determines ''a first orientation associated with the image at capturing of the image'' under the ALJ's construction of ''first orientation'' and ''at capturing of the image.'' *See* ID at 27. Does the EVO 4G also ''sav[e] an indication'' of the ''first orientation'' to memory? Specifically, does the EVO 4G save an indication of ''a direction with respect to an axis with a portrait or landscape aspect ratio (i.e., right portrait, left portrait, upright landscape, or inverted landscape) associated with the image based on the orientation of the image capture unit?'' Include discussion of whether the EVO 4G saves ''right,'' ''left,'' ''upright,'' and ''inverted'' of the ALJ's construction, and whether saving this information is required to satisfy the claim. Please cite to the evidentiary record.

Question 4: Does the EVO 4G ''determin[e] whether the third orientation is different from the second orientation, the first orientation, or both'' under the ALJ's construction of the term ''orientation,'' i.e., ''a direction with respect to an axis with a portrait or landscape aspect ratio (i.e., right portrait, left portrait, upright landscape, or inverted landscape).'' *See* ID at 22 and 28. Please cite to the evidentiary record.

Question 5: Does the EVO 4G ''rotat[e] the image to be displayed in the third orientation'' under the ALJ's construction of the claim limitation, *i.e.,* ''stor[e] the image data in a buffer in one of two directions such that the orientation of the image is the same as the orientation of the image capture unit?'' *See* ID at 35. Please cite to the evidentiary record.

Question 6: Complainant argues in its petition for review that ''should a construction that relies on pre-rotation be adopted * * * both the initial determination and the ALJ's ruling in Order No. 26 on these points should be reversed and remanded for further proceedings, including instruction that additional discovery from Microsoft regarding its source code be compelled consistent with Flashpoint's previous requests to the ALJ.'' Comp. Pet. at 33. Considering that the ALJ ordered Microsoft to allow Complainant's expert to inspect an electronic copy of the source code, and to proceed with its offer to provide complainant with a signed witness declaration for authentication (Order No. 26 at 2–3), and that Microsoft allowed that ''any code used at trial can be submitted to the Court for judicial review,'' (Microsoft March 2, 2011 Opposition at 4) what is the basis for arguing that the ALJ abused his discretion or committed clear error? Even if the denial of the request to produce a paper printout of the source code did not facilitate the presentation of complainant's case, were not alternative avenues available to Complainant that it failed to pursue? *See* HTC's Response to OUII's Petition for Review and Flashpoint's Petition for Review at 24–27.

Question 7: Does the HD7 determine ''a first direction with respect to an axis * * * associated with the image based on the orientation of the image capture unit'' during the time period of ''at capturing of the image'' under the ALJ's construction of the time period, i.e., ''the time period following the determination by the image capture unit that an image is to be captured and before the completion of generating image data from the image sensor.'' *See* ID at 25. Does the HD7 also determine ''a landscape or portrait aspect ratio * * * associated with the image based on the orientation of the image capture unit'' during the time period of ''at capturing of the image'' under the ALJ's construction of the time period? *See* Id. Please cite to the evidentiary record.

Question 8: Does the HD7 ''save an indication of'' a first direction with respect to an axis with a landscape or aspect ratio associated with the image based on the orientation of the image capture unit, as required by the claims under the ALJ's construction of the limitations ''first orientation'' and ''storing the image, including storing information relating to the first orientation associated with the image.'' *See* ID at 25 and 27. Please cite to the evidentiary record.

Question 9: Does the HD7 ''determin[e] whether the third orientation is different from the second orientation, the first orientation, or both'' under the ALJ's construction of the term ''orientation,'' i.e., ''a direction with respect to an axis with a portrait or landscape aspect ratio (i.e., right portrait, left portrait, upright landscape, or inverted landscape)?'' *See* ID at 22 and 28. Please cite to the evidentiary record.

Question 10: Does the HD7 ''rotat[e] the image to be displayed in the third orientation'' under the ALJ's construction of the claim limitation, *i.e.,* ''storing the image data in a buffer in one of two directions such that the orientation of the image is the same as the orientation of the image capture unit?'' *See* ID at 35. Please cite to the evidentiary record.

Question 11: Do the licensed Motorola smartphones ''determin[e] whether the third orientation is different from the second orientation, the first orientation, or both'' under the ALJ's construction of the term ''orientation,'' *i.e.,* ''a direction with respect to an axis with a portrait or landscape aspect ratio (*i.e.,* right portrait, left portrait, upright landscape, or inverted landscape)?'' *See* ID at 22 and 28. Please cite to the evidentiary record.

Question 12: Do the licensed Motorola smartphones ''rotat[e] the image to be displayed in the third orientation'' under the ALJ's construction of the

claim limitation, i.e., ''storing the image data in a buffer in one of two directions such that the orientation of the image is the same as the orientation of the image capture unit.'' *See* ID at 35. Please cite to the evidentiary record.

Question 13: Do the licensed Apple smartphones determine ''a first direction with respect to an axis * * * associated with the image based on the orientation of the image capture unit'' during the time period of ''at capturing of the image'' under the ALJ's construction of the time period, i.e., ''the time period following the determination by the image capture unit that an image is to be captured and before the completion of generating image data from the image sensor?'' *See* ID at 25. Do the licensed Apple smartphones also determine ''a landscape or portrait aspect ratio * * * associated with the image based on the orientation of the image capture unit'' during the time period of ''at capturing of the image'' under the ALJ's construction of the time period? *See* Id. Please cite to the evidentiary record. In your responses to Questions 12–15, as appropriate, include discussion of the significance, if any, of the testimony of Mr. Jirman.

Question 14: Do the licensed Apple smartphones ''save an indication of'' a first direction with respect to an axis with a landscape or aspect ratio associated with the image based on the orientation of the image capture unit, as required by the claims under the ALJ's construction of the limitations ''first orientation'' and ''storing the image, including storing information relating to the first orientation associated with the image?'' *See* ID at 25 and 27. Please cite to the evidentiary record.

Question 15: Do the licensed Apple smartphones ''determin[e] whether the third orientation is different from the second orientation, the first orientation, or both'' under the ALJ's construction of the term ''orientation,'' i.e., ''a direction with respect to an axis with a portrait or landscape aspect ratio (i.e., right portrait, left portrait, upright landscape, or inverted landscape)?'' *See* ID at 22 and 28. Please cite to the evidentiary record.

Question 16: Do the licensed Apple smartphones ''rotat[e] the image to be displayed in the third orientation'' under the ALJ's construction of the claim limitation, i.e., ''storing the image data in a buffer in one of two directions such that the orientation of the image is the same as the orientation of the image capture unit?'' *See* ID at 35. Please cite to the evidentiary record.

Question 17: Were Flashpoint's rights to the '716 patent and the '816 patent with respect to the accused WP7 products exhausted by an ''authorized sale'' of an article that ''substantially embodies'' the '716 patent and the '816 patent? *See Quanta Computer, Inc.* v. *LG Elec., Inc.,* 128 S.Ct. 2109, 2122 (2008).

Question 18: Assume that there was an authorized sale of an article that substantially embodies the asserted patent, did the first sale take place in the United States? *See Jazz Photo Corp.* v. *Int'l Trade Comm'n,* 264 F.3d 1094, 1105 (Fed. Cir. 2001). How does the law of contracts determine where a first sale took place for purposes of the exhaustion doctrine? What state's law of contracts governs this determination?

Question 19: Does the WP7 software sold to HTC have ''non-infringing uses'' with respect to the '716 patent and the '816 patent and do circumstances of the sale ''plainly indicate that the grant of a license should be inferred'' with respect to the '716 patent and the '816 patent? *See Met-Doil Systems Corp.* v. *Korners Unlimited, Inc.,* 803 F.2d 684, 686 (Fed. Cir. 1986).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in a respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the United States Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, October 10, 2011. Reply submissions must be filed no later than the close of business on Monday, October 17, 2011. The written submissions must be no longer than 50 pages and the reply submissions must be no longer than 25 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR. 210.6. Documents for which confidential treatment by the Commission is sought

will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR. 210.42–46 and 210.50).

By order of the Commission.

Issued: September 26, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–25205 Filed 9–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–808]

In the Matter of Certain Electronic Devices With Communication Capabilities, Components Thereof, and Related Software; Notice of Institution of Investigation; 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 August 16, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of HTC Corp. of Taiwan. An amended complaint was filed on September 7, 2011. Supplements were filed on September 2, 19, and 23, 2011. The amended 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 electronic devices with communication capabilities, components thereof, and related software by reason of infringement of certain claims of U.S. Patent No. 7,765,414 (''the '414 patent''); U.S. Patent No. 7,417,944 (''the '944 patent''); U.S. Patent No. 7,672,219 (''the '219 patent''); U.S. Patent No. 6,708,214 (''the '214 patent''); U.S. Patent No. 6,473,006 (''the '006 patent''); U.S. Patent No. 7,289,772 (''the '772 patent''); U.S. Patent No. 6,868,283 (''the '283 patent''); and U.S. Patent No. 7,020,849 (''the '849 patent''). The amended complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist order.

ADDRESSES: The amended 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 Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

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 (2011).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on September 26, 2011, 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 electronic devices with communication capabilities, components thereof, and related software that infringe one or more of claims 1, 4–13, and 15–21 of the '414 patent; claim 1 of the '944 patent; claims 1–5 of the '219 patent; claims 1–3 of the '214 patent; claims 1, 3, and 7–11 of the '006 patent; claims 1, 2, and 9 of the '772 patent; claims 11, 12, and 19 of the '283 patent; and claims 1, 5, 9–11, 13, 14, 16, and 17 of the '849 patent; and whether an industry in the United States exists or is in the process of being established 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:

HTC Corp., 23 Xinghua Rd., Taoyuan City, Taoyuan County 330, Taiwan.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the amended complaint is to be served:

Apple Inc. a/k/a Apple Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Acting Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended 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(d)–(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 amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended 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 amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended 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 amended 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: September 27, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–25279 Filed 9–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–391A–393A (Third Review)]

Ball Bearings and Parts Thereof From France, Germany, and Italy; Termination of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The subject five-year reviews were initiated in August 2011 to determine whether revocation of the antidumping duty orders on ball bearings and parts thereof from France, Germany, and Italy would be likely to lead to continuation or recurrence of material injury. The Department of Commerce published notice that it was revoking the order effective September 15, 2011, because ''no domestic interested party filed a notice of intent to participate in response to the notice of initiation of the sunset reviews by the applicable deadline.'' (76 FR 57019). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

DATES: *Effective Date:* September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: September 26, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–25206 Filed 9–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–740]

In the Matter of Certain Toner Cartridges and Components Thereof; Notice of Commission Final Determination of Violation of Section 337; Termination of Investigation; Issuance of General Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of Section 337 in the above-captioned investigation. The Commission has determined to issue a general exclusion order and cease and desist orders. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 12, 2010, based on a complaint filed by Lexmark International, Inc. of Lexington, Kentucky (''Lexmark''). 75 FR 62564–65 (Oct. 12, 2010). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,337,032 (''the '032 patent''); 5,634,169 (''the '169 patent''); 5,758,233 (''the '233 patent''); 5,768,661 (''the '661 patent''); 5,802,432 (''the '432 patent''); 5,875,378 (''the '378 patent''); 6,009,291 (''the '291 patent''); 6,078,771 (''the '771 patent''); 6,397,015 (''the '015 patent''); 6,459,876 (''the '876 patent''); 6,816,692 (''the '692 patent''); 6,871,031 (''the '031 patent''); 7,139,510 (''the '510 patent''); 7,233,760 (''the '760 patent''); and 7,305,204 (''the '204 patent''). The complaint further alleges the existence of a domestic industry.

The Commission's notice of investigation named as respondents Ninestar Image Co. Ltd., (a/k/a Ninestar Technology Co., Ltd.) of Guangdong, China (''Ninestar''); Ninestar Image Int'l, Ltd. of Guangdong, China (''Ninestar Image Int'l''); Seine Image International Co. Ltd. of New Territories, Hong Kong (''Seine Image''); Ninestar Technology Company, Ltd. of Piscataway, New Jersey (''Ninestar Tech''); Ziprint Image Corporation of Walnut, California (''Ziprint''); Nano Pacific Corporation of South San Francisco, California (''Nano Pacific''); IJSS Inc. (d/b/a TonerZone.com Inc. and Inkjet Superstore) of Los Angeles, California (''IJSS''); Chung Pal Shin (d/b/a Ink Master) of Cerritos, California (''Ink Master''); Nectron International, Inc. of Sugarland, Texas (''Nectron''); Quality Cartridges Inc. of Brooklyn, New York (''QCI''); Direct Billing International Incorporated (d/b/a Office Supply Outfitter and d/b/a The Ribbon Connection) of Carlsbad, California (''Direct Billing''); E-Toner Mart, Inc. of South El Monte, California (''E-Toner''); Alpha Image Tech of South El Monte, California (''Alpha Image''); ACM Technologies, Inc. of Corona, California (''ACM''); Virtual Imaging Products Inc. of North York, Ontario; Acecom Inc.—San Antonio (d/b/a Inksell.com) of San Antonio, Texas (''Acecom''); Ink Technologies Printer Supplies, LLC (d/b/a Ink Technologies LLC) of Dayton, Ohio (''Ink Tech''); Jahwa Electronics Co., Ltd of Chungchongbuk-do, South Korea; Huizhou Jahwa Electronics Co., Ltd. of Guangdong Province, China; Copy Technologies, Inc. of Atlanta, Georgia (''Copy Tech''); Laser Toner Technology, Inc. of Atlanta, Georgia (''LTT''); C&R Service, Incorporated of Corinth, Texas (''C&R''); Print-Rite Holdings Ltd., of Chai Wan, Hong Kong (''Print-Rite''); and Union Technology Int'l (M.C.O.) Co., Ltd. of Rodrigo Rodrigues, Macao.

The Commission determined not to review an initial determination terminating the investigation as to Print-Rite based on a settlement agreement. Commission Notice (Jan. 10, 2011) (Order No. 11). The Commission determined to review and affirm several initial determinations finding several

respondents in default under Commission Rules 210.16(a)(2) and (b)(2) based on those respondents' elections to default. Commission Notice (Mar. 3, 2011) (Order Nos. 15–16); Commission Notice (Mar. 11, 2011) (Order Nos. 17–18); Commission Notice (Mar. 11, 2011) (Order No. 19). The Commission determined not to review two other initial determinations finding the remaining respondents in default. Commission Notice (Mar. 23, 2011) (Order No. 23); Commission Notice (April 6, 2011) (Order No. 24).

On April 25, 2011, Lexmark filed a motion pursuant to Commission Rule 210.18 (19 CFR 210.18) for summary determination of violation of Section 337 and requesting issuance of a general exclusion order and cease and desist orders against defaulting respondents. On May 5, 2011, the Commission investigative attorney (''IA'') filed a response supporting the motion, on the condition that Lexmark submit the following: (1) A declaration from its expert, Charles Reinholtz, averring that the statements in his expert report are true and correct, and (2) a declaration from Andrew Gardner that the accused products do not have any substantial non-infringing uses. Lexmark filed the submissions per the IA's request.

On June 1, 2011, the ALJ issued an initial determination (Order No. 26) (''ID'') granting Lexmark's motion for summary determination of violation of Section 337. The ID also contained the ALJ's recommended determination on remedy and bonding. Specifically, the ALJ recommended issuance of a general exclusion order (''GEO'') and cease and desist orders (''CDOs'') against the defaulting respondents. The ALJ further recommended that the Commission set a bond of 100 percent during the period of Presidential review.

On July 12, 2011, the Commission determined not to review the ID and called for briefing on remedy, the public interest, and bonding. 76 FR 41822–24 (July 15, 2011). On August 1, 2011, Lexmark submitted an initial brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and CDOs and set a bond of 100 percent during the period of Presidential review. The brief included a proposed GEO and a proposed CDO. Also on August 1, 2011, the IA submitted an initial brief on remedy, the public interest, and bonding, supporting Lexmark's request for a GEO and CDOs, as well as a bond of 100 percent. The IA's brief also included a proposed GEO and a proposed CDO.

The Commission has determined that the appropriate form of relief is the following: (1) A GEO under 19 U.S.C. 1337(d)(2), prohibiting the unlicensed entry of toner cartridges and components thereof that infringe one or more of claim 1 of the '032 patent; claims 1–3, 32, 33, 36, and 42 of the '169 patent; claims 1 and 2 of the '233 patent; claims 1 and 2 of the '661 patent; claims 1–3 of the '432 patent; claims 1, 2, and 14 of the '378 patent; claims 1 and 2 of the '291 patent; claims 1, 2, 5, 6, 10, and 15 of the '771 patent; claims 1, 2, 7, 10, 11, 14, 15, 17, 22, and 24 of the '015 patent; claims 1–3 and 28 of the '876 patent; claim 1 of the '692 patent; claims 1, 3, 5, 8, and 10 of the '031 patent; claims 1 and 6 of the '510 patent; claims 11, 12, and 14 of the '760 patent; and claims 1, 7, 14, and 15 of the '204 patent; and (2) CDOs directed to defaulting domestic respondents E-Toner, Alpha Image, Copy Tech, LTT, C&R, ACM, Ink Master, Direct Billing, Ink Tech, QCI, IJSS, Acecom, Ninestar Tech, Ziprint, Nano Pacific, and Nectron and defaulting foreign respondents Ninestar, Ninestar Image Int'l, and Seine Image.

The Commission has further determined that the public interest factors enumerated in Section 337(d) and (f) (19 U.S.C. 1337(d), (f)) do not preclude issuance of the GEO and the CDOs. The Commission has determined that the bond for temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the value of the imported articles that are subject to the order. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–50).

By order of the Commission.

Issued: September 27, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–25281 Filed 9–29–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–763]

In the Matter of Certain Radio Control Hobby Transmitters and Receivers and Products Containing Same; Notice of Commission Issuance of Limited Exclusion Order Against Infringing Products of Respondents Found In Default; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and has issued a limited exclusion order against infringing products of respondents previously found in default, Koko Technology, Ltd. (''Koko'') and Cyclone Toy & Hobby (''Cyclone'') of China.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (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*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 9, 2011, based on a complaint filed by Horizon Hobby, Inc. (''Horizon'') of Champaign, Illinois. 76 FR 12995–96 (March 9, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S.

Patent No. 7,391,320 (''the '320 patent''), U.S. Copyright Reg. No. TX–7–226–001 (''the '001 copyright''), and U.S. Trademark Reg. No. 3,080,770 (''the 770 mark''). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Koko and Cyclone as the only respondents. The complaint and notice of investigation were served on respondents on March 3, 2011. No responses were received.

On April 11, 2011, Horizon moved, pursuant to 19 CFR 210.16, for: (1) An order directing respondents Koko and Cyclone to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Koko and Cyclone in default upon their failure to show cause. Koko and Cyclone did not respond to the motion. On April 22, 2011, the presiding administrative law judge (''ALJ'') issued Order No. 5 which required Koko and Cyclone to show cause no later than May 12, 2011, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. No response was received from either Koko or Cyclone to the show cause order.

The ALJ issued an initial determination (''ID'') (Order No. 6) on May 16, 2011, finding both Koko and Cyclone in default, pursuant to §§ 210.13, 210.16, because both respondents did not respond to the complaint and notice of investigation, or to Order No. 5 to show cause. Also, on May 17, 2011, the ALJ issued an ID (Order No. 7) terminating the investigation because Koko and Cyclone are the only respondents in the investigation. On June 3, 2011, the Commission issued notice of its determination not to review the ALJ's IDs finding Koko and Cyclone in default and terminating the investigation. 76 FR 33362–63 (June 8, 2011). In the same notice, the Commission requested written submissions on the issues of remedy, the public interest, and bonding with respect to respondents found in default.

Horizon and the Commission investigative attorney (''IA'') submitted briefing responsive to the Commission's request on June 24, 2011, and the IA submitted a reply brief on July 1, 2011. Horizon requested both a limited exclusion order directed to Koko's and Cyclone's infringing products and a general exclusion order as well. The IA recommended a limited exclusion order and opposed Horizon's request for a general exclusion order.

Having reviewed the record in the investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to issue relief directed solely to the defaulting respondents pursuant to Section 337(g)(1). 19 U.S.C. 1337(g)(1). The Commission found that the statutory requirements of section 337(g)(1)(A)–(E) (19 U.S.C. 1337(g)(1)(A)–(E)) were met with respect to the defaulting respondents. Pursuant to section 337(g)(1) and Commission Rule 210.16(c) (19 CFR 210.16(c)), the Commission presumed the facts alleged in the complaint to be true. Based on the record in this investigation and the written submissions of the parties, the Commission has determined that the appropriate form of relief is a limited exclusion order directed to the defaulting respondents prohibiting the unlicensed entry of radio control hobby transmitters and receivers and products containing same that are covered by one or more of claims 1–5 of the '320 patent, the '001 copyright, or the '770 mark, and that are manufactured abroad by or on behalf of, or are imported by or on behalf of, Koko or Cyclone, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. 19 U.S.C. 1337(g)(1). The Commission has determined not to issue a general exclusion order because Horizon did not establish the evidentiary showing required by 19 U.S.C.1337(g)(2) and it did not declare that it sought a general exclusion order under Commission rule 210.16(c)(2) (19 CFR 210.16(c)(2)).

The Commission has further determined that the public interest factors enumerated in section 337(g)(1) (19 U.S.C. 1337(g)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission has determined that a bond of 100 percent of the entered value of the covered products is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16(c) and 210.41 of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c) and 210.41).

By order of the Commission.

Issued: September 27, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–25280 Filed 9–29–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–69]

Jeffery M. Freesemann, M.D.; Decision and Order

On January 24, 2011, Administrative Law Judge (ALJ) John J. Mulrooney, II, issued the attached recommended decision. The Respondent did not file exceptions to the decision.

Having considered the ALJ's decision and the record in light of the parties' post-hearing briefs, I have decided to adopt the ALJ's rulings, findings of fact, and conclusions of law.[1] Accordingly, I also adopt the ALJ's recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 824(a)(2) & (4), as well 28 CFR 0.100(b), I order that DEA Certificate of Registration, BF4089125, issued to Jeffery M.Freesemann, M.D., be, and it hereby is, revoked. This Order is effective October 31, 2011.

Dated: September 19, 2011.

Michele M. Leonhart,

Administrator.

Christine M. Menendez, Esq., for the Government.

Dennis R. Thelen, Esq., for the Respondent.

[1] The ALJ made extensive findings under the public interest factors. *See* ALJ Slip Op. at 32–40. While the Government cited both 21 U.S.C. 824(a)(2) & (4) as the legal authority for the proposed revocation, the factual basis—as alleged—was limited to Respondent's convictions (and the circumstances surrounding them) for a felony offense that falls within 21 U.S.C. 824(a)(2). *See* ALJ Ex. 1; *see also* ALJ Slip op. at 32. Moreover, there was no application pending at the time of the proceeding and Respondent's conviction was no longer subject to appeal.

Because a conviction for a felony offense that falls within section 824(a)(2) provides an independent and adequate ground for revoking a registration, and there was no pending appeal of the conviction or pending application for a new registration, the ALJ was not required to make findings under the public interest factors. While such a conviction satisfies the Government's *prima facie* burden, it is not a *per se* bar to registration. *Cf. The Lawsons,* 72 FR334, 74338 (2007). Accordingly, in a case brought under section 824(a)(2), the ALJ is still required (as he did here) to make findings as to whether the registrant has accepted responsibility for his misconduct and demonstrated that he will not engage in future misconduct. *Cf. Ronald Lynch, M.D.,* 75 FR 78745, 78749 (2010).

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

John J. Mulrooney, II, Administrative Law Judge. The Deputy Assistant Administrator, Drug Enforcement Administration (DEA or Government), issued an Order to Show Cause (OSC), dated August 13, 2010, seeking revocation of the Respondent's Certificate of Registration (COR), Number BF4089125, as a practitioner, pursuant to 21 U.S.C. 824(a)(2) and (a)(4) (2006), and denial of any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. 823(f), alleging that the Respondent has been convicted of three felonies involving controlled substances, and that his continued registration is otherwise inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). On August 25, 2010, the Respondent timely requested a hearing, which was conducted in Los Angeles, California, on December 14 through December 15, 2010.

The issue ultimately to be adjudicated by the DEA Deputy Administrator, with the assistance of this recommended decision, is whether the record as a whole establishes by substantial evidence that the Respondent's registration with the DEA should be revoked as inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Respondent's DEA COR is set to expire by its terms on September 30, 2012.

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions below.

The Evidence

The OSC issued by the Government alleges that revocation of the Respondent's COR is appropriate because of the Respondent's May 8, 2009 conviction for three felony counts of transportation of controlled substances, *i.e.* methamphetamine, ecstasy, and cocaine, in violation of California state law.[1] OSC at 1.

The parties, through their respective counsel, have entered into stipulations regarding the following matters:

Stipulation A: Respondent is a licensed physician in the state of California pursuant to license number G 83122. Respondent's license status is current. ALJ Ex. 9 at 1.

Stipulation B: On May 8, 2009, Respondent pleaded no contest to, and was convicted on, three criminal felony counts of transportation of controlled substances by the Superior Court of California, County of Kern. The controlled substances were methamphetamine, ecstasy, and cocaine. The Respondent also pleaded no contest to, and was convicted on, one misdemeanor count of carrying a loaded firearm. ALJ Ex. 9 at 1.

Stipulation C: Prior to the night the Respondent was arrested, he had no adverse interaction with law enforcement authorities. Tr. vol. 1, 129, Dec. 14, 2010.

Stipulation D: That neither party would interpose any objection to the admission of any of the proposed exhibits noticed prior to the hearing. Tr. 7–10.

Stipulation E: A blue pouch depicted on page 3 of Government Exhibit 5 did not contain the firearm seized from the Respondent's motor home on the night he was stopped and detained by the police. Tr. 354–55.

Among the exhibits admitted into evidence through stipulation was a state criminal court transcript, dated May 8, 2009, wherein the Respondent entered pleas of no contest to three felony drug transportation counts and one loaded firearm misdemeanor in satisfaction of the indictment pending against him. Resp't Ex. 3 at 4–7; Gov't Ex. 11 at 4–7; Gov't Ex. 10 at 1–3. Specifically, the Respondent pleaded no contest to transporting methamphetamine in violation of Cal. Health & Safety Code § 11379 (West 2008), transporting Ecstasy or MDMA in violation of Cal. Health & Safety Code § 11379 (West 2008), transporting cocaine in violation of Cal. Health & Safety Code § 11352 (West 2008), and possession of a loaded firearm in a vehicle in violation of Cal. Penal Code § 12031(a) (West 2008). Resp't Ex. 3 at 6–7; Gov't Ex. 11 at 6–7; Gov't Ex. 10 at 1–3.

Also included among the Government's exhibits admitted into evidence is the October 20, 2010 Decision and Order (Order) of the Medical Board of California (Medical Board) following a state administrative hearing that took place on August 23, 2010.[2] Gov't Ex. 15–16. In its Order, the Medical Board, adopting the recommended decision issued by the state Administrative Law Judge, found that the Respondent was stopped by police with his wife, Mrs. Shelly Freesemann, on August 28, 2008 en route in a motor home to the ''Burning Man Festival'' in Nevada. Gov't Ex. 15 at 3. The Order indicated that at his hearing before the Medical Board, the Respondent testified that his wife, by his account, unbeknownst to him, packed the cocaine, ecstasy, and methamphetamine found by the police in the vehicle for use at the festival at which they had intended to meet friends. *Id.* However, while the Respondent, at his state Medical Board hearing, denied knowingly transporting controlled substances, the Medical Board found that under its precedent, he is nevertheless guilty of willfully transporting those drugs because he pleaded *nolo contendere* and was convicted pursuant to his plea. *Id.* at 2. At his Medical Board hearing, the Respondent testified that although his wife was by far the more culpable actor, he chose to bear the burden of incarceration so that his wife could complete a drug rehabilitation program and care for their children. Gov't Ex. 15 at 3. The Respondent apparently explained to the Medical Board that he chose this course because he had ''the greater strength to endure incarceration,'' and declared that ''children outweigh cash and income on my scale any day.'' *Id.* The Medical Board expressed some level of concern regarding the Respondent's credibility, but ultimately concluded that there was insufficient indicia of deceit to support a finding that he was ''dishonest in his testimony.'' *Id.* at 4. The Medical Board noted the Respondent's seemingly inconsistent positions of blaming his wife while simultaneously acknowledging that he is ''responsible for his crime.'' *Id.*

The Medical Board ultimately determined that although ''[c]ause exists to revoke or suspend'' the Respondent's state medical privileges, a stayed revocation accompanied by a seven-year term of probation with limitations, reporting conditions, and ethics training would ''provide adequate protection of the public health, safety and welfare.'' *Id.*

At the DEA hearing conducted in this matter, the Government presented the testimony of five police officers from Bakersfield, California who worked on the investigation that culminated in the Respondent's convictions as set forth in Stipulation B, and also called the Respondent as a witness. The first officer who testified was Detective (Det.) David Boyd, the lead case detective for the investigation. Tr. 29. Det. Boyd, a twenty-two-year veteran of the Bakersfield Police Department (Bakersfield PD), nine of which was

[1] The same day, the Respondent also pleaded no contest to a misdemeanor charge of carrying a loaded firearm. Gov't Ex. 11; *see* Cal. Penal Code 12031(a) (West 2008).

[2] Although both parties noticed the Medical Board Order, in the interest of avoiding unnecessary duplication, it was admitted as a Government exhibit. Tr. 9–10.

spent as a detective,[3] testified that he first encountered the Respondent during the course of a narcotics investigation primarily targeted at an individual named Stephen Galvan (Galvan).[4] Tr. 28. A cell phone wiretap that had been judicially authorized during the investigation revealed voice and text traffic between Galvan's cell phone and phones connected to the Respondent and his wife, Shelly Freesemann. Tr. 29–30, 50.

On August 24, 2008, the investigating officers monitored some phone traffic between Galvan and a female who was later identified as Galvan's sister, Tessa. Tr. 38–39, 41–43. During the call, Galvan was attempting to procure a ''zip,'' which, based on Det. Boyd's training and experience, he identified as referring to an ounce of illicit drugs. Tr. 43–47. Galvan told his sister that he was willing to pay $1,200.00 to $1,300.00, but needed it by the following day. Tr. 45.

At about 2 p.m. the following day (August 25th), the officers intercepted a text message from Galvan's cell phone to Shelly Freesemann[5] that read: ''Hey, back in town, can take care of that 4 U ASAP.'' Tr. 47–48. After a five-hour period without a response from Shelly Freesemann, Galvan's phone issued another text message to her phone with the message: ''???'' Tr. 49. Galvan's second text received a reply from a cell phone registered to Mrs. Freesemann within three minutes that read: ''Sorry * * * Jeff will call you later.'' Tr. 50.

Galvan called Shelly Freesemann's phone and had a conversation with a female voice the officers believed to be hers. Tr. 51. In the conversation, Mrs. Freesemann told Galvan that the following day she and her husband would be retrieving a motor home and departing the area around 7:30 p.m. Tr. 52. Galvan told her that around noon he would pick up ''paperwork'' (a term that Det. Boyd testified is commonly used in narcotics transactions to refer to cash). *Id.*

At 8:06 a.m. the next morning (August 26th), a text message emanated from Mrs. Freesemann's phone to Galvan's cell phone that advised: ''Me, not Shelley, 29th and Fth.[6] Call my work # [the Respondent's work telephone number]. Jeff.'' Tr. 54. Sometime after the text message instructing him to do so, Galvan did call the Respondent at the number provided in the text and spoke to him. Tr. 55. During their conversation the two men discussed the Respondent's plans to leave town that evening and that Galvan needed to meet with the Respondent to get money from him.[7] Tr. 55. After some discussion related to the logistics of their meeting, the pair agreed to meet at the Valley Gun Store (Valley Gun) located in Bakersfield. Tr. 55–56.

Det. Boyd testified that he and his team were able to confirm that Galvan and the Respondent did indeed meet that day at noon at the Valley Gun. Tr. 56. Surveillance units posted near the Respondent's car, Galvan's car, and Valley Gun tracked the two men driving to their rendezvous point at Valley Gun, observed them enter the store separately within two to three minutes of one another, and watched them depart separately after spending about five minutes in the store. Tr. 56–58. The Respondent drove from his office to Valley Gun, even though the two locations were diagonally across from each other on the same intersection of Bakersfield. Tr. 58–62. After the meeting, officers followed the Respondent in his car to a Barnes & Noble bookstore. Tr. 62.

Det. Boyd testified that Galvan placed numerous phone calls after his meeting with the Respondent. Tr. 63. The officers monitored phone calls from Galvan to his sister and to his father. *Id.* The object of the phone calls to both parties was to arrange to purchase methamphetamine. *Id.* Galvan also telephoned Phil Nunez (Nunez), an individual the officers had earlier identified as one of Galvan's sources of methamphetamine.[8] Tr. 63–64. At about 7:00 p.m., after Galvan and Nunez agreed to a meeting, the former placed another call to the Freesemanns. Tr. 65–66. When Mrs. Freesemann picked up the phone, Galvan asked to speak to the Respondent and informed him that he should expect him at the Freesemann residence in approximately twenty to thirty minutes. *Id.* The officers monitored several additional phone calls between Galvan and Nunez related to the logistics of locating each other for their meeting and frustration with cell phone service problems. Tr. 67. Galvan and Nunez met in a public parking lot, after which Galvan drove directly to the Freesemann residence which was being staked out by another police officer, Sergeant[9] (Sgt.) Chris Johnson, at Det. Boyd's direction. Tr. 67–68.

Sgt. Johnson, who is also a member of the Bakersfield PD narcotics unit, also testified for the Government. Sgt. Johnson testified that he participated in and provided support to Det. Boyd during his narcotics investigation of Galvan, and that during the evening hours of August 26, 2008, he was conducting a surveillance of the Respondent's home. Tr. 201. Johnson testified that he arrived at the stakeout around 7:30 pm, remained there for approximately five hours, and could see the Freesemann home and a motor home parked at the curb. Tr. 201–03. Sgt. Johnson's visual observations, made from three houses away, had the benefit of street lighting, porch lights, and motor home lights after the sun set. Tr. 202–03. He testified that the Freesemanns were loading the motor home when he observed Galvan drive up in a truck and park across the street. Tr. 203. Galvan greeted the Respondent in the front yard and followed him into the motor home carrying an oblong-sized object about the size of a grapefruit. Tr. 204. After a brief period of time, Galvan exited the motor home, encountered Mrs. Freesemann, hugged her goodbye, shook the Respondent's hand, and drove away, but without the oblong, grapefruit-sized object. Tr. 204–05. Sgt. Johnson further testified that Galvan's entire visit lasted approximately five minutes. Tr. 204, 211. He also testified that he saw Mrs. Freesemann leave the motor home and enter the residence carrying an object that was similar in size and shape to the grapefruit-sized item brought to the scene by Galvan. Tr. 205–06. Sgt. Johnson testified that he watched the Respondent and his wife continue to load the motor home for about another hour and watched as the motor home and the Freesemanns drove off. Tr. 207, 211.

Bakersfield PD Police Officer (PO) Kevin O. Hock also testified for the Government. PO Hock testified that he has worked for Bakersfield PD for the past fifteen years. Tr. 156. PO Hock testified he is assigned to the Special Enforcement Unit (SEU) at Bakersfield PD, and that in addition to working on gang crime cases and gang intelligence, SEU also provides uniformed and ''black and white'' patrol car assistance to investigations as needed. Tr. 156–57. PO Hock testified that on August 26,

[3] Tr. 23.

[4] Boyd testified that Galvan was identified to the Bakersfield PD by a paid informant. Tr. 39–40.

[5] Although Det. Boyd initially testified that he believed that the Freesemanns were identified as acquaintances of Galvan earlier in the investigation through prior surveillance, Tr. 51, he later clarified that he only became aware of the Freesemanns through this investigation and their telephonic contact with Galvan. Tr. 124–26.

[6] Det. Boyd testified that there is such an intersection in Bakersfield. Tr. 53–54.

[7] According to Det. Boyd, Galvan used the terms ''money'' and ''paperwork'' interchangeably during this phone call. Tr. 55.

[8] Nunez is also identified as a co-defendant on the felony complaint and information associated with the Respondent's criminal case. Gov't Exs. 7 at 1; Gov't Ex. 9 at 1.

[9] At the time of the Respondent's arrest, Sgt. Johnson was a detective. Tr. 198.

2008, he was working a uniformed assignment in a marked patrol car and was directed by Sgt. Tunnicliffe, a Bakersfield PD narcotics division supervisor, to conduct a vehicle stop on a white motor home that the narcotics unit was actively surveilling.[10] Tr. 159–60. When PO Hock caught up to the white motor home, he noticed that it had no license plate light [11] and initiated a vehicle stop. Tr. 162 PO Hock testified that he encountered the Respondent driving the vehicle, procured his California driver's license from him, and asked (as is his custom with all vehicle stops) whether there were any illegal substances inside the vehicle. Tr. 163–64. The Respondent responded in the negative and consented to a search of the motor home.[12] Tr. 165. Hock testified that Mrs. Freesemann and a female, named Michelle Hori,[13] were also in the motor home when it was pulled over. Tr. 163. PO Hock testified that he ordered all the occupants of the vehicle to step out and radioed a K–9 officer, Det. Cox, to respond to the scene, which he did within five minutes. Tr. 165–66. PO Hock testified that Det. Cox searched the entire vehicle and told him that his narcotics dog, ''Gracie,'' alerted to three different areas within the motor home. Tr. 167. In one of the alert areas between the front seats, Hock opened a bag that contained a pink pouch. Tr. 167–68, 171–74; Gov't Ex. 5 at 7–11, 16, 48–50. The pink pouch contained what PO Hock believed to be MDMA tablets and powder cocaine. Tr. 170. Hock testified that the motor home was driven to the Bakersfield PD station and searched more thoroughly there under the authority of the search warrant procured by Det. Hale. Tr. 174–75.

The testimony of the responding K–9 officer, Bakersfield Det. David Cox, corroborated the testimony of PO Hock. Det. Cox testified that on the night of the Respondent's arrest, he was assigned as a K–9 officer in the narcotics unit and was Gracie's handler. Tr. 182. Det. Cox testified that he responded on August 26, 2008 to PO Hock's request to sweep the Respondent's motor home with Gracie after he stopped it.[14] Tr. 185–87. As testified to by PO Hock, Cox recalled that Gracie had alerted to three different areas of the motor home. The first alert was on the area between the two front passenger seats, another was on a drawer or compartment above the motor home bed, and a third was on an area with approximately two to four bags located on the interior floor of the motor home near some bicycles. Tr. 188–93. Det. Cox then testified that he related the areas of K–9 alert to PO Hock for action, but that his part of that vehicle search evolution substantially ended at that point. Tr. 192. He testified that he did not personally see any controlled substances seized from the motor home, nor did he even see the aforementioned pink pouch containing methamphetamine and BZP tablets and powder methamphetamine, nor did he see a yellow pelican case that, per Det. Boyd's testimony, the laboratory results, and the return to search warrant, contained copious amounts of illicit substances. Tr. 195.

Det. Boyd, testified that sometime after the commencement of the search on the motor home, he directed another officer, Det. Michael Hale, to prepare an affidavit and seek a warrant to search the stopped motor home and the Respondent's residence. Tr. 72–73. The Government also presented Det. Hale's testimony at the hearing. Hale, a fourteen-year veteran Bakersfield police officer, testified that on the night of the motor home stop he was assigned to the Narcotics Unit at the Bakersfield PD and had been involved in the Galvan investigation. Tr. 217–18. He testified that he was the affiant on the supporting affidavit (PC Affidavit) which was utilized to secure a state-court-issued search warrant that was executed on the stopped motor home and on the Respondent's residence in the early hours of the next morning.[15] Tr. 218–21; Gov't Ex. 3; Gov't Ex. 4.

The PC Affidavit tracked the bones of the investigation consistently with the testimony of Det. Boyd. The PC Affidavit informs how the Bakersfield PD was led to the Respondent and his wife through its monitoring of Galvan, who was suspected of being a drug dealer. Gov't Ex. 3. The document explains that the state-court-authorized cell phone intercept (cell phone tap) resulted in the intercept of telephone calls and text messages from Galvan's cell phone to the Respondent and his wife. *Id.* at 8. The PC Affidavit sets forth the August 25th cell call from Galvan to the Respondent's wife wherein she explained to Galvan that she was leaving the next night and that a third party had inquired as to whether she wanted to bring ''that.'' *Id.* at 9. In his PC Affidavit, Det. Hale explained that, based on his training and years of experience involving narcotics investigations, it is his opinion that the word ''that'' is an expression commonly used in connection with narcotics. *Id.* at 11. Before the call ended, the Respondent's wife explained that she would be leaving the next night at 7:30 p.m. after picking up a motor home. *Id.*

The PC Affidavit progresses through August 26th, as Bakersfield PD officers intercepted a text message to Galvan's cell phone that stated ''Meet me at noon instead of shelly at 29th and Fth. if diff. plans call my work# 340–2323 jeff [sic].'' *Id.* at 9. The PC Affidavit continues that later in the day, the cell phone tap revealed that Galvan called the number provided by ''jeff'' in the text message. *Id.* The phone was answered by an individual who identified himself as ''Jeff.'' *Id.* Galvan explained to Jeff that he wanted to take care of ''all that'' today, but then indicated that they needed to meet first so he could collect money from Jeff. *Id.* After Galvan asserted that he needed a couple of hours, they agreed to meet at noon at Valley Gun where they had met previously. *Id.*

The PC Affidavit also narrates the surveillance conducted at Valley Gun wherein detectives observed the Respondent pull up in a car registered to himself and his wife at about noon and enter the store. *Id.* The document explains how, after a few minutes, Galvan arrived at Valley Gun and joined the Respondent inside. *Id.* After what Hale's affidavit characterizes as ''a short period,'' the two men concluded their meeting inside the store and the Respondent drove off. *Id.*

The PC Affidavit relates that shortly after Galvan's noon meeting at Valley Gun, detectives intercepted numerous calls between Galvan and his sister, Tessa, wherein the two unsuccessfully attempted to close a drug deal to secure a ''whole one,'' which, in Det. Hale's experience, refers to an ounce of suspected narcotics. *Id.* at 10–11. At 6:15 p.m., finding himself unable to successfully broker for illegal drugs with his sister, the cell phone tap revealed that Galvan turned to his father, explaining that he needed to provide crystal methamphetamine to a friend who was set to leave town at 7:30

[10] Det. Boyd testified that it was he who made the decision to have the motor home stopped and conveyed that decision to his supervisor, Sgt. Tunnicliffe. Tr. 68–69.

[11] A violation of Cal. Veh. Code § 24601 (West 2008).

[12] PO Hock testified that the Respondent was cooperative throughout the entire evolution on the side of the road. Tr. 178.

[13] Det. Boyd testified that police intercepted a phone conversation wherein Ms. Hori indicated that she was intending to transport six ecstasy capsules to a Tacoma, Washington surgeon by the name of Dr. Wendell Smith. Tr. 134–35, 145. According to Det. Boyd, Ms. Hori ultimately entered a guilty plea to some unspecified criminal charge and received a sentence of probation. Tr. 132.

[14] Det. Cox also testified that earlier in the day he assisted in conducting surveillance on Galvan and the Freesemanns. Tr. 185, 193–94.

[15] The search warrant and the PC Affidavit were received into evidence at the hearing by mutual stipulation of the parties. Tr. 7–10; Stipulation D; *see* Gov't Ex. 3.

(the same time the Respondent's wife had previously related to Galvan as her planned departure time). *Id.* at 9–10.

According to the PC Affidavit, approximately fifteen minutes after placing the call to his father, Galvan called Nunez, and the two agreed to meet. *Id.* at 10. During that cell phone conversation, the latter asked the former if his sister had called for ''it'' and was informed that their efforts to reach agreement had been fruitless. *Id.* Following numerous calls placed to find each other, Galvan met Nunez in a restaurant parking lot and, in the opinion of the police, conducted an illegal narcotics transaction. *Id.* Upon leaving the parking lot, Galvan called the Respondent's wife and asked to speak with ''Jeff.'' Galvan informed Jeff that he was on his way. *Id.*

The PC Affidavit further states that at the Respondent's home, another Bakersfield PD detective was observing the Respondent and his wife load items into a motor home that was parked there when Galvan drove up. *Id.* at 11. The PC Affidavit elucidates how Galvan handed a light-colored, oblong package about the size of a grapefruit to the Respondent before the two entered the motor home, and how, after a while, the Respondent's wife carried the package into their attached garage. *Id.* According to the PC Affidavit, Galvan departed after shaking the Respondent's hand and hugging Mrs. Freesemann. *Id.* The Respondent and his wife departed at 8:05 p.m. in the motor home which, as had been sworn to by Det. Hale, was stopped thirty minutes later and searched. *Id.* at 12.

Det. Hock, the officer who pulled over the motor home, testified that after he identified what he suspected to be illicitly-possessed controlled substances, he notified Sgt. Tunnicliffe, who then directed that the Respondent, his wife, and Ms. Hori be transported to the Bakersfield PD.[16] Tr. 171. Another officer drove the motor home back to the Bakersfield PD station where it was searched. Tr. 172. While Det. Hock testified that he participated in the roadside search of the motor home with other officers, as well as the search of the motor home back at the police department pursuant to the search warrant, he testified at the hearing that the only controlled substances he specifically remembered seeing during the roadside search were contained in the pink pouch. Tr. 174.

The search warrant return prepared in connection with the search of the motor home listed the seizure of seventy-seven items. Gov't Ex. 4. Among the seized items were many individually packaged containers with pills, powders, liquids, and substances that, when tested, were confirmed to be scheduled controlled substances, including methylenedioxymethamphetamine (MDMA or ecstasy), methamphetamine, cocaine, and psilocybin mushrooms (psilocybin or mushrooms). Gov't Exs. 4, 8; Tr. 99. More specifically, the controlled substances secreted in the motor home and seized were 277 pills that included various quantities of Adipex-P,[17] methamphetamine,[18] BZP,[19] zolpidem,[20] Lunesta,[21] ketamine,[22] and ecstasy;[23] 25.9 grams of powdery or rocky substances that included ketamine, cocaine,[24] and methamphetamine; liquid in multiple bottles constituting gamma-butyrolactone (GBL);[25] 2.4 grams of marijuana;[26] and 0.8 grams of psilocybin mushrooms.[27] Gov't Ex. 4. While most of the drugs that were tested yielded positive results for the same illicit nature for which they were suspected, a cross-reference of the return to search warrant with the laboratory analysis results reveals some anomalies. For instance, a portion of the suspected MDMA tablets tested positive for methamphetamine and benzylpiperazine (BZP). *Compare* Gov't Ex. 4 at 4 (see item #61), *with* Gov't Ex. 8 at 5 (see item #18). Also, some of the suspected cocaine HCl tested positive for methamphetamine. *Compare* Gov't Ex. 4 at 4 (see item #62), *with* Gov't Ex. 8 at 7 (see item #25).

As discussed earlier in this recommended decision, a separate return was prepared in connection with the items seized from the Respondent's home. Among the controlled substances seized at the residence were 258.5 tablets of suspected ecstasy, 5.3 grams of suspected cocaine, and an unspecified quantity of suspected ''liquid ecstasy.'' *Id.* A loaded handgun was seized from the motor home, and a loaded handgun and extra ammunition were seized from the Respondent's residence.[28] *Id.* at 4, 6.

Det. Boyd testified that the narcotics seized from the motor home and the residence were packaged in small dosage amounts in numerous containers. According to Det. Boyd, based on his training, this manner of packaging is consistent with the manner in which individuals commonly package illicit drugs for sale.[29] Tr. 76–77, 117.

Notwithstanding the fact that the Respondent did not contest the illicit nature of the seized contraband, Det. Boyd also provided a narration of sorts regarding numerous photographs of the items seized from the motor home that had been stipulated into evidence.[30] While the detective was able to identify a quantity of marijuana,[31] and devices he styled as ''marijuana pipes,''[32] much of his testimony regarding the photographs constituted little more than arguably unhelpful guesses and multiple choice options of illicit drug possibilities. For example, in describing

[16] Det. Boyd testified that the occupants of the motor home were not booked for an arrest that night but were ''detained and then later released pending further investigation.'' Tr. 108. He testified that this was done to facilitate the continuing investigation of Galvan without having to disclose the existence of the cell phone tap. Tr. 131.

[17] A Schedule IV controlled substance listed under phentermine. 21 CFR 1308.14(e)(9) (2010).

[18] A Schedule II controlled substance. *Id.* § 1308.12(d)(2).

[19] A Schedule I controlled substance. *Id.* § 1308.11(f)(2).

[20] A Schedule IV controlled substance. *Id.* § 1308.14(c)(51).

[21] A Schedule IV controlled substance listed under zopiclone. *Id.* § 1308.14(c)(52).

[22] A Schedule III controlled substance. *Id.* § 1308.13(c)(7).

[23] A Schedule I controlled substance. *Id.* § 1308.11(d)(11).

[24] A Schedule II controlled substance. *Id.* § 1308.12(b)(4).

[25] A List I chemical. *Id.* § 1310.02(a)(24). Analogues of controlled substances, like GBL to gamma-hydroxybutyric acid (GHB), a Schedule I controlled substance, i*d.* § 1308.11(e)(1), can be treated under federal law as a Schedule I controlled substance if intended for human consumption. 21 U.S.C. 813 (2006).

[26] A Schedule I controlled substance. *Id.* § 1308.11(d)(22).

[27] A Schedule I controlled substance. *Id.* § 1308.11(d)(28). While 13.5 pills of Xanax, a Schedule IV controlled substance listed under alprazolam at *id.* § 1308.14(c)(1), were also seized from the motor home, they were within a vial labeled as a prescription to the Respondent. Gov't Ex. 4 at 4. The Government makes no allegation that the Xanax was invalidly prescribed, abused, or diverted. Other uncontrolled substances seized, prescription or otherwise, are not considered in this decision under the public interest factors.

[28] Hypodermic needles and a pill cutter were also seized from the Freesemann residence. Gov't Ex. 6 at 18–19; Tr. 115. On the present record, these items have not been sufficiently linked to illegal activity to adversely factor against the Respondent. There is nothing in the present record to discount the Respondent's testimony that the hypodermic needles were present in the residence for the treatment of his ailing mother, who has since passed away. Tr. 270, 279–81.

[29] Det. Boyd also testified that he is aware of other indicia of controlled substance dealing, such as particular currency denominations, scales, packaging materials, and sometimes even ''pay and owe sheets'' that actually record drug transactions, none of which were located on the Freesemanns or in their rented motor home on the night they were arrested. Tr. 78–80, 133.

[30] Four photographs depict the sum total of the contraband seized from the motor home. Gov't Ex. 5 at 55–58; Tr. 93–94.

[31] Tr. 80; Gov't Ex. 5 at 18. Interestingly, Det. Boyd testified that the suspected marijuana seized in this case was not sent out for confirmatory testing. Tr. 100.

[32] Tr. 80–81, 91; Gov't Ex. 5 at 19, 52.

one photograph [33] he stated that it showed ''a glass vial with a black lid, with a white powdery substance in it [and explained that] [f]rom the photograph, [he] would *believe* it to be either cocaine[ ] HC[l] or methamphetamine.'' Tr. 82 (emphasis supplied). Another photograph [34] was described as depicting ''three oblong pills, white in color with what looks like blue spectacles in it,'' and when asked whether he ''*believe*[*s*] [it] to be an illicit controlled substance,'' responded that he ''*believe*[*s*] it was possible it would be some type of pharmaceutical.'' Tr. 82 (emphasis supplied). Still another photo [35] was described as including a container holding ''a white powdery substance in it which [he] would *believe* to be either cocaine[] HC[l] or methamphetamine.'' Tr. 82–83 (emphasis supplied). Other photographs were described as containing ''orangish-red pills which [he] *believe*[*s*], through [his] training and experience, to be that of ecstasy or MDMA [and other material] that [he] *believe*[*s*] to contain either methamphetamine or cocaine,'' [36] and ''[s]everal gel caps or capsules with a brown material [and states that he is] not sure what they are.'' [37] The record contains multiple examples of this approach, but the following excerpt addressing two photographs [38] is representative:

> [The first photo] [w]ould be those three cylinders, open to show the contents, two of them having white powdery substances, which I believe to be either cocaine or methamphetamine, and the other is either, I can't remember which photograph it is that depicts it. It's either depicting the small amount of psilocybin that was seized or marijuana. * * * [The second photo is of] two sets of blue pills, different in size. One individual blue pill and then two yellow pills that appear to be prescription-style medication. The blue oblongy-looking one appears to be a prescription[-]style medication. The blue pills down here appear to me to be similar to ecstasy[/]MDMA.

Tr. 84–85. Although later in his testimony, Det. Boyd indicated that confirmatory testing on the seized materials yielded results consistent with his expectations that the seized items were the controlled substances he anticipated they would be,[39] this did not prove to be entirely true. For example, the laboratory analysis report relative to the material seized in the motor home, which was admitted into evidence at the hearing, indicated that the seized substance that the Bakersfield PD assigned as ''agency #10'' was not cocaine hydrochloride as had been *believed* by Det. Boyd (and submitted by the Government within its Proposed Finding of Fact 85), but ketamine.[40] Gov't Ex. 8 at 9; Gov't Ex. 5 at 20; Tr. 81–82; Gov't Br. at 13.

More helpfully, Det. Boyd described numerous containers of over-the-counter pill bottles where material that resembled illicit drugs were placed below several doses of the pills that the vials were intended for. Tr. 86–91; *see* Gov't Ex. 5 at 32–35, 38–39, 41, 43–50, 52. Boyd testified that based on his training and experience, he has observed the utilization of this technique to give the appearance of a benign over-the-counter medication or supplement to inspecting eyes that are not inclined to dig deeper, and that it is a common method used to secrete illegal drugs. Tr. 86. Pills that he considered suspect were also identified in two Starbucks tin mint containers. Tr. 88; *see* Gov't Ex. 5 at 36–37.

Sgt. Johnson testified that he participated in the execution of the search warrant on the Respondent's residence, assisted with other officers, to the extent that he helped secure the residence and the people inside of it. Tr. 209–10. He testified that he did not, however, take photographs, and because he did not conduct the actual search of the inside of the residence, he does not have any personal knowledge of the controlled substances found in the home. Tr. 210.

Det. Hale, the affiant on the PC Affidavit testified in greater detail about the search conducted in the house. According to Hale, after the children and their babysitter were located and isolated, the Respondent's home was searched. Tr. 221–23. A description litany reminiscent of Det. Boyd's account of the photographs and his opinion of the illicit substances seized from the motor home was elicited from Hale regarding the items seized from the Freesemann residence, with similar efficacy. *Id.;* Gov't Ex. 6. A safe, that Hale recalled as being unsecured, yielded a black plastic case that contained individually packaged amounts of what Hale suspected to be ecstasy and cocaine.[41] Tr. 223–27.

Det. Boyd testified that a firearm was seized from the Respondent's residence during the search. Tr. 96. According to Boyd, although the firearm was registered and there was no illegality that stemmed from the weapon's discovery at the Freesemann residence, it is standard police procedure to seize identified firearms during searches related to narcotics. *Id.*

After personally observing the police witnesses testimony and demeanor, I find the testimony of each of these witnesses to be sufficiently plausible, detailed, internally consistent, and externally consistent with other witnesses, evidence and each other, to be deemed credible.[42]

Although the Respondent noticed himself as a witness, the Government

[33] Gov't Ex. 5 at 20.

[34] Gov't Ex. 5 at 22.

[35] Gov't Ex. 5 at 24.

[36] Tr. 83; *see* Gov't Ex. 5 at 28.

[37] Tr. 84; *see* Gov't Ex. 5 at 29.

[38] Gov't Ex. 5 at 30–31.

[39] Tr. 101–02.

[40] Although Det. Boyd testified that the laboratory analysis report provided by the Government set forth the results of materials seized from the motor home as well as the residence, a comparison of the itemized materials by the agency numbers assigned in the lab report (which correspond to item numbers in the search warrant return) indicates that only the motor home contraband results may be detailed in the report submitted in evidence. *Compare* Gov't Ex. 8, *with* Gov't Ex. 4. It is possible that because the crime lab's own item numbering, the system of which appears to be assigned by test batches, begin at ''06'' that the first five item numbers corresponded to tests of substances found in the residence. When pressed on the issue at the hearing, Boyd indicated that he was ''not 100 percent'' sure that the lab report contained results from both searches. Tr. 104. Although afforded the opportunity to clarify any ambiguity regarding the report during the proceedings, neither the witness nor the Government took any steps to do so. Tr. 104–06. When pressed on whether the suspected contraband seized from the residence tested positive for controlled substances, Hale could only represent that he ''would assume they were.'' Tr. 235. Interestingly the Respondent's guilty pleas (and corresponding stipulation) relate only to the illicit substances he was transporting (in the motor home), not the items seized at his residence. Stipulation B; Gov't Exs.9–11. In any event, inasmuch as the Respondent has not contested that illicit controlled substances were seized from both locations, and in light of Mrs. Freesemann's testimony that their master bedroom closet did, in fact, contain illegal drugs, Tr. 459, the potential discrepancy is of little moment in these proceedings. Significantly, this portion of Mrs. Freesemann's testimony was included in that segment that was subject to a Government objection at the hearing, which was renewed (for emphasis?) in its closing brief. Gov't Br. at 21 n.2.

[41] Also seized in the search was a loaded firearm in the closet of the home's master bedroom and samples of medications commonly-known to be used to treat erectile dysfunction (ED) that were seized from the trunk of a vehicle parked in the home's garage. Tr. 231, 237–38. No illegality has been alleged or established regarding the ED medications or the gun found in the Respondent's bedroom. The Respondent testified that the weapon is registered to his father, Tr. 230–31, and Det. Hale did not recall whether the weapon was returned to the Respondent. The testimony about these seized items was admitted in the interest of completing the narrative connected to the search, but this evidence does not impact on the determination of whether maintaining the Respondent's COR is in the public interest.

[42] While some minor inconsistencies are noticed between Det. Hale's testimony and other witness testimony or documentary evidence, such as whether the standing safe inside the Freesemann's bedroom closet was unlocked or required him to obtain the combination from the Freesemanns, Tr. 242–43, 274, or whether the gun was registered to the Respondent or his late father, the nature of these inconsistencies are sufficiently tangential and inconsequential that they do not materially affect the credibility to be attached to the testimony.

elected to call him to testify as part of its case-in-chief. Tr. 244. The Respondent testified that he has been a physician for the last seventeen years and is presently licensed in California. Tr. 246–47. The Respondent described his rural roots, and how, after an initial, unsuccessful college experience, and following stints working as an oil-field roustabout and an apprentice electrician,[43] he returned to academia, completed his undergraduate degree at the University of California at Berkely, graduated from Georgetown Medical School, and completed his internship and residency at the Oregon Health Sciences University. Tr. 246, 282–84.

According to the Respondent, in 1996 (the same year he was admitted to practice medicine in California) he was hired by a Bakersfield physician. Tr. 248. The Respondent explained that he and several other doctors entered a joint venture to purchase his employer's practice, where he was engaged in the practice of internal medicine until the time of his current difficulties. Tr. 248, 252, 256. He described himself as having been ''a high profile physician in [his] community of Bakersfield,'' having held the position of hospital chief of staff until the adverse press generated by his legal difficulties made the continuation of his medical practice untenable and resulted in the sale of his portion of his practice back to his partners. Tr. 257. He testified that he has never been sued for medical malpractice and prior to the transgressions that are the subject of these proceedings, he had never been subject to disciplinary action by the Medical Board. Tr. 282–83.

The Respondent also described a high level of prestigious activity and achievements that he attained in the medical profession, including appointments as a local delegate to the California Medical Association for ten years, board member and former president of his county medical association, and board member at San Joaquin Hospital, as well as appointments demonstrating increasing levels of responsibility at Mercy Hospital, to include service on the credentialing board, medicine chairman, vice chief of staff, and ultimately chief of staff. Tr. 288–89.

The Respondent's testimony presented an interesting window into the extent of his perceived need for the COR that is the subject of these proceedings. The Respondent explained that the primary focus of his internal medicine practice was elder care, and although he has maintained a COR to prescribe (not dispense) controlled substances, he actually prescribes controlled substances to his patients on a ''[v]ery, very low'' basis. Tr. 251. In a bizarre exchange, the Respondent, a physician with seventeen years of internal medicine practice and former hospital chief of staff, revealed that he believed that he needed a DEA controlled substance COR to prescribe all medications, not just scheduled controlled substances.[44] Tr. 249–52. The Respondent indicated that it his (incorrect) ''understanding [that] you need a [COR] even to prescribe antihypertensive medications or cholesterol or diabetes medications.'' Tr. 250.

The Respondent denied ever doing illegal drugs at any point in his life through high school to the present day.[45] Tr. 284–85, 289.[46] According to his testimony, between building a practice and raising young children, the ten years following his arrival in California were busy ones for him and his wife. Tr. 286–88. The Respondent testified that the reintroduction of a former high-school friend of his wife into her life was the catalyst for powerful life changes for the Freesemanns. Tr. 289–91. He testified that Mrs. Freesemann's new-old friend began inviting the couple out to Los Angeles for nights of dancing, dinner, and shows. Tr. 289. Overnight trips to the city followed, as did, at least by the Respondent's estimation, a variety of relationship rekindling. Tr. 291, 294. Coincidentally at this time, the Respondent was more available to spend time with his wife, including time in Los Angeles for overnight trips away from the children, whereas during the preceding decade the Respondent worked too frequently and Mrs. Freesemann was so busy taking care of their children that the Freesemanns ''didn't have much of a relationship.'' Tr. 289–91. During this period in which the Respondent testified that ''[he] found that [they] were getting closer as a couple during that time [like when they] first started dating,'' Tr. 291, the Respondent testified that he and Mrs. Freesemann began meeting more people through successive chain introductions, much like a ''Brownian Motion,''[47] until they had a regular group in which to socialize, Tr. 289–92.

By the Respondent's account, it was during this period of dancing, clubbing, and reconnecting that Galvan entered the picture. Tr. 258–59, 295. Apparently the favor of an introduction to Galvan was effected in December of 2007 by another physician's wife, who introduced him as a club promoter at ''The Replay'' in Bakersfield who could provide VIP table access and bottle service, as well as parking. Tr. 258. Galvan was someone with whom the Respondent admitted to moderate, intermittent contact,[48] but who would periodically visit at his home with Mrs. Freeemann while the Respondent was elsewhere. Tr. 297–99.

The Respondent further testified regarding his wife's behavior and the likelihood she was abusing illicit controlled substances during the period of their shared social boom. The Respondent admitted being suspicious that Mrs. Freesemann was using drugs, in particular because of her behavioral changes. Tr. 293–94. For instance, the Respondent noted ''infrequent episodes'' where people would go to the bathroom, including his wife, and they would come back more excited, their pupils would be more dilated which he could discern despite the low light level, or exhibited other suspicious behaviors. *Id.* The Respondent suspected enough of his wife to confront her on multiple occasions about illicit drug use, but he testified that she would either deny it or claim it was a ''one-time thing.'' Tr. 276–77. However, the Respondent also testified that his wife's drug use caused certain changes in her

[43] The Respondent testified that he attained journeyman electrician status before returning to college. Tr. 284.

[44] The Respondent also indicated that he believed that he needed to maintain his COR for other reasons, such as being able to prescribe some controlled substances on a brief basis, and because some potential employers have an interest in minimizing referrals to specialists. Tr. 255.

[45] Some conflicting evidence in this regard was produced through the testimony of Det. Boyd when the Government recalled him as a witness. Det. Boyd had previously elicited a statement from Michelle Hori to the effect that she observed the use of ecstasy sometime in 2005. Tr. 360. Boyd testified that Hori had related this information about the Respondent during a conversation with him after receiving *Miranda* warnings and that although the results of the interview may have been contained in a report, no statement signed by Ms. Hori was ever prepared. Tr. 146, 361. Even if it were conceded, *arguendo,* that Ms. Hori provided this information to Det. Boyd, the vague nature of the statement, the relative remoteness in time of the alleged drug use, and the broad time spam alleged (sometime in 2005), coupled with the inability to cross examine Ms. Hori, sufficiently undermine this evidence below a point where it can be, should be, and is useful for any fact relevant to these proceedings. Accordingly, this evidence has been afforded no weight in this recommended decision.

[46] The Respondent also testified that as a condition of his probation imposed by the Medical Board, he is drug tested a minimum of four times per month. Tr. 314.

[47] The Respondent explained a Brownian Motion to be ''the random movement of molecules that's spread out in gas, that causes all the other molecules around it to interact.'' Tr. 292.

[48] The Respondent admitted to approximately fourteen social interactions with Galvan at clubs or in the Freesemann home over a nine-month period. Tr. 297.

that he found more ''attractive,'' such as how she was more prone to stay up late and match his high energy level despite her former routine 9 p.m. bedtime, and she had more enthusiasm.[49] Tr. 294.

The Respondent testified that he loaned Galvan $1,000.00 in March of 2008 (five months prior to the night he was detained by the police) at the behest of Mrs. Freesemann. Tr. 303. It was the Respondent's understanding that he was loaning Galvan money at that time because the latter needed funds to pay his rent, and the Respondent expressed surprise that the borrower actually returned the money several weeks thereafter. Tr. 303–04, 327. The Respondent indicated that no interest was paid by Galvan for the loaned money. Tr. 327.

The Respondent acknowledged that he provided Galvan with another $1,000.00 on August 26, 2008 at Valley Gun. Tr. 260. However, (unlike the previous money which he understood to be a loan) he testified that he had no idea why Galvan was the beneficiary of this largess. Tr. 261, 323. Although the Respondent maintained that he accepted his spouse's tasking to present Galvan (whom he alternately described as ''a surly-looking guy,'' a ''scary-looking character, and a ''shady character'') [50] with $1,000.00 at a prearranged location away from his office without so much as asking her why he was doing it or for what purpose the money was being tendered, he conceded that at the time, he ''had [his] suspicions.'' Tr. 262, 324. When pressed about the nature of his ''suspicions,'' the Respondent stated that he ''suspected that, given [Galvan's] appearance, given [his] wife's behavior, given other things, that possibly there could be controlled substances involved.'' Tr. 271.

The Respondent's dual acknowledgements that he believed that his wife was likely abusing controlled substances and that Galvan was an unsavory character render his position that he assumed that he was presenting Galvan with a rent-money loan on the day that the Freesemanns were headed on vacation singularly implausible. Factoring in the Respondent's impressive educational pedigree and his impressive professional accomplishments and qualifications, his assertion that ''[a]ll I can claim is to be the stupidest doctor at the time'' [51] is unpersuasive.

The reasons for which Valley Gun was chosen as a meeting location, according to the Respondent's testimony, despite its walkability across the street from the Respondent's practice, was because Galvan looked ''surly * * * [with a] shaved head [and] tended to dress a little bit more game-looking [and] had big arms with tattoos[,] [so] he's kind of a scary-looking character [so the Respondent] didn't want him walking in the front office of [his] very conservative regular medical practice;'' Galvan and the Respondent met at Valley Gun the last time the Respondent gave him cash; and lastly because it was close. Tr. 263–64. The Respondent also testified that they chose to meet at Valley Gun rather than at the bookstore, where he drove to afterwards, because driving to the bookstore was an impromptu afterthought following his conversation setting up a meeting with Galvan. Tr. 335. If the Respondent was, as he claims, gullibly providing money to a friend of his wife for unknown, but presumably benign reasons, and was intending to shop at a bookstore, it would be more likely that their meeting, if it could not take place at the Respondent's office, would be at the bookstore. The meeting at nearby gun shop with both men (neither of whom had business to conduct at Valley Gun) arriving and departing within minutes of each other, but not together, possesses a clandestine quality that undermines the Respondent's assertion that the encounter and transaction was designed (by the Respondent) for a legitimate purpose.

Consistent with the conversations overheard by the police on the cell phone tap, the Respondent testified that on the day he was detained by police, he and Mrs. Freesemann were headed out of town in their rented motor home to the Burning Man Festival in Nevada, a twelve-hour drive. Tr. 305–06. He testified that the Burning Man Festival is an art festival that occurs annually in a desert near Reno, Nevada that attracts crowds of 45,000 people who make camp. Tr. 299. The Respondent represented that sharing and trading is a significant feature of the festival, and that he intended to make and share grilled-cheese sandwiches there. Tr. 300. He testified that he took a loaded firearm with him in case he encountered snakes. Tr. 310, 341–43. Suffice it to say that the Respondent's account of why he brought a loaded handgun to the 45,000-person strong Burning Man Festival is not among the more plausible aspects of his testimony. Regarding the illegal drugs found in the motor home, the Respondent testified that he had no actual knowledge of anything illegal in vehicle. Tr. 272. However, he also testified that he should have known there were controlled substances on board, and that any reasonable person would have known, in light of Galvan's appearance earlier in the evening, that there were drugs in the motor home. Tr. 337.

The Respondent similarly denied any knowledge of the illicit substances found in the closet of his bedroom. Tr. 273. While the drugs were found in a black Pelican case similar to valises owned by the Respondent, the case which contained the drugs was located within a home safe that is always locked, the combination for which was known only to Mrs. Freesemann (although the Respondent testified that he knew where in the house to find the combination code). Tr. 273–74.

The Respondent testified that he accepted the plea bargain offered by the prosecution in his criminal case to spare his wife the experience of incarceration and to ensure that she could remain at home to mind their children. Tr. 311. He imputed political motives to the criminal prosecutor. Tr. 336. He likewise assigned the responsibility for the decision to accept the plea bargain and enter the plea to advice he received from his criminal defense attorney. Tr. 338. The Respondent stated that he entered the no-contest plea to attain the benefit of the plea bargain. Tr. 338.

The Respondent also took pains during his testimony to point out that after conducting its own evaluation, the probation authorities established that he was not a drug-treatment candidate and determined that substance-abuse classes were not needed. Tr. 312. He further stated that the drug testing mandated by the Medical Board has been conducted thus far without adverse incident. Tr. 312, 314.

During his testimony, the Respondent acknowledged that he and his wife have discussed the night they were taken into custody and the events that led up to that unfortunate event. Tr. 328. The Respondent indicated that his wife has since informed him that the $1,000.00 that he provided to Galvan at noon on the date in question was for the purpose of purchasing mushrooms (psilocybin). Tr. 328–29, 345. Illogically, he also testified that when Galvan appeared at his motor home and residence on the evening of the day he was paid, he did so without delivering any mushrooms, and was warmly received by himself and Mrs. Freesemann. Tr. 329.

The Respondent presented both documentary and testimonial evidence on his own behalf. Included in his

[49] The Respondent also testified that Mrs. Freesemann would be ''overly excited at times, overly sad at times, and overly hyper at times,'' precipitating conversations over her suspected drug abuse. Tr. 272.

[50] Tr. 261–62, 264–65.

[51] Tr. 332.

documentary presentation, the Respondent introduced a certified letter of standing dated February 17, 2010 regarding his California medical license. Resp't Ex. 2. The letter of standing unhelpfully declares that the Respondent's state medical license is current and no disciplinary action has been taken against it. *Id.* However, this obviously dated information is squarely contradicted by the decision of the California Medical Board, effective November 19, 2010, revoking the Respondent's license, staying the revocation, and placing the Respondent on probation for seven years under certain specified terms and conditions. Gov't Ex. 15 at 6; Gov't Ex. 16; Resp't Ex. 25 at 1, 7.

The Respondent provided numerous letters of support, the overwhelming majority of which were obviously prepared for and tendered to the prosecutor in the state criminal matter in an effort to inspire leniency on the Respondent's behalf regarding the disposition of that case. Resp't Exs. 4–24; Tr. 344–45.[52] One letter, written by Tony M. Deeths, M.D., attests to the Respondent's professional success, high caliber of medical skill, intelligence, and contribution to the community during the twelve years Dr. Deeths has known the Respondent. Resp't Ex. 4. Dr. Deeths opines that the community would suffer if deprived of the Respondent's ability to continue to practice medicine. *Id.* Interestingly, in his letter, Dr. Deeths admits that he is unfamiliar with the Respondent's ''legal problems,'' but postulates (contrary to the Respondent's position that he has no substance abuse or dependence issues) that the Respondent's substance abuse issues were born from the high stress that comes with practicing medicine. *Id.* The weight that can be attached to this letter is significantly undermined by the fact that the Respondent rejects the underlying premise that he deserves clemency based on a substance abuse issue.[53] Hence the letter does not provide strong evidence opposing the revocation sought by the Government.

V. Amirpour, M.D. authored a pithy letter indicating he has practiced medicine for twenty-four years and has known the Respondent for at least twelve of those years. Resp't Ex. 6. Dr. Amirpour's stated opinion is that the Respondent has helped the community including San Joaquin Hospital, that he trusts him as a physician, that the Respondent ''did a great job treating people,'' and Dr. Amirpour hopes that the Respondent's service to the community will be considered by the criminal court in his sentencing.[54] *Id.* Like the other letters, Dr. Amirpour professes no knowledge about the misconduct that was at the root of the Respondent's criminal conviction and forms the basis of these proceedings. Although Dr. Amirpour touts the level of the Respondent's practice, there is no indication that he has formed an opinion regarding the Respondent's prescribing practices or that he has a basis to have such an opinion (such as shared patients). The letter does not provide a great deal of insight into any matter that could be helpful toward reaching a disposition of the present case.

A hand-written letter signed by Shawn C. Shambaugh, M.D. is also included in the record. Resp't Ex. 8. In his letter, Dr. Shambaugh relates that he has known the Respondent during this last decade in a variety of professional medical capacities, including the treating of common patients. Resp't Ex. 8 at 1. Dr. Shambaugh states that he has found the Respondent to be ''continuously devoted to improve the quality of care the physicians and staff delivered to patients'' and that he ''consistently exceeded the community standards in the level of quality care he delivered to his patients,'' earning frequent patient praise regarding ''his commitment to their overall health and well[-]being.'' *Id.* at 1–2. The strength of Dr. Shambaugh's letter is enhanced by the circumstances under which he interacted with the Respondent. He worked with the Respondent on several medical staff committees while Shambaugh was hospital chief of staff and the two physicians apparently shared in the care of common patients. *Id.* at 1. While there are no specific references to Dr. Shambaugh's knowledge or awareness of the Respondent's prescribing practices, this letter is generally supportive of the Respondent's competence as a physician.

A criminal clemency letter by Ricardo R. Vega, M.D. is also included in the record. Dr. Vega indicates that he and the Respondent have shared patients and that, in his view, the Respondent is a ''superior physician'' whose ''competence, compassion and ethics as a physician are exemplary.'' Resp't Ex. 15. Dr. Vega characterizes the Respondent's ''patient care to be both thorough and above the standard of care.'' *Id.* Although the letter does not specifically refer to the Respondent's prescribing practices, Dr. Vega's experience acting as a pulmonary consultant to the Respondent's patients does provide a basis for his favorable professional opinion of the Respondent's medical acumen. Interestingly, as discussed in her testimony *infra* at 37, Mrs. Freesemann testified that it was Dr. Vega's wife, Michele Vega, who introduced the Freesemanns to Galvan. Tr. vol. 2, 447, Dec. 15, 2010. Michele Vega was also present during the daytime visit to Mrs. Freesemann at her home when Galvan's cousin raised the issue of Galvin's drug-brokerage services. Tr. 448–49.

Lawrence N. Cosner, Jr., M.D. who previously worked with the Respondent on the board of the Kern County Medical Society, also supplied a letter for the Respondent for use during his criminal sentencing. Resp't Ex. 11. Of note, Dr. Cosner considers the Respondent ''honorable, sincere and worthy of trust and respect,'' while admitting he ''know[s] nothing of [the Respondent's] current troubles, and wrote the letter ''solely because [he] consider[s] [the Respondent] a friend and colleague, and because he said he needed help.'' *Id.* The letter does not address the Respondent's prescribing practices and does not provide a basis to evaluate the author's level of knowledge about the Respondent's medical skills or his handling of controlled substances, but is supportive of the Respondent as being honorable, sincere, and worthy of respect.

Tonny Tanus, M.D. also provided a criminal clemency letter on the Respondent's behalf at the Respondent's request. Resp't Ex. 13. Dr. Tanus states that he has known the Respondent for over a decade in settings ranging from professional to social. *Id.* Dr. Tanus writes that in situations where both his and the Respondent's family were present, the Respondent never behaved improperly. *Id.* Dr. Tanus expresses that he ''was shocked to learn about the charges, because [he has] never seen [the Respondent] being under the influence.'' *Id.* The letter is somewhat undermined by lack of any stated foundation for a basis to evaluate the

[52] An inspection of Respondent's exhibits four through twenty-four, including the dates of the letters and the addressees, makes it evident that every letter was prepared as a character reference on the Respondent's behalf for consideration by the criminal court or the Kern County District Attorney's Office.

[53] The state charged the Respondent with various counts of possessing and transporting controlled substances, conspiracy related to same, conspiracy to sell controlled substances, and carrying a loaded firearm in a motor vehicle. Gov't Ex. 9 at 2, 4, 7–13; Gov't Ex. 11 at 4. None of the charges or allegations against the Respondent relate to substance abuse.

[54] Although Dr. Amirpour's letter states that it is his ''hope that [the Respondent's] service to the community will be forgotten,'' Resp't Ex. 6, it is reasonable, from the context of the balance of the letter, that the word ''not'' was inadvertently omitted from the sentence.

Respondent's professional work as a physician, and more fundamentally, by its underlying subtle assumption, consistently denied by the Respondent, that substance abuse was at the root of his misconduct and resultant criminal case.[55]

James B. Grimes, M.D. authored a letter, stating that he knows the Respondent on a personal and professional basis. Resp't Ex. 14. He writes that the Respondent ''is a very good person, who apparently made a mistake,'' and who ''has suffered greatly due to negative publicity and loss of his medical practice.'' *Id.* Dr. Grimes advocates taking into consideration the ''tremendous amount of good'' that the Respondent has provided to the community and because the community ''is far better off having [the Respondent] remain among us.'' *Id.* Although Dr. Grimes opines that he ''would feel very confident having [the Respondent] as [his] personal physician,'' *id.,* the letter does not state that he and the Respondent have had patients in common or that he has any particular basis for his professional opinion. Still, the letter stands as a letter of support from a fellow member of the medical community, albeit offered for support to mitigate a criminal sanction at a different forum.

A letter, provided by area podiatrist Mark F. Miller, DPM, asserts that the author knows the Respondent and his wife for over a decade professionally and personally. Resp't Ex. 17. The letter, under the subject heading of ''character reference,'' does not provide a professional opinion regarding the Respondent's medical ability or prescribing practices, but offers support as a friend would offer regarding the Respondent's criminal case. *Id.* Accordingly, little weight can be afforded this letter under the public interest factors in consideration of whether the Respondent should retain his DEA COR to handle controlled substances.

The Respondent also provided two letters written by area dentists who supported him in his criminal case. One succinct note, provided by Peter Bae, D.D.S., characterizes the Respondent as a ''community leader in [m]edicine,'' ''very kind,'' and ''act[s] with utmost professionalism.'' Resp't Ex. 12. The Respondent knows Dr. Bae as a patient and as members together in a country club, and Dr. Bae ''hope[s] and feel[s] confident that whatever decision is handed down during [the criminal] sentencing [that the Respondent] will emerge from this ordeal to be a better citizen and physician in our community.'' *Id.*

A second dentist, Thomas A. Gordon, D.D.S., also provided a letter to the Respondent to assist him in attaining leniency in the criminal case. Resp't Ex. 7. Dr. Gordon relates that he and his wife encountered the Respondent and Mrs. Freesemann while the four volunteered together at ''Couples Against Cancer.'' *Id.* While Dr. Gordon declares knowing the Respondent for over a decade, he readily acknowledges that he has no knowledge of the Respondent's personal life. *Id.* In his carefully-worded letter, Dr. Gordon guardedly asserts that he ''never heard a negative comment regarding [the Respondent's] professional life and in fact, believed [sic] him to be an accomplished and dedicated physician and contributor to the Bakersfield community.'' *Id.* Since Dr. Gordon's written assessment of the Respondent's professional conduct stems only from an absence of negative comments, not shared patients, experience, or any other rational professional basis, and he eschews any knowledge about the Respondent's personal life, the letter sheds no light on the Respondent's prescribing practices and scarce little light on any other issue that must be decided in connection with a disposition in this case. The letters from the two dentists are supportive letters from other medical professionals who know the Respondent either personally or by reputation and generally wished him some level of leniency in the disposition of his criminal matter. However, they are of little value under the public interest factors that must be balanced in making a final determination regarding the status of the Respondent's COR.

Numerous letters penned by personal friends and acquaintances prepared in connection with the criminal case were also offered by the Respondent and received into the record. One such letter is from personal family friend and aspiring film producer, John Burgess. Resp't Ex. 18. While Mr. Burgess fully details the nature, length, and extent of his personal relationship with the Respondent for the criminal court, the letter, in its best light, is an affirmation of how good a friend the Respondent has been to Mr. Burgess. Mr. Burgess made a point to communicate his view to the criminal prosecutor that the Respondent and his wife are ''not criminals,'' that they ''contribute much to society and regularly give back to their community,'' and that the Respondent has ''a passion for healing and helping others.'' *Id.* In his letter, Burgess refers to the Respondent's ''arrest and prosecution'' as ''misunderstandings.'' *Id.* Unfortunately, the strength and length of the Respondent's friendship with Mr. Burgess is not dispositive of any issue that must be decided in this recommended decision.

Another personal and family friend, Daniel J. Pardoe, also provided a letter for the Respondent to be used in connection with the criminal case. Resp't Ex. 19. Like Mr. Burgess's letter, Mr. Pardoe's letter sets forth the nature and length of his friendship with the Respondent in considerable detail, and those personal friendship-related details are the only elements of the submission that appear to be based on the author's personal knowledge. *Id.* There is very little in this obviously well-intentioned criminal clemency letter that can be used to reach a disposition of the present case.

A letter written by Kevin Fiori, another personal friend and patient of the Respondent who knew him for over a decade, which is also similar to the letters written by Mr. Burgess and Mr. Pardoe, bears testament to the type of person the Respondent is, yet candidly admits all he knows about the Respondent's criminal case is what he read through online news articles. Resp't Ex. 20. It therefore lacks foundation and relevance to the public interest factors that must be considered in this case.

Similarly, David Harb, another personal friend of the Respondent, authored a letter in which he relates his experience with testicular cancer and the commendable emotional support that the Respondent provided him. Resp't Ex. 21. Again, this letter speaks well of the Respondent's attributes as a friend, but lacks any indication of the Respondent's prospective ability and responsibility to handle controlled substances under a DEA registration in compliance with federal and state law. Accordingly, it is of limited value in evaluating the issues in this case.

A letter drafted by Jessica Wood, another personal friend of the Respondent's family, discusses various members of the Respondent's family, extols the virtues of the family members as friends, but adds very little to the analysis here. Resp't Ex. 23.

The same observations can be made of a letter provided by long-time Freesemann family friend Toni Swanson. Resp't Ex. 24. Like other letters in the record, Ms. Swanson uses a considerable portion of her letter to plead with the district attorney to be merciful, and implicitly requests the district attorney not seek incarceration of the Respondent. *Id.* 1–4. It is

[55] *See supra* note 53.

similarly unhelpful to these proceedings.

The Respondent also provided two letters that reflected non-medical business relationships. One of these is signed by Derek Holdsworth, president of KSA Group Architects, the firm which designed the Highgrove Medical Group's building. Resp't Ex. 5. Mr. Holdsworth's letter indicates that his contact with the Respondent ran the course of a two-year building period where the two collaborated on issues related to the design and construction of the Respondent's building. *Id.* Although Mr. Holdsworth states that he ''found [the Respondent] to be the ultimate professional, fair, [and] very knowledgeable about the medical field,'' *id.,* there is nothing in the letter or the record that would supply a basis for Holdworth's opinion regarding the breadth of the Respondent's medical knowledge. Mr. Holdsworth did indicate that he thought the Respondent ''was very concerned about the impact of the proposed new building on his patients, the community and specifically downtown Bakersfield.'' *Id.* Boiled down to its essence, the letter provides commentary by a local architect on his experience with the Respondent during a mutually-beneficial business transaction. Hence, this letter is not particularly helpful to the Respondent's case.

Another non-medical business relationship letter was penned by George R. Smith, Jr., president of a general contracting company. Resp't Ex. 9. Similar to the letter by Mr. Holdsworth, the letter describes how Respondent and Smith became acquainted through a business arrangement in which the Respondent's medical practice built the Highgrove Medical Clinic. *Id.* In the letter, Mr. Smith compliments the Respondent's business acumen and ethics, but also attests to his personal experience as a patient of the Respondent. *Id.* According to Smith's letter, the Respondent spent some period of time as his general care practitioner while Mr. Smith endured some ''serious health problems'' and was helpful in assisting him to procure medical services. *Id.* Smith's letter includes his opinion that the Respondent's ''medical knowledge and compassion saved [his] life,'' and that the Respondent's ''problems'' are ''out of character for him.'' *Id.* While the opinions borne from Mr. Smith's business experience with the Respondent do not assist any in evaluating the issues in this case, and while this letter lacks observations and judgment relating to the Respondent's prescribing practices or responsibility handling controlled substances, it does generally provide support as to the Respondent's bedside manner as a health care practitioner.

Letters written by Army Feth, Lara Riccomini, and Jill White are primarily focused on supporting the Respondent's wife at her sentencing hearing and are of negligible value in reaching a disposition in the present case. Resp't Exs. 10, 16, 22.

In summary, the letters provided by the Respondent were all addressed to the district attorney who prosecuted his criminal case and all sought some form of favorable consideration related to the exercise of criminal prosecutorial discretion. The letters were all from 2009, and while some contained some limited reference to issues that arguably relate to varying extents to the issues in this administrative case, not one letter addresses the issue of whether the Respondent can or should be entrusted with a DEA COR. To the extent that any of the numerous doctors, dentists, business acquaintances, and one patient who authored letters of support had an opinion or a basis for an opinion related to whether the Respondent should continue to have authority to handle controlled substances, none of the submitted letters provided that input. The letters submitted by the Respondent, while deemed credible, are of little practical value in reaching a determination regarding whether revocation of his COR is in the public interest.

Although aspects of his defense were presented through the testimony elicited at the time he was called as witness by the Government, the Respondent's testimonial case also included the testimony of his wife, Mrs. Shelly Freesemann, who supplied details as to the duration and strength of their marriage, relationship, and family life. Tr. 424–25. She testified that she has a bachelor's degree in biological sciences from the University of California at Berkeley, is taking some nursing classes at Taft College, and has applied for admission to the nursing program at California State University at Bakersfield. Tr. 426. Mrs. Freesemann testified that she worked in various occupations during the Respondent's medical training until 1996, and that since about 2000 she has been working as a yoga instructor. Tr. 427–31.

Regarding her history of drug abuse, Mrs. Freesemann testified that she smoked marijuana in high school a couple times per week one summer with friends. Tr. 431–32. She thereafter refrained from illegal drugs through her college years and courtship-turned-marriage to the Respondent until the summer of 2006 when she became reacquainted with a high-school classmate, Karen West (Karen). Tr. 432–33, 436–37. The Respondent, according to Mrs. Freesemann, has no interest in using illegal drugs and rarely drinks alcohol. Tr. 435.

After a few lunch dates with re-discovered friend Karen, the two former schoolmates began stepping out at night. Tr. 437. While the Respondent was on a business trip, Mrs. Freesemann accepted an ecstasy pill from Karen and ''just loved it'' because it gave her a ''thrill, like wow.'' Tr. 437–38. Mrs. Freesemann testified that thereafter she was enraptured in a ''whole other underworld'' in which she would be invited to many parties, be introduced to lots of different people, attend events, and in her excitement, became perpetually preoccupied with planning the next overnight weekend to Los Angeles and meeting new people, including celebrities. Tr. 439–40. Through Karen, Mrs. Freesemann became part of a clique whose activities consisted of yoga, personal training, working out, and frequenting the night life while recreationally abusing controlled substances. Tr. 441–42.

Mrs. Freesemann testified to using ecstasy, cocaine, methamphetamine, and marijuana. Tr. 442. She also testified to experimenting with drugs to regulate the effects of her drugs of choice: Cocaine and ecstasy. She would employ marijuana to ''bring [her] down a little bit'' to counteract the hyperactivity caused by ecstasy. Tr. 450. She also used crystal meth (methamphetamine) regularly toward the end of her party sessions to ''wake [her] up if [she] had been partying too long and [she] needed to straighten up.'' Tr. 466. Mrs. Freesemann further testified that because she knew the Respondent would not approve of her drug use, if he was around she would conceal her activities by using in a bathroom or some other room out of his sight. Tr. 442–43. Other than the newfound excitement and attention borne of her drug abuse, Mrs. Freesemann testified that she liked the change in lifestyle; she enjoyed the power to resist fatigue, partying all night rather than retiring to bed early, as had been her custom. To enable access to her new habit, Mrs. Freesemann arranged overnight babysitters or had her mother, mother-in-law, or sister-in-law watch her children. Tr. 443–44.

The Respondent's wife testified that she and her new group of revelers procured illicit drugs by pooling their money and purchasing them from a drug dealer known to Karen. Tr. 451. However, in December 2007 another

friend, Michele Vega (Michele),[56] introduced Mrs. Freesemann to Galvan at The Replay nightclub in Bakersfield as a friend, promoter of the club, and one who did side jobs for Michele. Tr. 444–48. It was about six weeks after this fateful introduction, during a visit to the Freesemann home by Michele, Galvan, and his cousin, that Mrs. Freesemann learned that Galvan would be a willing provider of illegal drugs. Tr. 448–49. Thereafter, Mrs. Freesemann began purchasing drugs from Galvan, primarily ecstasy and cocaine. Tr. 450. What made Galvan an attractive seller was that she could get a lot more product for her money than her sources in Los Angeles. *Id.* Galvan also included what seemed to Mrs. Freesemann as freebies; for instance, she would furnish him some monetary amount and ask for whatever the equivalent would be in cocaine, and in turn he provided her cocaine, and some methamphetamine would tend to just ''show up'' with the order as a bonus. Tr. 466. Mrs. Freesemann testified that whether she was purchasing drugs from Galvan or other sources, she knew she could only get certain substances in certain places, so she would accumulate them and squirrel them away with a ''pack rat'' mentality, concealing them from the Respondent, keeping some and sharing some with friends. Tr. 443, 471.

Mrs. Freesemann also testified regarding the controlled substances found in the motor home. In her testimony she claimed responsibility for packing the vehicle with the drugs, and testified that the Respondent had no knowledge of them.[57] Tr. 458. Regarding their destination on the night they were detained, the Burning Man Festival, Mrs. Freesemann acknowledged that in addition to the artistic attributes of the festival that were expounded upon by her husband, it is a festival with ''a lot of drugs.'' Tr. 468.

Mrs. Freesemann admitted that she could never personally use all of the drugs found in the van over the course of the weeklong Burning Man Festival. Tr. 471. As discussed, *supra,* she indicated that the Respondent had no interest in using drugs. Tr. 435. When asked what her plan for the large quantity of contraband was, the Respondent's wife testified that it was:

> To party and do what I could do and then take it back home, and keep it a secret and just—it was beyond my control at that point, having just more than I could deal with, but not knowing quite what to do with it.

Tr. 472.

Regarding the $1,000.00 that the Respondent paid to Galvan, Mrs. Freesemann testified that it was dispensed to purchase a quantity of mushrooms (psilocybin) to take with her to the Burning Man event because ''it'd be fun to do mushrooms at Burning Man'' and it would be ''[j]ust a different drug to try.'' Tr. 476–77. This version of events is difficult to reconcile with both Mrs. Freesemann's acknowledgement that the stash of illicit drugs already secreted in the motor home (with additional reserves remaining behind in her bedroom closet) was more than she (the only drug-using Freesemann) could inflict upon herself during the planned week-long sojourn,[58] and the fact that a quantity of psilocybin was located and seized in the motor home. Gov't Ex. 4 at 2. In short, Mrs. Freesemann had plenty of drugs to use at the festival and even had mushrooms.

The details of the money transaction between the Respondent and Galvan are similarly lacking in plausibility. According to Mrs. Freesemann's account, her yoga classes were only taught in the morning,[59] yet she had her husband (who was working during the day) deliver $1,000.00 to Galvan for mushrooms because she was picking up a motor home for a trip that was to commence in the evening. This occurred during a time in her life where she testified that she suddenly found herself with more time on her hands than she was used to because her children were getting older. Tr. 437, 440. Notwithstanding the flurry of text messaging that preceded the transaction and the special arrangements that the Respondent made with Galvan to get him his ''paperwork'' at noon on the date of the Freesemanns' departure, it is Mrs. Freesemann's position that the surveillance officers were incorrect in their observation that Galvan came to her home equipped with a grapefruit-sized package on the evening of the day he got his money and left without that package. Tr. 474–76. By her account, she had her husband pay Galvan $1,000.00, and when the latter visited the couple immediately prior their departure, he delivered nothing but a handshake to the Respondent and a hug to Mrs. Freesemann—no mushrooms. Tr. 476. This occurred, under Mrs. Freesemann's version, without any manner of objection or even inquiry on her part concerning the missing drugs. Tr. 475–76.

It is far more plausible that one or both of the Freesemanns possessed safety concerns associated with meeting Galvan (who Mrs. Freesemann acknowledges is a drug dealer)[60] and determined that the Respondent was better suited for the potentially dangerous task at a public place away from his medical practice. Considerations associated with safety are almost certainly the more reasonable explanation concerning the Respondent's decision to bring a handgun with him to the Burning Man Festival than his almost laughable contention that the intended purpose of the weapon was to protect himself from the sort of snakes that slither upon the desert floor. It is likewise more consistent with the evidence presented from both sides that Galvan received his money from the Respondent and delivered illicit drugs in a grapefruit-sized package to the Freesemanns just in time for their departure. Any argument that the Respondent harbored any doubt that he was engaged in an illegal transaction involving Galvan is effectively undermined by Galvan's reference to the money he was to get as ''paperwork'' in his phone call with the Respondent. Likewise, the arrangements the two men (involved in a developing relationship) made to see each other at the Respondent's home that night provided insight into the true nature of the transaction. Money tendered for legal purposes can be referred to by its true name, not a euphemism designed to evade detection, and a meeting so temporally close to a cash exchange under the circumstances presented here was most assuredly arranged and conducted to provide the merchandise purchased; in this case, more of the illicit drugs that the Respondent well knew his wife had become dependent on.

The Respondent's depiction of himself as an unwitting dupe to his wife's drug-dependent cleverness is likewise unpersuasive. He testified that he had already deemed Galvan to be a shady character and was sufficiently concerned about his physical appearance that he was unwilling to have him materialize near his medical practice. This is particularly remarkable in the context that a medical practice (which in this case was located away from the Respondent's home) is generally a location where it is commonplace for new, never-before-seen patients to appear for their first appointments on a regular basis without

[56] Michele Vega's husband, Dr. Ricardo R. Vega, authored a criminal clemency letter on the Respondent's behalf for use while his criminal case was pending. *See supra* p. 29.

[57] Mrs. Freesemann also testified to owning the pink pouch and yellow Pelican case found within the motor home. Tr. 456.

[58] Tr. 471.

[59] Tr. 473.

[60] Tr. 470.

any manner of visual vetting process. If the Respondent were to be believed in this regard, Galvan's appearance, whatever it was, was deemed by the Respondent to be sufficiently unnerving that he could not countenance the patients and employees of his practice being exposed to it. It was likely not Galvan's appearance that caused discomfiture, but the reality of who he was and the drug-related money transaction that was planned to occur. The evidence supports the conclusion that the Respondent, an experienced physician who testified to his own recognition of his spouse's drug use and distrust of Galvan, knew well that he was purchasing illicit drugs for his wife for $1,000.00 and shook Galvan's hand outside his home at the consummation of the deal prior to his wife's embrace. Each party associated with the transaction received the benefit that each had knowingly bargained for.

The manner in which the seized contraband was packaged also spoke volumes about the intent of its possessors. Det. Boyd testified that the drugs were packaged in multiple small-dose containers, many of which had benign outward labels, and some of which had several dosage units of the material described on the packages on top of the illicit substances within. According to Boyd, based on his training and experience, this manner of packaging is consistent with the manner used by those intending to sell drugs. Tr. 76–77, 117. The packaging observed in this case less resembled the work of an out-of-control drug addict than it did an individual (or individuals) who were transporting large doses of controlled substances in a manner designed for easy distribution and evasion of discovery.

While there were doubtless credible portions of the testimony offered by the Freesemanns, such as their education, background, and the lifestyle changes brought about by Mrs. Freesemann's drug use, those portions of their testimony related to the acquisition and intended purposes of the traded currency and seized illegal drugs are simply not credible.

Other evidence required for a disposition of this issue is set forth in the analysis portion of this decision.

The Analysis

The Deputy Administrator[61] is authorized to revoke a COR when convinced that the registrant has been convicted of a felony under the CSA or any state law relating to a controlled substance. 21 U.S.C. 824(a)(2) (2006). It is undisputed in this case that the Respondent has been convicted of California state felonies relating to controlled substances. Stipulation B.

Pursuant to 21 U.S.C. 824(a)(4) (2006), the Deputy Administrator is permitted to revoke a COR if persuaded that the registrant ''has committed such acts as would render * * * registration under section 823 * * * inconsistent with the public interest * * * .'' The following factors have been provided by Congress in determining ''the public interest'':

(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).

''[T]hese factors are considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Any one or a combination of factors may be relied upon, and when exercising authority as an impartial adjudicator, the Deputy Administrator may properly give each factor whatever weight she deems appropriate in determining whether an application for a registration should be denied. *Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005); JLB*, Inc., d/b/a Boyd Drugs,* 53 FR 43945, 43947 (1988); *David E. Trawick, D.D.S.,* 53 FR 5326, 5327 (1988); *see also David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993); *Joy's Ideas,* 70 FR 33195, 33197 (2005); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16422, 16424 (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 (DC Cir. 2005). The Deputy Administrator is not required to discuss consideration of each factor in equal detail, or even every factor in any given level of detail. *Trawick* v. *DEA,* 861 F.2d 72, 76 (4th Cir. 1988) (the Administrator's obligation to explain the decision rationale may be satisfied even if only minimal consideration is given to the relevant factors and remand is required only when it is unclear whether the relevant factors were considered at all). The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest * * * .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

In an action to revoke a registrant's DEA COR, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). Once DEA has made its *prima facie* case for revocation of the registrant's DEA Certificate of Registration, the burden of production then shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would not be appropriate. *Morall,* 412 F.3d at 174; *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72311, 72312 (1980). Further, ''to rebut the Government's *prima facie* case, [the Respondent] is required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the reoccurrence of similar acts.'' *Jeri Hassman, M.D.,* 75 FR 8194, 8236 (2010).

Where the Government has sustained its burden and established that a registrant has committed acts inconsistent with the public interest, that registrant must present sufficient mitigating evidence to assure the Deputy Administrator that he or she can be entrusted with the responsibility commensurate with such a registration. *Steven M. Abbadessa, D.O.,* 74 FR 10077, 10078, 10081 (2009); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008); *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007). Normal hardships to the practitioner, and even the surrounding community, that are attendant upon the lack of registration are not a relevant consideration. *Abbadessa,* 74 FR at 10078; *see also Gregory D. Owens, D.D.S.,* 74 FR 36751, 36757 (2009).

The Agency's conclusion that past performance is the best predictor of future performance has been sustained on review in the courts, *Alra Labs.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), as has the Agency's consistent policy of strongly weighing whether a registrant who has committed acts inconsistent with the public interest has accepted responsibility and demonstrated that he or she will not engage in future misconduct. *Hoxie,* 419 F.3d at 483; *Ronald Lynch, M.D.,* 75 FR 78745, 78749 (2010) (Respondent's attempts to minimize misconduct held to

[61] This authority has been delegated pursuant to 28 CFR 0.100(b) and 0.104.

undermine acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Abbadessa,* 74 FR at 10078; *Krishna-Iyer,* 74 FR at 463; *Medicine Shoppe,* 73 FR at 387.

While the burden of proof at this administrative hearing is a preponderance-of-the-evidence standard, *see Steadman* v. *SEC,* 450 U.S. 91, 100–01 (1981), the Deputy Administrator's factual findings will be sustained on review to the extent they are supported by ''substantial evidence.'' *Hoxie,* 419 F.3d at 481. While ''the possibility of drawing two inconsistent conclusions from the evidence'' does not limit the Deputy Administrator's ability to find facts on either side of the contested issues in the case, *Shatz,* 873 F.2d at 1092; *Trawick,* 861 F.2d at 77, all ''important aspect[s] of the problem,'' such as a respondent's defense or explanation that runs counter to the Government's evidence, must be considered. *Wedgewood Vill. Pharmacy* v. *DEA,* 509 F.3d 541, 549 (DC Cir. 2007); *Humphreys,* 96 F.3d at 663. The ultimate disposition of the case must be in accordance with the weight of the evidence, not simply supported by enough evidence to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *Steadman,* 450 U.S. at 99 (internal quotation marks omitted).

Regarding the exercise of discretionary authority, the courts have recognized that gross deviations from past agency precedent must be adequately supported, *Morall,* 412 F.3d at 183, but mere unevenness in application does not, standing alone, render a particular discretionary action unwarranted. *Chein* v. *DEA,* 533 F.3d 828, 835 (DC Cir. 2008) (citing *Butz* v. *Glover Livestock Comm. Co., Inc.,* 411 U.S. 182, 188 (1973)), *cert. denied,* __ U.S. __, 129 S. Ct. 1033, 1033 (2009). It is well-settled that since the Administrative Law Judge has had the opportunity to observe the demeanor and conduct of hearing witnesses, the factual findings set forth in this recommended decision are entitled to significant deference, *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474, 496 (1951), and that this recommended decision constitutes an important part of the record that must be considered in the Deputy Administrator's decision, *Morall,* 412 F.3d at 179. However, any recommendations set forth herein regarding the exercise of discretion are by no means binding on the Deputy Administrator and do not limit the exercise of that discretion. 5 U.S.C. 557(b); *River Forest Pharmacy, Inc.* v. *DEA,* 501 F.2d 1202, 1206 (7th Cir. 1974); *Attorney General's Manual on the Administrative Procedure Act* 8 (1947).

Factor 1: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority

Action taken by a state medical board is an important, though not dispositive, factor in determining whether the continuation of a DEA COR is consistent with the public interest. *Patrick W. Stodola, M.D.,* 74 FR 20727, 20730 (2009); *Jayam Krishna-Iyer,* 74 FR at 461. The considerations employed by, and the public responsibilities of, a state medical board in determining whether a practitioner may continue to practice within its borders are not coextensive with those attendant upon the determination that must be made by DEA relative to continuing a registrant's authority to handle controlled substances. It is well-established Agency precedent that a ''state license is a necessary, but not a sufficient condition for registration.'' *Leslie,* 68 FR at 15230; *John H. Kennedy, M.D.,* 71 FR 35705, 35708 (2006). Even the reinstatement of a state medical license does not affect the DEA's independent responsibility to determine whether a registration is in the public interest. *Mortimer B. Levin, D.O.,* 55 FR 8209, 8210 (1990). 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 state government. *Edmund Chein, M.D.,* 72 FR 6580, 6590 (2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (DC Cir. 2008), *cert. denied,* __ U.S. __, 129 S. Ct. 1033, 1033 (2009). Congress vested authority to enforce the Controlled Substances Act (CSA) in the Attorney General and not state officials. *Stodola,* 74 FR at 20375.

Here the California Medical Board determined that the Respondent's misconduct authorized an outright revocation of his state medical privileges. Gov't Ex. 15 at 6. However, the Medical Board ultimately determined that it could discharge its responsibility to protect the ''public health, safety and welfare'' [62] by staying its revocation and imposing a probationary period with limitations, conditions, reporting requirements and ethics training. Gov't Ex. 15 at 6–11.

While the action of a state medical board must be considered under Factor 1, a state's action pertaining to the Respondent's medical license or ability to handle controlled substances, falling short of an executed revocation, is not dispositive in DEA's determination regarding the appropriateness of a sanction. *See George Mathew, M.D.,* 75 F.R. 66138, 66145 (2010) (Administrator declines to adopt as dispositive under Factor 1 the state medical board's sanction of suspending respondent's medical license, then staying the suspension, in case where respondent was prescribing controlled substances without physically examining patients or maintaining medical records). There is no evidence that the Respondent has been non-compliant with the terms imposed by the state medical board, but the relatively brief period of time that has passed since the issuance of the Medical Board's Order does not allow for a meaningful extrapolation regarding the Respondent's level of compliance with the probationary terms over the next seven years.

Thus, consideration of the evidence under this factor presents something of a mixed bag. That the California Medical Board determined that the Respondent's misdeeds justified the imposition of revocation, its most severe penalty, tends to militate in favor of the revocation sought by the Government. Contrariwise, the Board's decision that the public would be adequately protected by allowing the Respondent to practice medicine with supervision and conditions is arguably supportive of the Respondent's position that an outright, un-stayed revocation is not warranted under the circumstances. Consideration of the Medical Board's actions in this case does not militate for or against revocation.

Factor 3: The Applicant's Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances

As discussed in considerable detail elsewhere in this decision, the record reflects that the Respondent was convicted [63] under California state law on three counts for the felony transportation of ecstasy, methamphetamine, and cocaine. Gov't Ex. 11 at 6–7; Gov't Ex. 10 at 2. The Government, without analysis on the point, urges that in view of the Respondent's convictions, ''factor three weighs in favor of finding that Respondent's continued registration

[62] Gov't Ex. 15 at 5.

[63] Pursuant to the terms of a plea agreement, the Respondent pleaded no contest to three counts of transportation of controlled substances and a state misdemeanor offense for carrying a loaded firearm. Gov't Ex. 10 at 2–3. Consistent with the plea agreement provisions, other counts, including numerous conspiracy and possession with intent to sell and/or transport various controlled substances were dismissed in exchange for his no contest pleas. *Id.*

would be inconsistent with the public interest.'' Gov't Br. at 20.

While the Respondent's state criminal convictions are undoubtedly related to controlled substances, Agency precedent is less clear on whether such a conviction relates to the ''manufacture, distribution, or dispensing'' of controlled substances under the third public interest factor. In *Stanley Alan Azen, M.D.,* 61 FR 57893, 57895 (1996), *aff'd, Azen* v. *DEA,* 76 F.3d 384 (9th Cir. 1996), a state felony conviction for possession of cocaine was held to be relevant to Factor 3. Likewise, in *Jeffrey Martin Ford, D.D.S.,* 68 FR 10750, 10753 (2003), a cocaine possession felony conviction was held to implicate this factor. In *Super-Rite Drugs,* 56 FR 46014, 46015 (1991), the Agency determined that a cocaine possession conviction did not implicate Factor 3 based on the reasoning that ''[a]lthough [the respondent] entered a guilty plea to a drug-related felony, *his actions did not relate to the manufacture, distribution, or dispensing* of controlled substances.'' *Id.* (emphasis supplied). Ironically, although *Super-Rite Drugs* is the more dated precedent, it is the most persuasive and should be followed. The analysis in *Azen* centered on the subsequent state court reversal of the conviction, and in *Ford,* the decision analysis actually omitted the phrase ''relating to the manufacture, distribution, or dispensing'' when addressing the issue. A contrary interpretation would eviscerate the difference between public interest Factors 3 and 4 and ignore the specific language inserted by Congress. Guidance can be found in the accepted maxims of statutory interpretation that ''a statute of specific intention takes precedence over one of general intention,'' *United States* v. *Dozier,* 555 F.3d 1136, 1140 n.7 (10th Cir. 2009) (citing *NISH* v. *Rumsfeld,* 348 F.3d 1263, 1272 (10th Cir. 2003)), and that ''words should ordinarily be given their ordinary meaning,'' *Moskal* v. *United States,* 498 U.S. 103, 108 (1990), and that ''where language is clear and unambiguous, it must be followed, except in the most extraordinary situation where the language leads to an absurd result contrary to clear legislative intent.'' *United States* v. *Plots,* 347 F.3d 873, 876 (10th Cir. 2003) (citing *United States.* v. *Tagore,* 158 F.3d 1124, 1128 (10th Cir. 1998)); *see Griffin* v. *Oceanic Contractors,* 458 U.S. 564, 572 (1982); *Comm'r* v. *Brown,* 380 U.S. 563, 571 (1965). The ordinary meaning of the clear, unambiguous, specifically limiting words ''relating to the manufacture, distribution, or dispensing of controlled substances'' set forth in 21 U.S.C. 823(f) compels the result that a conviction that is related to illegal drugs generally (transportation here), but not to manufacturing, distributing, or dispensing specifically, is not relevant to public interest Factor 3.

Accordingly, consideration of this factor does not support the Government's petition for revocation of the Respondent's COR.

Factor 2: The Respondent's Experience in Dispensing Controlled Substances

Regarding Factor 2, in cases where the quality of a registrant's prescribing practices are at issue, the qualitative manner and the quantitative volume in which that registrant has engaged in the dispensing of controlled substances, and how long he has been in the business of doing so, are significant factors to be evaluated in reaching a determination as to whether he should be entrusted with a DEA certificate. In some cases, viewing a registrant's proven acts of misconduct (such as a criminal conviction related to controlled substances) against a backdrop of how he has performed activity within the scope of the certificate can provide a contextual lens to assist in a fair adjudication of whether continued registration is in the public interest. However, the Agency has taken the reasonable position that although evidence that a practitioner may have conducted a significant level of sustained activity within the scope of the registration for a sustained period is a relevant and correct consideration, this factor can be outweighed by acts held to be inconsistent with the public interest. *Jayam Krishna-Iyer,* 74 FR at 463.

In this case, the Government has neither alleged nor produced evidence in support of prescribing malfeasance. Although the record in this case is not analytically focused on the Respondent's prescribing and dispensing practices, the nature and history of the Respondent's past prescribing practices are a proper area for consideration in reaching a determination regarding the issue of whether he can be entrusted with the responsibilities attendant upon a registrant. In these proceedings, the Respondent has offered evidence in the form of letters from colleagues, business associates, former patients, and personal family friends. Unfortunately, the letters were all focused on persuading the state prosecutor in his criminal case to exercise leniency, and none of the letters' authors engage in any discussion related to the Respondent's prescribing practices and dispensing conduct. The Respondent did not produce a single letter wherein the writer provided an opinion regarding the Respondent's past history of handling, or suitability to continue to handle, controlled substances. That being said, however, taken as a whole, the criminal clemency letters generally attest that the Respondent, consistent with his impressive credentials and prestigious professional achievements, possesses some level of acuity for practicing medicine, and is well-respected and/or liked by friends, business acquaintances, patients, and peers in the community.

There is no indication in the record that the acts that formed the basis of the Respondent's convictions were contemporaneously known to the Respondent's patients or the hospital staff where he was practicing medicine. Before his current transgressions, the Respondent had engaged in fourteen or so years of presumably uneventful practice that was apparently unmarred by proven allegations of controlled substance mishandling or prescribing misconduct. Although the authors of the letters have not been subject to cross examination, the evidence was received without Government objection and, for the limited purposes for which it can be utilized here, stands unrefuted. While true that on this record consideration of this factor is not supportive of the Government's petition to revoke the Respondent's COR, neither has the Respondent provided evidence from which his prescribing and dispensing practices can be characterized. In short, consideration of this factor militates neither for nor against revocation.

Factors 4 and 5: Compliance With Applicable State, Federal or Local Laws Relating to Controlled Substances; and Such Other Conduct Which May Threaten the Public Health and Safety

Regarding Factor 4, to effectuate the dual goals of conquering drug abuse and controlling both legitimate and illegitimate traffic in controlled substances, ''Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.'' *Gonzales* v. *Raich,* 545 U.S. 1, 13 (2005). Every DEA registrant serves as a guardian with specific obligations aimed at protecting against improper diversion. It would be difficult to imagine a more deliberate, flagrant disregard of the Respondent's obligations as a registrant than his decision to participate in the possession and transportation of illegal drugs at the

request of his wife (who he suspected to be drug-addicted) in amounts too great for her to consume herself and so copious and packaged in a manner as to make it not unlikely that they were intended for distribution to others willing, happy, and/or desperate to abuse them. Perversely contrary to his registrant-borne obligations to minimize the risks of controlled substance diversion, the evidence demonstrates that the Respondent was acting as a conduit for his wife's abuse and even possibly for illegal street drug distribution at a highly-populated arts festival conducted in the desert. Contrary to the posture assumed by the Respondent during these proceedings and at his state medical board hearing, the evidence of record here makes it clear that he was not a well-meaning, if misguided spouse ''taking the rap'' for a culpable wife, but an active planner and willing participant in an evolution to transport illegal drugs—at a minimum—for his wife's use. From the Respondent's own testimony, it is clear that on the date he was apprehended, he recognized that his wife had a drug addiction problem, he (correctly) suspected that the man he was tasked with paying $1,000.00 to was a drug dealer, he admitted that a reasonable person would have known as much, he sent and received phone calls and text messages to arrange a clandestine meeting with the drug dealer, and he received a large quantity of illegal drugs that were packaged for sale. The level of participation demonstrated by this Respondent—a supposed registrant-guardian of the closed regulatory system—is so abjectly repugnant to the integrity of the system and the Respondent's obligations under the law that consideration of this factor alone militates powerfully in favor of revocation.

Under Factor 5, the Deputy Administrator is authorized to consider ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(f)(5). It is settled Agency precedent that, ''offenses or wrongful acts committed by a registrant outside of his professional practice, but which relate to controlled substances may constitute sufficient grounds for the revocation of a registrant's DEA Certificate of Registration.'' *David E. Trawick, D.D.S.,* 53 FR 5326, 5327 (1988); *see Jose Antonio Pla-Cisneros, M.D.,* 52 FR 42154, 42154 (1987); *Walker L. Whaley, M.D.,* 51 FR 15556, 15557 (1986). It is beyond doubt that Mrs. Freesemann was correct that the massive volume of controlled substances seized from the Respondent's motor home was too great for her to consume during the couple's planned vacation. The drugs were absolutely headed for Mrs. Freesemann's use, and judging by the testimony of the trained and experienced police officers who seized them, were packaged as if prepared for sale to the public. Whether the Respondent was transporting this abundant cache of contraband for the exclusive use of his drug-abusing spouse or whether the drugs were headed for distribution to festival attendees, the public health and safety was a guaranteed intended casualty. But for the intervention of the Bakersfield PD, the drugs the Respondent was ferrying would have been pumped into Mrs. Freesemann's likely drug-dependent body or out on the street through the Burning Man Festival, putting members of the public in all age groups in danger. The Respondent's simultaneous possession of a handgun with a readily available clip full of ammunition reinforces his own understanding of the dangers attendant upon dealing with the likes of his wife's supplier and facilitating the interstate transportation of illegal drugs for whatever purpose. Consideration of the Respondent's conduct under this factor alone would be sufficient to justify the revocation of his COR.

Consideration of Factors 4 and 5 militate powerfully and conclusively in favor of the revocation of the Respondent's COR.

Recommendation

Based on the foregoing, the evidence supports a finding that the Government has established that the Respondent has been convicted of a felony relating to controlled substances and has also committed acts that are inconsistent with the public interest. A balancing of the statutory public interest factors supports a revocation of the Respondent's Certificate of Registration. In tacit acknowledgement of this reality, the Respondent, through counsel, seeks amelioration in terms of the recommended sanction. In his Proposed Findings of Facts and Conclusions of Law (Respondent's Brief), the Respondent petitions for a stayed suspension that mirrors the order issued by the California Medical Board in terms and duration. Resp't Br. at 6.

In cases, such as the present case, where the Government has made out a *prima facie* case that the Respondent has committed acts that render his continued registration inconsistent with the public interest, Agency precedent has firmly placed acknowledgement of guilt and acceptance of responsibility as conditions precedent to merit the continued status as a registrant and avoid revocation. *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005); *Ronald Lynch, M.D.,* 75 FR 78745, 78749 (Respondent's attempts to minimize misconduct held to undermine acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Steven M. Abbadessa, D.O.,* 74 FR 10077, 10078 (2009); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009); *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008). Here, while the Respondent has acknowledged his conviction and that he was caught transporting a large shipment of illicit drugs, he has truly acknowledged very little. He accepted a no-contest guilty plea on the criminal matter, but the essence of his testimony at his DEA hearing, like his testimony at his hearing before the California Medical Board, was to assign responsibility for his convictions on the overzealous prosecutor, his defense attorney, and a desire to accept a disproportionate helping of culpability to shield his wife (whom he essentially demonizes as the truly culpable party). He did not acknowledge that he knew he was paying money for drugs, that he received drugs, or that he was a principal player in choreographing the entire event. In truth, the Respondent has not accepted responsibility for his actions, expressed remorse for anything other than the consequences of those actions at any level, or presented evidence that could reasonably support a finding that the Deputy Administrator should continue to entrust him with a Certificate of Registration. *See Mathew,* 75 FR at 66140, 66165 (failure of registrant to accept responsibility for established misconduct held fatal to his attempt to rebut the Government's establishment of a *prima facie* case for COR revocation); *George Jeri Hassman, M.D.,* 75 FR 8194, 8236 (2010) (requiring the Respondent to accept responsibility for his misconduct related to controlled substances and to demonstrate the corrective measures that he has taken to prevent similar future misconduct in order to rebut the Government's *prima facie* case). Rather than accept responsibility, the Respondent instead puts the principal blame for his current difficulties on his wife, while conveniently dismissing the uncontroverted evidence of his own pervasive entanglement (text messages, phone calls, meetings, *etc.*) in a scheme to move and distribute copious amounts of dangerous and highly controlled drugs. An illicit drug transaction like the one in which involved the

Respondent as the primary drug and money courier strikes at the heart of the CSA, the very statute that privileged the Respondent to handle controlled substances in his medical practice. The deleterious potential effect that these drugs can have on the human body, the peril in which they put human life when indiscriminately ingested by willing abusers, and the sheer volume by which the Respondent was caught delivering them cannot be overstated. The reckless danger that the Respondent's course of action posed to the public health and safety of his wife, at a minimum, and possibly even the surrounding area and community where the Burning Man Festival was to take place, would not be counterbalanced even if the Respondent had deemed to submit evidence of many years of admirably-conducted medical practice. The offensiveness of his actions, including the duty imposed by his Hippocratic oath to abstain from doing harm, as well as his lack of candor at his hearing in minimizing the extent to which he helped orchestrate this scheme, all militate strongly in favor of revocation.

Even if the Respondent's position regarding the operative facts were embraced, it would not change the outcome of this recommended decision. The Respondent acknowledged during his testimony that he (correctly) suspected that his wife was abusing illicit drugs based on a readily-available set of objective facts that he was even able to catalogue upon request during his testimony. He acknowledged that he was paying a $1,000.00 to a man who made him uneasy at the request of his (likely drug-abusing) spouse. The Respondent even conceded that any reasonable person would have realized that there were illicit drugs in the motor home he was driving that evening,[64] and that ''[a]ll [he] can claim is to be the stupidest doctor at the time'' [65] is (even if credited) wholly unpersuasive, and ''manifests a degree of irresponsibility that is incompatible with what DEA expects of a registrant.'' *Cf. Lynch,* 75 FR at 78753 (registrant's position that it was acceptable for him to prescribe controlled substances in the face of known and obvious diversion risks on the theory that he is not a lawyer or police agent characterized as ''manifest[ing] a degree of irresponsibility that is incompatible with what DEA expects of a registrant''). Reduced to its essence, the Respondent seeks relief from his actions and convictions by a claim that he stubbornly refused to acknowledge what his trained eyes and ears informed him of: that he was giving money to a drug dealer and receiving illicit drugs for his wife that were packaged as if for sale and driving those drugs to an art festival in the Nevada desert. The Respondent's odd theory that turning a blind eye to circumstances that required him to refrain from actions that were repugnant to his responsibilities as a registrant, and whistling past the graveyard of what was obviously a drug transaction where he was playing an integral role, is not a persuasive argument in favor of continuing to entrust him with the responsibilities of a DEA registrant. *Cf. Holloway Distrib.,* 72 FR 42118, 42124 (2007) (in the context of a List I distributer, a policy of ''see no evil, hear no evil'' is fundamentally inconsistent with the obligations of a DEA registrant). In short, his efforts to convince DEA that he is ''the stupidest doctor,'' [66] even if successful, would hardly have inspired sufficient confidence in his ability to continue to execute the responsibilities attendant upon a registrant to fairly merit his continued exercise of that privilege.

Accordingly, the Respondent's Certificate of Registration should be *Revoked* and any pending applications for renewal should be *Denied.*

Dated: January 24, 2011.

John J. Mulrooney, II,

U.S. Administrative Law Judge.

[FR Doc. 2011–25224 Filed 9–29–11; 8:45 am]

BILLING CODE 4410–09–P

[64] Tr. 337.

[65] Tr. 332.

[66] Tr. 332.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–65]

Stephen L. Reitman, M.D.; Decision and Order

On July 20, 2010, Administrative Law Judge Gail A. Randall issued the attached recommended decision.[1] Neither party filed exceptions to the ALJ's decision.

Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law,[2] and recommended order except as discussed below. Accordingly, while Respondent's registration will be continued, I conclude that the record requires that several conditions be placed on it to adequately protect the public interest.

At the time of the hearing, the Medical Board of California (MBC) had filed an accusation against Respondent. ALJ at 31. However, the MBC did not issue a final decision in the matter until December 20, 2010, which became effective on January 19, 2011. *In re Stephen Lee Reitman, M.D.,* Decision at 1 (Cal. Med. Bd. Dec. 20, 2010). I take official notice of the MBC's Decision and the Stipulated Settlement and Disciplinary Order.[3] Therein, the Board revoked Respondent's medical license but stayed the revocation and placed him on probation for five years subject to numerous conditions. Stipulated Settlement, at 4. The conditions include, *inter alia,* that Respondent ''maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by'' him, that he abstain ''from the personal use or possession of controlled substances'' except as ''to medications lawfully prescribed to [him] by another practitioner for a bona fide illness or condition'' and that he ''notify the Board'' within fifteen calendar days of receiving any such prescription, and that he take both a prescribing practices course and an ethics course. *Id.* at 4–10.

Most significantly, the Order requires that Respondent, at his own expense, ''contract with a laboratory or service—approved in advance by the Board or its designee—that will conduct random, unannounced, observed, urine testing a maximum of four times each month.'' *Id.* at 5. Moreover, ''[t]he contract shall require results of the urine tests to be transmitted by the laboratory or service directly to [the] Board or its designee

[1] All citations to the ALJ's decision are to the slip opinion as issued by her.

[2] The ALJ found that Respondent violated California law by obtaining controlled substances from a distributor ''while concealing the fact that he was dispensing to himself.'' ALJ at 33 (citing Cal. Health & Safety Code 11173). The ALJ did not, however, cite any decisional law holding that conduct similar to that engaged in by Respondent violates this provision. *See id.* Moreover, there is no evidence establishing that Moore Medical required Respondent to make any disclosure as to his purpose in purchasing the drugs. *Cf. Lovejoy* v. *AT&T Corp.,* 92 Cal.App.4th 85, 96 (2001) (noting that tort of concealment requires that ''the defendant must have been under a duty to disclose the fact to the plaintiff''). I therefore do not adopt this finding. However, the evidence does establish the other violations of the CSA and State law as discussed by the ALJ.

[3] Under the Administrative Procedure Act (APA), an agency ''may take official notice of facts at any stage in a proceeding-even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); *see also* 21 CFR 1316.59(e). Respondent can dispute the facts of which I take official notice by filing a properly supported motion for reconsideration within twenty days of service of this Order, which shall begin on the date it is mailed.

within four hours of the results becoming available'' and that Respondent's ''[f]ailure to maintain this laboratory or service during the period of probation is a violation of [his] probation.'' *Id.* at 5–6. Finally, the Order provides that it is a violation of Respondent's probation if he ''[f]ail[s] to submit to or comply with the time frame for submitting to, or fail[s] to complete the required biological fluid testing.'' *Id.* at 5–6.

In her decision, the ALJ rejected the Government's contention that Respondent's registration should be revoked because he has been sober for only eleven months and that this is an insufficient period to demonstrate that he is not likely to relapse. ALJ at 35 (citing Gov. Br. at 9–10). In so ruling, the ALJ reasoned that '''[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.''' *Id.* (quoting *Leonardo* v. *Lopez, M.D.,* 54 FR 36915 (1989)). However, none of the cases which have invoked this principle involved circumstances similar to those at issue here, where, a registrant has abused controlled substances for seven years and has demonstrated his sobriety for only one year. *See Lopez,* 54 FR 36915; *see also Robert L. Dougherty, M.D.,* 76 FR 16823 (2011); *Robert A. Leslie, M.D.,* 64 FR 25908 (1999); *Mary M. Miller, M.D.,* 63 FR 71157 (1998); *John Porter Richards, D.O.,* 61 FR 13878 (1996); *James W. Shore, M.D.,* 61 FR 6262 (1996).

That being said, I agree with the ALJ's findings that Respondent has accepted responsibility for his misconduct and that he has undertaken substantial efforts at rehabilitation. Indeed, even the Government acknowledges that Respondent had taken ''various and comprehensive steps * * * toward rehabilitation'' and that his efforts were ''entered into voluntarily, which no doubt demonstrates a commitment to staying clean and sober.'' Gov. Br. at 9. However, as the Government noted in its brief, according to the evidence adduced at the hearing, under the terms of Respondent's contract with his treatment program, the program is not obligated to report any relapse to either the MBC or this Agency.[4] *Id; see also* Tr. 91. Given the limited time for which Respondent has demonstrated his sobriety (on the record of the hearing), such an arrangement is manifestly inadequate to support the continuation of a registration. Thus, I am not persuaded by the ALJ's reasoning that ''under the particular circumstances of this case, nine months is not such a short recovery period that it should serve as grounds for revocation.'' ALJ at 36.

However, as found above, subsequent to the closing of the record, Respondent entered into a Stipulated Settlement and Disciplinary Order with the MBC which provides for random biological fluid testing and which requires that the results be reported directly to the MBC. Moreover, since the record closed, additional time has passed during which Respondent has been subject to random biological fluid testing, and during this period, no evidence of a relapse has been presented to this Office.

These developments, when considered along with Respondent's strong showing as to his acceptance of responsibility, his efforts at rehabilitation, as well as the lack of evidence that he harmed anyone other than himself or diverted drugs to others, supports the conclusion that Respondent's continued registration would not ''be inconsistent with the public interest.''[5] 21 U.S.C. 823(f).

Accordingly, Respondent's pending renewal application will be granted. However, to adequately protect the public interest, Respondent's registration will be subject to the conditions set forth below, which shall remain in effect until the same date as the State's probation expires. Any violation of these conditions constitutes an act which renders his registration ''inconsistent with the public interest,'' 21 U.S.C. 824(a)(4), and subject to proceedings under that provision.

(1) Respondent's registration is restricted to authorizing the prescription of controlled substances. Respondent shall not prescribe controlled substances to himself or any family members. Respondent is further prohibited from obtaining controlled substances from a manufacturer, distributor, or pharmacy, whether the controlled substances are obtained by ordering them from a manufacturer, distributor, or pharmacy, or provided to him by a manufacturer, distributor, or pharmacy as a sample. This condition does not prohibit Respondent from obtaining a prescription for a controlled substance from another practitioner for a legitimate medical condition and filling such a prescription at a pharmacy.

(2) Respondent shall maintain a log of all controlled substance prescriptions he issues. Respondent shall provide a copy of his log each quarter to the local DEA office within ten business days of the end of each quarter of the calendar year (*i.e.,* March 31st; June 30th; September 30th, and December 31st). If Respondent issues no controlled substance prescriptions during the quarter, a report indicating that no prescriptions were issued must also be filed no later than ten business days following the end of the quarter.

(3) Respondent shall consent to unannounced inspections of his registered location by DEA personnel and waives his right to require that Agency personnel obtain an Administrative Inspection Warrant prior to conducting an inspection of his registered location.

(4) Any violation of the probationary terms imposed pursuant to the MBC's requirement that he contract with a laboratory or service to provide for random biological fluid testing shall constitute grounds for the immediate suspension of his DEA registration.

[4] Respondent did not introduce into evidence a copy of his treatment contract.

[5] In her discussion of whether Respondent had accepted responsibility, the ALJ explained that ''[p]ast DEA cases have involved practitioners whose registrations were either not revoked or their applications were not denied despite more reprehensible conduct than [Respondent's] self-prescribing.'' ALJ at 37. While I agree that in *Judy L. Henderson,* 65 FR 5672 (2000), and *Mary Thomson, M.D.,* 65 FR 75969 (2000), the registrants committed acts which are arguably more egregious than those committed by Respondent, I do not see any meaningful difference between the conduct committed by the registrant in *Jimmy H. Conway, Jr., M.D.,* 64 FR 32271 (1999), and Respondent. As for her discussion of *Robert G. Hallermeier, M.D.,* 62 FR 26818 (1997), suffice it to say that were a case with similar facts presented to me, that individual would receive a sanction that more appropriately reflected the grave harm which that registrant caused the public and the Agency's interest in deterring similar misconduct. *See Joseph Gaudio, M.D.,* 74 FR 10083, 10094 (2009) (citing *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007)). *See also Butz* v. *Glover Livestock Commission Co., Inc.,* 411 U.S. 182, 187–88 (1973).

Finally, the ALJ's discussion that the applicant in *John Porter Richards, D.O.,* 61 FR 13878 (1996), ''continued to maintain that he had not committed the crimes for which he had been convicted,'' ALJ at 38, is simply a misreading of that decision. As the decision makes clear, the text quoted by the ALJ was a paraphrase of a question posed of the applicant by the Government on cross-examination. *See* 61 FR at 13879 (''When asked on cross-examination whether, consistent with his not guilty plea, he continued to maintain that he had not committed the crimes for which he had been convicted, the Respondent testified, ''I accept my conviction[.]''). When the Government then asked ''to what extent he did so,'' the applicant testified: '''In its completeness.''' *Id.* Notably, the decision contains no further discussion suggesting that the applicant acknowledged his conviction but then denied having committed the crime or claimed that he was set up.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a)(4), as well as 28 CFR 0.100(b), I order that the application of Stephen L. Reitman to renew his DEA Certificate of Registration be, and it hereby is, granted subject to the conditions set forth above. This Order is effective immediately.

Dated: September 20, 2011.

Michele M. Leonhart,

Administrator.

Christine M. Menendez, Esq. *for the Government.*

Robert C. Schlein, Esq. *for the Respondent.*

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Procedural Background

Gail A. Randall, Administrative Law Judge. The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated September 10, 2009, proposing to revoke the DEA Certificate of Registration Number AR6012568, of Stephen L. Reitman, M.D. (''Respondent'' or ''Dr. Reitman''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal, modification, or additional registrations, pursuant to 21 U.S.C. 823(f), because the continued registration of the Respondent is inconsistent with the public interest, as that term is defined in 21 U.S.C. 824(a)(4). [Administrative Law Judge Exhibit (''ALJ Exh.'') 1].

On September 25, 2009, the Respondent, through counsel, filed a request for a hearing in the above-captioned matter. [ALJ Exh. 2].

The hearing was held in San Diego, California, on April 13–14, 2010. [ALJ Exh. 4 at 1; Transcript (''Tr.'') Vol. I–II]. At the hearing, Counsel for the DEA and Counsel for the Respondent called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted Proposed Findings of Fact, Conclusions of Law and Argument.

II. Issue

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke the DEA Certificate of Registration Number AR6012568 of Stephen L. Reitman, M.D., as a practitioner pursuant to 21 U.S.C. 824(a), and deny any pending applications to renew or modify this registration under 21 U.S.C. 823(f), because to continue Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). [ALJ Exh. 3 at 1; Tr. 5].

III. Findings of Fact

I find, by a preponderance of the evidence, the following facts:

A. Background

1. Respondent is registered with DEA as a practitioner in Schedules II–V pursuant to DEA Registration Number AR6012568. [ALJ Exh. 3 at 1; Government Exhibit (''Govt. Exh.'') 1; Tr. 58].

2. Respondent is licensed as a physician and surgeon in the State of California pursuant to License Number G25924. Respondent's licensure status is renewed and current. [ALJ Exh. 3].

3. Dr. Reitman attended the University of Illinois in Champaign for undergraduate school. Then he studied at the University of Illinois Medical School in Chicago from 1965 to 1969. Dr. Reitman graduated medical school in 1969. [Tr. 55]. He next attended the University of Cincinnati for internship and residency from about 1969 until 1972. From there, he studied at Ann Arbor University of Michigan from 1972 until 1974 for a fellowship in nephrology. In 1974, he and his wife moved to San Diego where he has been in practice since that time. He has been licensed to practice medicine in California since 1973. [Respondent's Exhibit (''Resp. Exh.'') 5; Tr. 55–56].

4. Dr. Reitman is currently working in La Mesa, California. His practice consists mostly of geriatric and internal medicine treating senior citizens, people 60 or older. He sees maybe 15 to 20 patients per day. [Tr. 57]. In his practice, he sees many seniors with chronic pain. He prescribes Vicodin, codeine, and Darvocet, as well as anti-anxiety medications and anti-depressants. He does not dispense. [Tr. 58–59].

B. DEA Investigation

5. Diversion Investigator Ayoma Rudy (''Investigator Rudy'') has been a diversion investigator with the DEA in San Diego, California since November 3, 2005. [Tr. 18–19]. Prior to becoming a diversion investigator, she was a DEA group assistant in 1996. [Tr. 19]. She then became an investigative assistant in approximately 2001. [*Id.*]. She trained for three months at Quantico, where she received specialized training including how to conduct regulatory, financial, and criminal investigations and how to write reports, take affidavits, conduct search warrants, and conduct interviews. [Tr. 20]. Investigator Rudy is now responsible for investigating the illegal diversion of controlled substances and listed chemicals. She is the lead investigator of the issues surrounding the Dr. Reitman case. [Tr. 20–22].

6. Investigator Rudy began investigating Dr. Reitman on May 28, 2009, when Moore Medical submitted a controlled substance report to the San Diego Field Division showing what the DEA considered to be excessive purchases of controlled substances by Dr. Reitman from Moore Medical. [Govt. Exh. 3, 5; Tr. 23]. A DEA registrant has a responsibility to inform the DEA of any excessive purchases or suspicious orders. [Tr. 26]. Investigator Rudy's supervisor, John Partridge, told her to follow up on these purchases, because he considered them excessive. [Tr. 26–27].

7. A Controlled Substance Utilization Review (''CURES'') report is generated by a California Department of Justice database, which tells an investigator what the patient filled, what drugs the patient filled, when, which pharmacies the patient went to, and how many doctors the patient saw within the week or within the day. [Tr. 22].

8. In the case of the report from Moore Medical, the DEA Certificate of Registration Number used to order the controlled substances was AR6012568, which is Dr. Reitman's number. [Govt. Exh. 3; Tr. 25].

9. Dr. Reitman was ordering Butalbital APAP (acetaminophen) Caffeine with codeine[6] and APAP 300mg with codeine 60mg from January 2005 through March 18, 2009. [Govt. Exh. 5; Tr. 27–8]. APAP with codeine is a Schedule V controlled substance. [Tr. 28]. Butalbital APAP with Codeine is a Schedule III controlled substance. [Tr. 28].

10. On July 8, 2009, DEA Diversion Investigators Ayoma Rudy and Kenneth Crouch interviewed Dr. Reitman regarding controlled substances that he purchased from Moore Medical. [ALJ Exh. 3 at 2; Tr. 28].

11. At that time, Dr. Reitman invited them in, asked them to sit down. [Tr. 29]. Investigator Rudy stated that Dr. Reitman was friendly, cooperative and forthright. [Tr. 41–42]. He seemed coherent and rational. [Tr. 42].

12. Dr. Reitman admitted that the report from Moore Medical was correct. [Tr. 30]. He admitted to having an addiction problem. [Tr. 42]. During the

[6] The milligrams are not specified for this drug. [*See* Govt. Exh. 5].

interview, Dr. Reitman stated that he ordered the substances in question for his personal use and that he was not selling the controlled substances or exchanging them for other services. [ALJ Exh. 3 at 2; Tr. 30, 32]. Investigator Rudy said, ''By the third sentence, he put his head down'' and said that he ''ordered [the controlled substances] for personal use.'' [Tr. 30]. Dr. Reitman repeatedly stated that he needs help. [Tr. 32].

13. At that time, Dr. Reitman kept the controlled substances in a locked cabinet at his office location, the contents of which he showed to the two Diversion Investigators. [ALJ Exh. 3 at 2; Tr. 31–32]. He opened the cabinet, and DI Rudy could see about 22 or 23 bottles of the Butalbital and the APAP with codeine. [Tr. 31]. Dr. Reitman told DI Rudy that he was storing the controlled substances at his office, because he did not want his wife to find out. [Tr. 32].

14. Dr. Reitman stated that he had no records (receipts, invoices, log, or dispensing records) related to the controlled substances in Moore Medical's report. [Tr. 30–31].

15. Investigator Rudy asked him if he was trading or selling the drugs, and Dr. Reitman said no. [Tr. 32]. DI Rudy also stated that she believed his explanation. [Tr. 47–48]. At this hearing, Dr. Reitman stated that the drugs were for his personal use. He never sold them or dispensed them to anybody. [ALJ Exh. 3 at 2; Tr. 81].

16. Investigator Rudy asked the Respondent if he realized that he was violating DEA policy, and he said yes. [Tr. 32].

17. At that point, Investigator Rudy left without conducting an inventory, because she wanted to report this unique situation to her supervisor. [Tr. 33, 46]. Investigator Rudy had no way of conducting an inventory, because Dr. Reitman had no records to compare with the number of pills on hand. [Tr. 46, 47]. Her supervisor told her to seek a voluntary surrender of both his registration and the controlled substances, which she did. [Tr. 33, 45]. However, Dr. Reitman refused to voluntarily surrender the controlled substances or his registration until after he had spoken with his attorney. [Tr. 33, 45]. Investigator Rudy stated that she did not think it was unusual for Dr. Reitman to want to speak to an attorney and that he had a right to do so. [Tr. 43–44].

18. However, Investigator Rudy did tell Dr. Reitman to keep the controlled substances locked in the cabinet. [Tr. 41].

19. On July 13, 2009, DI Rudy returned to Dr. Reitman's office, this time with a different investigator, Investigator Theresa Grant, to seek a voluntary surrender of his registration. [Tr. 34–5]. Dr. Reitman, acting pursuant to the advice of his attorney, refused to surrender both the controlled substances and his DEA Certificate of Registration to DEA Diversion Investigators Rudy and Grant. [ALJ Exh. 3 at 2; Tr. 35].

20. On July 15, 2009, Investigator Rudy again met with Dr. Reitman at his office. [Tr. 35]. On this occasion, she was accompanied by Special Agent Rockwell Herron. [Tr. 35]. Dr. Reitman voluntarily surrendered the controlled substances in question to Investigator Rudy and Special Agent Herron. [ALJ Exh. 3 at 2; Tr. 35–36]. Investigator Rudy seized the controlled substances and gave Dr. Reitman a receipt (DEA–12) for the drugs. [Tr. 36, 41, 44].

21. Investigator Rudy and Agent Herron seized the Butalbital and the APAP with codeine, which were being stored in the same locked cabinet. [Tr. 36].

22. Investigator Rudy seized four sealed bottles and one partial bottle of APAP with codeine. [Tr. 36]. These drugs were in both 500- and 100-count bottles. [Tr. 47].

23. Investigator Rudy seized eight sealed bottles and one partial bottle of Butalbital with codeine. [Tr. 36–37]. These drugs were in 100-count bottles. [Tr. 47].

24. Investigator Rudy stated there was a significant difference between what was seized and the amount ordered according to the Moore Medical records. She is unsure of the amount that was in fact seized. [Tr. 47, 48–49]. She stated that he ordered 128 bottles of Butalbital and 32 bottles of APAP with codeine. However, there were only eight bottles of Butalbital and four bottles of APAP with codeine. [Tr. 48–9]. Investigator Rudy could not provide a specific number of the amount of pills he had on hand. [Tr. 49–50]. Therefore, Dr. Reitman had at least 800 dosage units of each controlled substance on hand at this time.

25. Investigator Rudy took these drugs to the San Diego Field Division's evidence room. They are now at the Southwest Lab in Vista, San Diego. [Tr. 37].

26. Investigator Rudy stated that Dr. Reitman told her that he was taking three to six pills per day. [Tr. 53].

27. Sometime in August, Investigator Rudy received an updated report from Moore Medical, which contained information related to controlled substances purchased by Dr. Reitman from Moore Medical from March 19, 2009 through August 27, 2009. [Govt. Exh. 4; Tr. 38, 39]. She received this report from Tracy Lofquist from Moore Medical's Regulatory Affairs department. [Tr. 38]. Again, this document shows that Dr. Reitman ordered Butalbital APAP with codeine and APAP with codeine. [Tr. 39]. Patrick Early, Vice President of Regulations and Operational Affairs at Moore Medical tallied Dr. Reitman's orders of controlled substances from January 1, 2005, through August 27, 2009. [Govt. Exh. 5 at 2–3]. He stated that Dr. Reitman ordered 11,600 dosage units of APAP with Codeine and 12,800 dosage units of Butalbital APAP Caffeine with Codeine in that time (which is four years, seven months, and twenty-seven days, or seventeen-hundred days). However, since Investigator Rudy seized at least 800 dosage units of APAP with Codeine and another 800 dosage units of Butalbital APAP Caffeine with Codeine, Dr. Reitman could have only ingested approximately 10,800 dosage units of APAP with Codeine and approximately 12,000 dosage units of Butalbital APAP with Codeine during that time. [*Compare* Govt. Exh. 5 at 2–3 *with* Tr. 36–37, 47]. This is an approximate average of six APAP with Codeine per day and an average of seven Butalbital APAP Caffeine with Codeine per day for a maximum total of thirteen pills per day. [Govt. Exh. 5 at 2–3].

28. Dr. Reitman's last order was placed on May 22, 2009. He has not ordered any controlled substances from Moore Medical since. [Govt. Exh. 4; Tr. 39–40, 44]. The DEA's ARCOS database, which stands for Automated Reporting and Consolidated Ordering System, tracks controlled substances orders. [Tr. 40]. Investigator Rudy used ARCOS to confirm that Dr. Reitman has made no controlled substances orders since May 22, 2009. [Tr. 40].

29. Dr. Reitman still has the ability to order controlled substances. [Tr. 40, 88]. He has not ordered any, but he has prescribed controlled substances to his patients. [Tr. 88].

30. Dr. Reitman stated that, other than an action related to the events that led to this hearing, Dr. Reitman has only had one prior interaction with the Medical Board of California. [Tr. 81–2]. The Medical Board of California placed Dr. Reitman on probation from 2002 until 2004, because he lost a malpractice case and the Board felt he had improperly treated a patient. The Board has taken no other action on his medical license. [Tr. 56–57, 101–02]. The 2002 probation had nothing to do with his abuse of codeine. [Tr. 102].

C. Dr. Reitman's Addiction

31. Dr. Reitman stated that he considers himself to be a recovered drug addict. He admits to abusing controlled substances, stating that he began to abuse Butalbital with codeine and APAP with codeine in about 2002 or 2003. Initially, he was prescribed these drugs by his private physician to treat headaches. Then, when he was at the point that he was taking more than 100 per month, he began ordering them for himself from Moore Medical. [Tr. 59–60, 77].

32. Dr. Reitman stated that he began getting essentially migraine headaches when he was about five or six years old. [Tr. 77]. They abated until the late 1990s when he was suffering from cervical stenosis and neck pain. [Tr. 78].

33. The Respondent admits that he knew that he ''was taking an ever larger dose of medication,'' but that he needed the medication because he was having the headaches. Dr. Reitman stated, ''I was stupid at the time. I probably should have asked to go to a rehab program or something to get myself off it at that time. I just didn't. I made a tremendous mistake.'' [Tr. 87].

34. Since July of 2009, Dr. Reitman has had few headaches, and he is able to treat these headaches with Imitrex or ibuprofen. [Tr. 78]. Dr. John E. Milner told Dr. Reitman that these headaches are codeine withdrawal headaches that may last from 18 to 24 months. [Tr. 78]. Also, Butalbital is a barbiturate. [Tr. 103]. However, Dr. Milner told Dr. Reitman that he did not think that Dr. Reitman was ever addicted to Butalbital, just the codeine. [Tr. 104]. Today, if he needs a controlled substance, he has two physicians, a neurologist and a primary physician, who can prescribe that for him. [Tr. 79].

35. Dr. Reitman candidly admitted that the Moore Medical report does not paint a clear picture of his self-prescribing practices. [Tr. 60–61]. The document begins with purchases on March 8, 2005. However, the Respondent admits to ordering for himself from Moore Medical since approximately 2002. [Tr. 60–61]. He stated that prior to 2002, he had been receiving his prescriptions from his private physician for about two years. [Tr. 61]. Dr. Reitman also stated that the Moore Medical report reflects all of the kinds of controlled substances he purchased from Moore Medical. [Tr. 81]. He did not purchase controlled substances from any other distributor. [Tr. 63].

36. Dr. Reitman said that he increased the amount of drugs that he was taking to the point that he was ingesting between eight and twelve (approximately 660 mg) per day. [Tr. 61–63].

37. Dr. Reitman states that he kept no records from Moore Medical. [Tr. 63–64]. He states he has no dispensing log, because he didn't dispense to anyone but himself. [Tr. 64].

D. Dr. Reitman's Treatment

1. Dr. Stephen Reitman

38. Dr. Reitman stated that he does not remember telling Investigator Rudy about his problem, but that he did tell Dr. William Friedel on the night of July 8, 2009. Dr. Friedel recommended he speak with an attorney and attend a meeting of the Physician Well-Being Committee at Grossmont Hospital, which occurs once every three months and happened to be the next day, July 9, 2009. Dr. Reitman attended the Well-Being Committee meeting where he told Dr. Calaprete of his drug problem. [Tr. 64–65, 68, 69, 102–03]. He continues to attend these committee meetings. [Tr. 69, 73].

39. Dr. Friedel also told Dr. Reitman about a diversion program. [Tr. 64–65, 74]. Dr. Reitman has also signed a Pacific Assistance Group (''PAG'') contract with Duane Rogers which ''spells out what I will do and what will happen to me if I am found to be positive of substances or alcohol.'' [Tr. 74, 89]. He has to not abuse controlled substances, attend diversion meetings twice a week, and allow random urine tests for a minimum of four to five times per month for three years. [Tr. 74, 90]. All of his urine tests have been negative since he began the program in July of 2009. [Tr. 74, 90]. He hasn't missed any meetings, but has been excused from a few when he was out of town. [Tr. 90–91]. If he breaks a term of the contract, he can be told that he cannot go to work until he has had two negative urine tests. [Tr. 91]. However, if he violates a term of this contract, it is not reported to the California Medical Board or to the DEA. [Tr. 91].

40. Dr. Reitman also attends Alcoholics Anonymous (''AA'') meetings. [Tr. 75]. He completed a 90 in 90 program, which means going to a minimum of 90 meetings in 90 days. Now, he attends AA meetings two to three times a week and meets with his sponsor, Philip Shapiro, on the phone or in person once per week. [Tr. 75]. Dr. Reitman attends AA meetings instead of Narcotics Anonymous (''NA'') meetings, because he did not feel comfortable at NA meetings. He said the participants were all younger, 17 to 30 years old and used four-letter words. Many had been to prison. [Tr. 76]. Several people at the AA meetings are also substance abusers or poly-drug abusers. [Tr. 76].

41. With regards to his addiction to controlled substances, Dr. Reitman also told two of his children who live in the area and his wife the following Monday when she returned from a trip abroad. [Tr. 67–68]. However, he did not admit to anyone that he had a problem until he was confronted by Investigator Rudy. [Tr. 65–66].

42. The last time he ingested a controlled substance was on the morning of July 8, 2009, when he took two tablets of the 60 mg Tylenol with codeine and two tablets of the Butalbital with codeine. He has since been substance free for over nine months. [Resp. Exh. 3 at 1; Tr. 66, 71].

43. On August 3, 2009, Dr. Reitman voluntarily entered an inpatient program at Rancho L'Abri in the East County of San Diego for 30 days. [Resp. Exh. 1, 2, 3; Tr. 70, 71, 72]. The program is run by Dr. John Milner. [Tr. 71]. Dr. Reitman conducted a five-day detoxification period at home prior to entering the program at Rancho L'Abri. [Tr. 72]. Through the program, Dr. Reitman learned that while he was self-prescribing codeine, he was most likely experiencing more headaches as a result of daily codeine withdrawal. [Tr. 73]. He states he has had no desire to take codeine since he stopped and that he feels like a different person. [Tr. 73, 79]. Though he still gets some headaches, he states that they are the result of ongoing changes in the mind and body resulting in his cessation of using codeine. [Tr. 88–89].

44. The Respondent stated that he has had a 100% recovery and that he is 100% committed to sobriety. [Tr. 80, 88]. When asked, he stated, ''Definitely. I never want to go backwards.'' [Tr. 80]. However, he also notes that it is a continuing thing and chemical dependency is something that he has to be worried about for the rest of his life, which is why he states that he will continue to go to AA meetings. [Tr. 88]. Dr. Reitman also states that though he abused codeine for eight years and has only been clean for a little over nine months, he is well on the road to recovery, and in more than just the early stages. [Tr. 89].

45. The Respondent offered into evidence approximately 18 patient comments about Dr. Reitman from August 1, 2009, to December 31, 2009, and from January 1, 2010, to March 23, 2010. [Resp. Exh. 9; Tr. 92–93]. The comments are mostly positive other than a few typical criticisms. [Resp. Exh. 9 at 2]. Additionally, during the time that he was addicted to codeine,

Dr. Reitman said that he did not receive any patient complaints. [Tr. 102].

46. The Respondent offered into evidence a Letter of Compliance from Duane Rogers, Psy.D., MFT, dated March 27, 2010.[7] [Resp. Exh. 7; Tr. 95–6]. Therein, Dr. Rogers states that Dr. Reitman ''has fully participated and complied with the physicians monitoring program from the above date [ ] as a self-referred voluntary participant.'' [Resp. Exh. 7]. The letter also states: ''To date, all tests are negative for all drugs of abuse and alcohol.'' [*Id.*].

47. The Respondent also offered into evidence the office notes from a neurologic evaluation of Dr. Reitman by Dr. Boris Khamishon, Dr. Reitman's treating neurologist who has been helping him with his headaches. [Resp. Exh. 8; Tr. 96–7].

2. Dr. Peter Colaprete

48. Dr. Peter Colaprete is a physician at Grossmont Hospital. [Tr. 108–9]. He began working with Dr. Reitman in 1987. [Tr. 109]. He has known Dr. Reitman for 23 years and considers him to be a friend. [Tr. 113]. Dr. Colaprete has an undergraduate degree in biology and chemistry. He then attended medical school, after which he completed a residency in emergency medicine, a fellowship in critical care medicine, and another residency in hyperbaric medicine. [Tr. 108].

49. Dr. Colaprete has been the chairman of the Grossmont Hospital Wellness Committee for approximately ten years, and has been a member of the committee for approximately twenty years. [Tr. 109]. The committee was mandated by the State of California in the 1970s with the purpose of helping physicians that are addicted to medications or alcohol or are suffering from dementia or psychiatric illness. [Tr. 109–10]. Prior to the establishment of these types of committees, doctors such as Dr. Reitman might have simply lost their license. This is a way to allow troubled doctors to continue to practice if the committee and the State feel that this is an option. There are ten members on the committee, and all have been there for more than five years. [Tr. 114]. At least one member of the committee has to have been a physician with a former addiction problem. [Tr. 119]. The committee meets quarterly, conducts random urine screens, and establishes a contract with the doctors that must be followed. The committee also stays in contact with the doctors as well as *their* physicians. [Tr. 114–15, 116]. The physician usually must attend these meetings for two or three years. [Tr. 116, 118].

50. In approximately July of 2009, it came to Dr. Colaprete's attention that Dr. Reitman would need the assistance of the Wellness Committee. [Tr. 110]. Dr. Reitman has attended three meetings since that time. [*Id.*]. Dr. Reitman told the committee of his recurring headaches, his treatment of those headaches, and his subsequent self-prescribing of codeine in large amounts. [Tr. 111].

51. Dr. Colaprete stated that the committee has not done any urinalysis tests for Dr. Reitman. [Tr. 115].[8] As part of the contract, twice per month, Dr. Reitman has to meet with a clinical psychologist, Duane Rogers, who can also do screening. [*Id.*].

52. If the Committee feels that the physician should not be permitted to work (*i.e.* the doctor fails to attend a meeting, tests positive on a urinalysis, admits to a relapse, *etc.*), then they can recommend this to the hospital's chief of staff who can summarily stop that physician from working. [Tr. 115–16, 117]. This would also be reported to the Medical Board of California, but not the DEA. [Tr. 117, 124].

53. Dr. Colaprete is familiar with Dr. Milner, the director of the Rancho L'Abri program. [Tr. 111–12]. Dr. Colaprete stated that Dr. Milner is very knowledgeable in prescription drugs and has seen many, many patients. [Tr. 112].

54. With regards to Dr. Reitman's recovery, Dr. Colaprete stated that Dr. Reitman was their ''star physician.'' Dr. Colaprete also said, ''He completed the program as we requested. He's followed all our instructions. He's come to every meeting we've asked him to come to, and, again, I've had, you know scores of physicians that have been requested to come to the committee, and I believe Dr. Reitman is at the top of that list of people that have completed and have performed as we requested.'' [Tr. 112–13]. Dr. Colaprete stated he intends to have Dr. Reitman continue to participate in this program. [Tr. 113].

55. In twenty years on the committee, Dr. Colaprete has seen approximately twenty physicians with substance abuse problems. [Tr. 118]. He has never seen a physician relapse who seemed very committed to recovery. [Tr. 119]. He also stated that having access to drugs as well as the ability to write prescriptions could potentially be a problem. [Tr. 120]. However, when asked if he would characterize Dr. Reitman as being recovered, Dr. Colaprete stated, ''* * * he's pretty close.'' [Tr. 120]. He also reiterated that Dr. Reitman is ''on the road to recovery, if not completely recovered,'' and he does not foresee him relapsing. [Tr. 122].

56. Dr. Colaprete stated that Dr. Reitman ''loves his patients,'' is ''very conscientious,'' and was a ''very professional physician.'' [Tr. 122]. At no point did Dr. Colaprete ever note any strange behavior on the part of Dr. Reitman. [Tr. 123–24].

3. Dr. William Friedel

57. Dr. William Friedel is a graduate of Brown University. He attended Albert Einstein College of Medicine, interned at Downstate in Brooklyn, New York, and returned to Albert Einstein for his residency in urology. He has been a practicing urologist in California since 1973. [Tr. 127].

58. Dr. Friedel has known Dr. Reitman as a friend and colleague for over 35 years. [Tr. 126–27, 138–9]. They belong to a religious group. They also worked together at El Cajon Valley Hospital. Dr. Friedel was Dr. Reitman's patient until approximately six or seven years ago when, after Dr. Friedel had a heart attack, he began seeing a cardiologist as his primary physican. [Tr. 127–28].

59. Dr. Friedel stated that, ''as a sophisticated consumer of medical care * * * I certainly would not have seen [Dr. Reitman] if I did not think he was more than competent.'' [Tr. 129]. He also said that his opinion of Dr. Reitman's medical abilities was ''excellent.'' [Tr. 129]. He has observed Dr. Reitman with patients. Dr. Friedel testified that Dr. Reitman is an ''excellent physician'' who ''cares about his patients and takes good care of them.'' [Tr. 134, 141]. During the 2002 to 2009 time frame, he did not suspect that Dr. Reitman was interacting with patients while he was under the influence of a controlled substance. [Tr. 141].

60. In July of 2009, Dr. Reitman told Dr. Friedel of his years of self-prescribing of controlled substances. [Tr. 129, 139]. Dr. Friedel advised Dr. Reitman to meet with Grossmont Hospital's Wellness Committee. [Tr. 130]. Dr. Friedel has been a member of this committee for over 20 years. [Tr. 130–31, 135]. Though he admits he is not an addictologist, he states that from a practical point of view, he is very experienced in addiction issues. [Tr. 131, 135].

[7] Although the letter is dated March 27, 2009, the parties agreed that this was a typographical error and the actual date was March 27, 2010. [Tr. 95–96].

[8] However, Duane Rogers has been conducting urinalysis tests and all have been negative for drugs ''of abuse'' and alcohol. [Resp. Exh. 7]. Rancho L'Abri also conducted urinalysis tests, which have all been negative as well. [Resp. Exh. 4].

61. Dr. Reitman has since met with the committee and will continue to meet with the committee regularly. [Tr. 132, 136]. However, Dr. Friedel stated that the committee does not really ''monitor'' physicians, but rather has the doctors come in and talk with the committee periodically. The committee also assigns a mentor to keep in close contact with the physicians. He is unsure if the committee has appointed a mentor for the Respondent. [Tr. 135–36].

62. Dr. Friedel stated that Dr. Reitman has ''an excellent chance of not abusing codeine in the future. It's crystal-ball-gazing, as you know. There's a certain relapse rate for people who use drugs. I think * * * it's unlikely that he would do that.'' [Tr. 133]. He added that Dr. Reitman ''absolutely'' appears committed to recovery. [*Id.*]. He knows that Dr. Reitman abused controlled substances for several years and that he has only been free of controlled substances for nine months. [Tr. 136]. He could not say that Dr. Reitman is recovered, but used the more general term of ''recovering.'' He compared it to being cured, stating that ''[y]ou only know somebody's cured when they die and they don't have it anymore.'' He later added, ''It's like the alcoholic describing themselves as [a] non-drinking alcoholic.'' [Tr. 136–37, 140].

63. Dr. Friedel stated that the committee only sees about one, new physician with substance abuse problems every three years. [Tr. 137]. He has seen physicians relapse even when they seemed committed to recovery. [Tr. 137].

64. When asked, with regards to a physician who is addicted to controlled substances, whether access to controlled substances would be conducive to recovery, Dr. Friedel said: ''There's no doubt that anybody who has free access to drugs is more likely to abuse drugs, and probably the best example I can use is an anesthesiologist who, as a profession, are more likely to become addicted, because the drugs are poorly accounted for and readily available. With that analogy, of course, anybody who has more access to drugs is probably more likely to abuse that access. On the other hand, I think Dr. Reitman's very committed not to do this.'' [Tr. 138].

65. Dr. Friedel stated that Dr. Milner was ''the guy in addiction medicine * * * he's the guy to go to.'' [Tr. 134].

4. Rabbi Avram Bogopulsky

66. Rabbi Avram Bogopulsky did his initial training in Muncie, New York under the tutelage of Rabbi Wein for eight years, encompassing detailed study, Talmudic study, rabbinical study, and pastoral care. He then served as an assistant rabbi in Charleston, South Carolina for three years. Now he has led the Beth Jacob Congregation in San Diego for the past 14 years. [Tr. 144].

67. Dr. Reitman has attended Beth Jacob for 14 years. [Tr. 144]. Rabbi Bogopulsky considers him ''one of our better congregants as far as he attends daily minion, which is a gathering of a quorum of ten * * * every single morning.'' [Tr. 144]. They talk on a regular basis. [Tr. 145, 148–9]. Dr. Reitman is one of two vice presidents of the congregation. [Tr. 145].

68. Rabbi Bogopulsky, his wife, and his son are all patients of Dr. Reitman. [Tr. 145]. Rabbi Bogopulsky stated that Dr. Reitman is a ''very good doctor.'' [Tr. 146].

69. In July of 2009, Dr. Reitman came to Rabbi Bogopulsky for spiritual guidance related to his years of addiction and self-prescribing of controlled substances. [Tr. 146–7]. Rabbi Bogopulsky stated that this came as a shock, because the Respondent never appeared to be under the influence. [Tr. 148]. He stated that Dr. Reitman ''has an impeccable character with a deep concern for people * * * and is a role model in the community.'' [Tr. 149].

70. Rabbi Bogopulsky testified that Dr. Reitman showed remorse and was ''absolutely regretful.'' [Tr. 150]. He also stated that Dr. Reitman has ''demonstrated to this day, every single day, a commitment'' to recovery. [*Id.*]. He explained that, in Orthodox Judaism, the Sabbath is a day of holiness. On the Sabbath, ''we do not use electricity, we don't answer the phone, drive, computers.'' However, part of the recovery process requires Dr. Reitman to call in on a daily basis. Therefore, he and Rabbi Bogopulsky have an agreement where Rabbi Bogopulsky allows Dr. Reitman to essentially bypass Jewish law and use Rabbi Bogopulsky's office phone to call in on the Sabbath. [Tr. 150–51]. Rabbi Bogopulsky stated that this allows him to maintain his religious faith and still carry out his commitment to recovery. [Tr. 151].

71. Rabbi Bogopulsky also said that he never suspected Dr. Reitman of abusing drugs and that he had no inclination that he was under the influence of any drugs. [Tr. 152]. He admitted that he is neither a medical doctor nor an addiction specialist. However, he testified that in his position as a spiritual leader, he has counseled people with addiction problems before, but he typically finds a more qualified counselor to help addicts. [Tr. 152–3].

5. Dr. John E. Milner

72. Dr. John E. Milner graduated from the University of Texas Medical School in Dallas in 1957. He interned at the Naval Hospital in Camp Pendleton and served as a general duty medical officer until 1961. He was in private practice in La Jolla, California from 1961–66. He began psychiatric training in 1966, eventually completing a child and adolescent fellowship in psychiatry in 1970. In the mid-1970s, he opened an alcohol and drug treatment unit in San Diego, California called Sharp Cabrillo Hospital. He received a certificate in addiction medicine in 1986. He also opened a non-hospital-based treatment program for alcohol or drug dual diagnosis patients called Rancho L'Abri. He has been the medical director at Rancho L'Abri for more than 25 years. He indicated that he has probably treated thousands of patients and hundreds of physicians with drug and alcohol issues. [Resp. Exh. 10; Tr. 181–4, 190].

73. Dr. Reitman came to Rancho L'Abri as an inpatient on August 3, 2009. [Resp. Exh. 1; Tr. 184–5]. Dr. Milner's team, under his direction, created a treatment plan for Dr. Reitman. [Resp. Exh. 2; Tr. 186–7]. In addition, the team also maintains patient progress notes, which are reviewed by Dr. Milner. [Resp. Exh. 3; Tr. 187–8]. The team also conducts urine toxicology screening and keeps records of the results. [Resp. Exh. 4; Tr. 189]. When Dr. Reitman arrived at Rancho L'Abri, his urinalysis results showed him as negative for both opioids and barbituates. [Resp. Exh. 4; Tr. 203]. Dr. Reitman continues to receive urine screens. [Tr. 204].

74. Dr. Milner diagnosed Dr. Reitman with opioid addiction. He did not diagnose Dr. Reitman with barbiturate addiction. He did not know that Dr. Reitman ordered four times as much Butalbital as he did APAP with codeine. [Tr. 200]. Dr. Milner said that Butalbital is a very mild sedative that can cause a person to become ''sort of intoxicated'' in huge doses. [Tr. 201]. He testified that he never saw any barbiturate withdrawal symptoms, and ''a person who's severely addicted is going to manifest them.'' [Tr. 201].

75. By July 2009, Dr. Reitman was taking approximately 660 mg of codeine per day. [Tr. 190–91, 202]. Dr. Milner stated that codeine is very kind on the human brain, ''so it's very, very likely, conceivable, and totally possible that he can function * * * as normally as he did with this dose of codeine in him.'' [Resp. Exh. 6; Tr. 192]. He said that his team looked extensively for any

evidence that Dr. Reitman failed to function as a physician during the period that he was abusing codeine, but could find no such evidence. [Tr. 192].

76. Dr. Milner testified that Dr. Reitman arrived at Rancho L'Abri having already stopped taking codeine. ''He was deeply ashamed, humiliated, aghast that he had been doing this for so long.'' [Resp. Exh. 3 at 1–4; Tr. 192–93].

77. Dr. Milner said that Dr. Reitman has been committed ''since the very beginning'' to stop using the drugs. [Tr. 193]. To the best of his extensive knowledge, he stated that Dr. Reitman has ''rigorously attended all the recommended behaviors and attitudes and processes.'' [Tr. 193–4]. When asked to rate Dr. Reitman's commitment to recovery on a scale of one to ten, Dr. Milner said, ''Nine. Ten. Yeah, he's committed.'' [Tr. 194]. He also stated that ''as long as he continues the process he's involved in, the risks [of relapse] are minimal.'' [Tr. 194]. Dr. Milner believed that it would be in the interest of the public to continue to allow Dr. Reitman to prescribe controlled substances, and he would expect the urine monitoring and continued involvement in his own recovery plan to continue. [Tr. 195–96]. Admitting that it is possible for a person who has demonstrated their commitment to recovery to relapse, Dr. Milner asserted that as long as the individual continues to be monitored and continues to follow recommended processes, the chances of relapse are very slim. [Tr. 196–97]. Dr. Milner knew that Dr. Reitman had abused for several years and had only been clean for approximately nine months. [Tr. 198]. He also stated that the chance of relapse in the earlier period of recovery is increased. [Tr. 199].

78. Dr. Milner testified that if a physician is in the proper monitoring program, then access to ''one's drug of choice'' would not be harmful. [Tr. 199].

79. Dr. Reitman's wife was continuously supportive throughout Dr. Reitman's stay at Rancho L'Abri, providing Dr. Reitman with kosher meals and attending family sessions. [Resp. Exh. 3 at 1–4, 6–7].

6. Dr. Sandra Jassmann

80. Dr. Sandra Jassmann received a medical degree from Medical College of Virginia in 1969. She had three years of internal medicine at Cleveland Clinic in Cleveland, Ohio from 1969 to 1972. She served two years with the United States Navy in Charleston, South Carolina from 1972 to 1974. Then, from July 1, 1974, to June 10, 1976, she participated in a fellowship in endocrinology at Sepulveda VA in Sepulveda, California, an affiliate of UCLA. She began working in San Diego in 1976. [Tr. 207].

81. Dr. Jassmann met Dr. Reitman in 1976 and worked closely with him for 30 years. [Tr. 208]. She considers Dr. Reitman to be a ''very competent, very capable, very professional'' doctor who has ''the interests of his patients at heart.'' [Tr. 208–9, 212].

82. In August of 2009, Dr. Reitman told Dr. Jassmann that he had an addiction problem and would be going into rehab. [Tr. 209]. Dr. Jassmann stated that she was ''astounded, [] had no way of knowing, [and] had not observed anything.'' [Tr. 210]. He was ''never'' lethargic, loopy, or seemed to be under the influence of any medication during the period from 2002 through 2009. [*Id.*]. She had never heard any complaints about Dr. Reitman. [Tr. 211, 212]. Dr. Jassman was aware of the 2002 action by the California Medical Board. However, she stated that this does not change her opinion of Dr. Reitman's abilities. [Tr. 212–3]. She no longer works with Dr. Reitman; however, Dr. Jassmann testified that, if she did, she would allow him to cross-cover her patients. [Tr. 213–4].

83. Dr. Jassmann stated that she felt confident that Dr. Reitman is able to conduct his practice successfully with regards to patients and prescribing. [Tr. 211]. She said that he was an excellent practitioner of internal and geriatric medicine. [Tr. 212].

84. Dr. Jassman testified that Dr. Reitman was remorseful about the fact that he had abused codeine. [Tr. 211].

7. Philip Shapiro, Esq.

85. Philip Shapiro is an attorney in San Diego. He went to college at Southern Illinois for his undergraduate degree. Then, he attended San Diego State for his Master's. For his J.D., he attended Thomas Jefferson School of Law. Prior to becoming an attorney, he served as a special agent with the United States Secret Service. [Tr. 216–17].

86. Mr. Shapiro had been addicted to cocaine. He is currently involved in Alcoholics Anonymous. He has been recovering for a total of 11 years. He has sponsored five people and is currently Dr. Reitman's sponsor. [Tr. 217]. Dr. Reitman is currently undergoing the twelve-step program, and is on step four. He is unsure, but he believes that Dr. Reitman has also completed the 90 in 90 program. Dr. Reitman and Mr. Shapiro had been talking every day, but now they talk three to four times per week on the phone, and 90% of the time, they meet in person on Sundays. [Tr. 218–19, 221].

87. With regards to Dr. Reitman's commitment to recovery, Mr. Shapiro said, ''I honestly would say that I think [Dr. Reitman] has the greatest chance of any person I've ever sponsored.'' [Tr. 219]. However, he also stated that he has seen other AA members relapse, even those that were remorseful about their past addiction and abuse. But, if the addicted person comes to meetings and doesn't abuse between meetings, then ''he or she will make it.'' [Tr. 222]. Also, having easy access to one's drug of choice can make it much tougher to stay sober. [Tr. 223]. Mr. Shapiro has seen individuals with 22 years of sobriety relapse. He stated that it is the individual's level of commitment to sobriety that seems to determine whether or not they are going to relapse. [Tr. 223–24].

88. Mr. Shapiro said that Dr. Reitman has been very open about his problem from the beginning. [Tr. 219]. He does not blame anyone but himself. [Tr. 220].

89. Mr. Shapiro testified that he would feel comfortable going to Dr. Reitman as his personal physician. In fact, he sent his daughter to Dr. Reitman. [Tr. 220].

8. Christine Kuwazaki

90. Christine Kuwazaki has known Dr. Reitman for 26 years. She is his back office assistant and his practice manager, doing billings, claims and charges. She works closely with Dr. Reitman on a daily basis. [Tr. 226–27, 233].

91. Ms. Kuwazaki stated that Dr. Reitman is ''very caring, very ethical, and conscientious with patient care.'' [Tr. 228, 231, 235].

92. However, she did not know that he was using his DEA Registration to order controlled substances for personal use. [Tr. 235].

93. To her knowledge, Dr. Reitman does no dispensing at his practice. No pharmacy representatives leave samples at the practice. [Tr. 236].

94. From the period of 2002 through the present, Dr. Reitman has only had a couple of patient complaints. [Resp. Exh. 9 at 2; Tr. 228]. She described them as ''typical.'' [Tr. 234].

95. Dr. Reitman told Ms. Kuwazaki that he had been abusing codeine on July 8, 2009. Up until that point, she did not see any evidence of him being under the influence of drugs. [Tr. 229–30]. He told her that he was going into rehab. She helped him reschedule patients during this time. [Tr. 230].

96. Prior to that time, she did not know that, at his office, he stored the drugs he self-prescribed. [Tr. 234].

97. Ms. Kuwazaki knew that Dr. Reitman had a problem with headaches.

She could tell when he had a ''really bad'' headache, because he looked ill and would have to go home for the day. [Tr. 230–31]. Now that Dr. Reitman has completed rehabilitation, Ms. Kuwazaki stated that he looks relieved and focused. [Tr. 231].

98. Ms. Kuwazaki does not think that his ability to write controlled substance prescriptions would be a problem for Dr. Reitman. [Tr. 232]. Ms. Kuwazaki stated that she would trust him to be her own personal doctor. [Tr. 232–3].

E. Medical Board of California

99. On March 17, 2010, the Medical Board of California (''Board'') filed an accusation against Dr. Reitman for ''self administering a dangerous drug,'' ''violation of drug statutes and regulations,'' and ''general unprofessional conduct.'' [Govt. Exh. 6]. However, the Record contains no evidence that the Board has conducted a hearing or imposed any restrictions on the Respondent's medical license.

IV. Conclusions of Law and Discussion

A. Position of the Parties

1. The Government

The Government asserts that the Respondent's continued registration is inconsistent with the public interest. [Government's Proposed Findings of Fact and Conclusions of Law (''Govt. Brief'') at 10].

First, the Government states that the Medical Board of California has filed an accusation against the Respondent. [Govt. Brief at 5]. While admitting that no final action has been taken on the accusation, the Government avers that the sanction being sought is revocation or suspension of his medical license. The Government concludes that this action, nonetheless, ''reflects the Board's recommendation as to Respondent's continued ability to practice medicine in the State of California.'' [Govt. Brief at 5–6].

Next, the Government contends that the Respondent's behavior was ''not an isolated incident of misuse, but was a continued pattern of behavior that continued over a seven year period.'' [Govt. Brief at 6]. Further, the Government notes that Respondent ''was not compliant with Federal law or the laws of the State of California.'' [*Id.*]. The Government asserts that the Respondent was indeed a dispenser, because he dispensed to himself, and is thus subject to Federal recordkeeping requirements, with which he did not comply. [Govt. Brief at 6–7]. Respondent's actions in self-prescribing and administering controlled substances also violated California law. [Govt. Brief at 7–8]. The Government contends that these violations ''weigh in favor of finding that Respondent's continued registration would be inconsistent with the public interest.''

Third, the Government notes that the Respondent was initially prescribed the controlled substances he later ordered for his own abuse. According to the Government, this does not negate the fact of his misdeeds. [Govt. Brief at 8]. The Respondent exploited his controlled substances registration and did not ask his physician to continue prescribing, because he knew that his intake of controlled substances was a problem. [Govt. Brief at 8–9].

The Government goes on to argue that though it appears Respondent's addiction never adversely affected his practice, Respondent was merely able to hide his addiction from everyone around him for seven years. [Govt. Brief at 9]. According to the Government, this exemplifies his ability to conceal future abuse. [*Id.*].

The Government next notes that, though the Respondent voluntarily entered a variety of rehabilitative efforts, ''which no doubt demonstrates a commitment to staying clean and sober * * * he has only been sober for a period of approximately eleven months. He abused controlled substances for a period of seven years.'' [*Id.*]. Additionally, the Government notes the chances that the Respondent will relapse could be enhanced, because he is in the ''early stages of recovery,'' and because, if he is permitted to retain his registration, he would have access to controlled substances. [Govt. Brief at 9–10].

In conclusion, the Government states that it ''has met its burden in proving that the Respondent's continued registration is inconsistent with the public interest.'' [Govt. Brief at 10]. Therefore, Dr. Reitman's registration should either be revoked or, alternatively, suspended for one year and subject to conditions for three years upon reinstatement. [Govt. Brief at 10–11].

2. The Respondent

The Respondent argues that his continued registration is not ''inconsistent with the public interest'' pursuant to 21 U.S.C. 824(a). [Respondent's Post-Hearing Proposed Findings of Fact, Conclusions of Law, and Argument (''Resp. Brief'') at 1].

The Respondent notes that Dr. Reitman has been subjected to no adverse recommendation by the state licensing board and also has no convictions under Federal or State laws. [Resp. Brief at 12, 13]. The Respondent further adds that Dr. Reitman is experienced in handling controlled substances and, ''exclusive of the subject at issue in this case, Dr. Reitman has been responsible in his distribution of controlled substances and compliant with DEA laws.'' [Resp. Brief at 13].

The Respondent next avers that, despite his own self-prescribing, his practice during this time period does not indicate that he placed the public at risk. [Resp. Brief at 13–15]. He cites one DEA hearing where a physician was ultimately found guilty of felonious self-prescribing by subterfuge in a manner the Respondent considers more egregious than his own conduct. *Mary Thomson, M.D., Continuation of Registration With Restrictions,* 65 FR 75,969, 75,970 (DEA 2000); [Resp. Brief at 14]. He also notes that one similarity between the two cases is that both doctors harmed no one but themselves. [Resp. Brief at 15]. Therefore, the Respondent argues that since his conduct was not as shocking as the actions taken by Dr. Thomson, Dr. Reitman should also be permitted to continue his registration with restrictions. [Resp. Brief at 14–15].

The Respondent also states that ''patient care was not affected during the time frame that Dr. Reitman was abusing codeine.'' [Resp. Brief at 15–16].

The Respondent then points out that he has fully accepted responsibility for his actions and has minimal risk of relapsing. [Resp. Brief at 16–17]. He cites two DEA cases for the proposition that ''the 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 his past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with [a] DEA registration.'' *John Porter Richard, D.O.,* 61 FR 13,878 (DEA 1996); *Leonardo* v. *Lopez, M.D.,* 54 FR 36,915 (DEA 1989); [Resp. Brief at 18]. Therefore, the Respondent is arguing that he has made the appropriate showing and it is thus reasonable for Dr. Reitman to maintain his DEA Registration at this time. [Resp. Brief at 18].

Lastly, the Respondent concludes by stating that the ''public interest will not be served by revoking Dr. Reitman's DEA registration.'' [Resp. Brief at 18]. ''Although his lifelong battle with headaches resulted in his eventual addiction to codeine, since being approached by the DEA, he has taken every conceivable step toward rehabilitation, and his rehabilitative efforts have paid off.'' [*Id.*].

Thus, the Respondent concludes by stating that he ''respectfully requests

that he be permitted to maintain his DEA Registration, and is open to any conditions that will ensure his continued compliance with DEA registration requirements.'' [Resp. Brief at 19].

B. Statement of Law

Pursuant to 21 U.S.C. 824(a)(4), the Deputy Administrator[9] may revoke a DEA Certificate of Registration if she determines that the continuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 823(f). Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

The factors may be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of these factors, and may give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (DEA 1993); *see also D&S Sales,* 71 FR 37,607, 37,610 (DEA 2006); *Joy's Ideas,* 70 FR 33,195, 33,197 (DEA 2005); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422, 16,424 (DEA 1989).

Also, in an action to revoke a registrant's certificate, the DEA has the burden of proving that the requirements for revocation are satisfied. 21 CFR 1301.44(e). The burden of proof shifts to the Respondent once the Government has made its prima facie case. *Shatz* v. *U.S. Dept. of Justice,* 873 F.2d 1,089, 1,091 (8th Cir. 1989); *Medicine Shoppe,* 73 FR 364 (DEA 2008); *see also Thomas Johnston,* 45 FR 72,311 (DEA 1980).

1. Factor One: Recommendation of the Appropriate State Licensing Board

The Medical Board of California has not recommended that Dr. Reitman's license be revoked. [FOF 2]. The fact that the Medical Board of California has currently authorized the Respondent to practice medicine is not dispositive in this administrative determination as to whether continuation of a registration is consistent with the public interest. *Patrick W. Stodola, M.D.,* 74 FR 20,727, 20,730 (DEA 2009); *Jayam Krishna-Iyer,* 74 FR 459, 461 (DEA 2009). 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 state government. *Edmund Chein,* 72 FR 6,580, 6,590 (DEA 2007), *aff'd, Chein* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008), *cert. denied,* __ U.S. __, 129 S.Ct. 1033 (2009). Although not dispositive, state board decisions are relevant on the issue of granting or denying a DEA application. *See Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009); *see Martha Hernandez, M.D.,* 62 FR 61,145, 61,147 (DEA 1997).

Dr. Reitman is currently licensed to practice medicine in California, License Number G25924. [FOF 2]. The California Medical Board has not taken any formal action to limit Respondent's right to practice medicine nor has it recommended limiting his ability to prescribe controlled substances. [FOF 2]. However, it has filed an accusation against the Respondent. Although, as previously stated, the Board has taken no final action. [FOF 99]. I disagree with the Government's argument that this accusation ''reflects the Board's recommendation as to the Respondent's continued ability to practice medicine in the State of California.'' [Govt. Brief at 6]. Rather, it is the Board's ultimate decision that serves as a recommendation, not merely the investigation.

Thus, I find that this factor falls neither for nor against revocation.

2. Factor Three: Conviction Record

The Record contains no evidence that the Respondent has any convictions relating to the manufacture, distribution, or dispensing of controlled substances. Therefore, this factor also does not fall in favor of revocation.

3. Factors Two and Four: Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable State, Federal or Local Law

The record revealed that the Respondent committed recordkeeping violations. [FOF 14, 17, 24, 37]. ''Every registrant manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him.'' 21 U.S.C. 827(a)(3), 842(a)(5). Moreover, ''[r]ecordkeeping is one of the CSA's central features,'' and ''a registrant's accurate and diligent adherence to this obligation is absolutely essential to protect against the diversion of controlled substances.'' *Paul H. Volkman, M.D.,* 73 FR 30,630, 30,644 (DEA 2008), *aff'd* 567 F.3d 215, 224 (6th Cir. 2009).

The Respondent did not dispense medication to anyone but himself. [FOF 15]. Regardless, a physician is required to keep accurate records readily available with regards to all controlled substances received and distributed. 21 U.S.C. 827(a)(3), 842(a)(5). According to 21 U.S.C. 827(c), a physician is often exempt from the recordkeeping requirements of 21 U.S.C. 827(a)(3) when the physician is only prescribing ''in the lawful course of their professional practice.'' However, Dr. Reitman's unique situation involves a doctor who ordered 24,400 tablets of controlled substances over approximately four and one-half years, a large portion of which were dispensed for his personal use, and not ''in the lawful course'' of his professional practice, although the rest of the time he was indeed only prescribing. [FOF 4, 27]. Thus, I agree with the DEA that the Respondent was operating as a ''dispenser'' as that term is defined in 21 CFR 1300.01(b)(11).[10] Yet, Dr. Reitman admitted that he kept none of those required records [FOF 14, 37], which is a violation of 21 CFR 1304.21–22.[11] Therefore, the Respondent violated DEA regulations.

The Respondent's administration of a controlled substance to himself is also a violation of both Federal and California law. Under California Business and Professions Code, Section 2239(a), ''the use or prescribing for or administering to himself or herself, of any controlled substance [ ] constitutes unprofessional conduct.'' Cal. Bus. & Prof. Code 2239 (West 2010). Also, ''[n]o person shall prescribe, administer, or furnish a controlled substance for himself.'' Cal. Health & Safety Code 11170 (West 2010). Additionally, ''[n]o person shall obtain or attempt to obtain controlled substances * * * (1) by fraud, deceit,

[9] The Deputy Administrator has the authority to make such determinations pursuant to 28 CFR 0.100(b) and 0.104 (2009).

[10] ''The term dispenser means an individual practitioner, institutional practitioner, pharmacy or pharmacist who dispenses a controlled substance.'' 21 CFR 1300.01(b)(11).

[11] ''(a) Every registrant required to keep records pursuant to 1304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him/her * * *'' 21 CFR 1304.21. ''Each person registered or authorized [ ] to manufacture, distribute, dispense, import, export or conduct research with controlled substances shall maintain records with the information listed below.'' 21 CFR 1304.22.

misrepresentation, or subterfuge; or [2] by the concealment of a material fact.'' Cal. Health & Safety Code 11173. Here, the Respondent admitted to ordering controlled substances for himself and obtained these controlled substances from Moore Medical while concealing the fact that he was dispensing to himself. [FOF 12, 15]. This is a violation of California law and, by extension, Federal law. Although the Respondent did not use prescriptions, he dispensed controlled substances without a prescription, which violated Federal statutory and regulatory provisions. *See* 21 U.S.C. 829; 21 CFR 1306.04.

Therefore, because the Respondent thus violated DEA record-keeping requirements, and because the Respondent self-administered, I find that this factor falls in favor of revocation, and the Government has thus met its prima facie burden.

4. Factor Five: Such Other Conduct Which May Threaten the Public Health and Safety

While acknowledging that the Government has met its prima facie burden, I find that the inquiry does not end here. Rather, when assessing the appropriate remedy in a particular case, the Deputy Administrator should consider all facts and circumstances at hand. *See Hernandez,* 62 FR at 61,147.

Though Dr. Reitman was self-prescribing, the evidence suggests that, initially, he was doing so to treat a medical condition. [FOF 31]. Though the Government argues that this should not be considered as a mitigating factor [Govt. Brief at 8–9], in the past, the Deputy Administrator *has* considered this to be a mitigating factor. *Dennis Robert Howard, M.D., Grant of Restricted Registration,* 62 FR 32,658, 32,662 (DEA 1997) (The then acting Deputy Administrator noted, ''There is no evidence in the record that any of the drugs were taken for other than a legitimate medical purpose. Also, there is no evidence that Respondent has since taken any medication that was not prescribed for him by another physician.''). Similarly, Dr. Reitman had intense headaches that led to dependence. [FOF 31–33]. The Record contains no evidence that Dr. Reitman was using these controlled substances in order to produce a ''high.'' Now, he has two doctors that can prescribe controlled substances for him if necessary. [FOF 34, 47]. Therefore, I find that Dr. Reitman's desire was to treat a genuine medical problem, and that this should at least serve as a mitigating factor. *See Howard,* 62 FR at 32,661.

There is evidence that, though Dr. Reitman self-prescribed, this did not impair his ability to provide competent care to his patients. [FOF 59, 68–69, 75]. He hurt no one other than himself. Though the Government argues that this simply demonstrates his skills in subversion [Govt. Brief at 9], in *Thomson,* the Deputy Administrator stated: ''Fortunately for Respondent's patients, and for Respondent herself, there is no evidence that Respondent's illicit drug abuse harmed any others than herself, and further, there is no evidence that Respondent's patients failed to receive needed medications.'' *Mary Thomson, M.D., Continuation of Registration,* 65 FR 75,969, 75,972 (DEA 2000). Likewise, Dr. Milner stated that it is ''very likely'' that Dr. Reitman was able to function normally while taking 660mg of codeine per day. [FOF 75]. Dr. Milner also stated that he searched for indications that Dr. Reitman failed to function as a physician during the period that he was addicted to codeine; he could find no such evidence. [*Id.*]. Other health care professionals stated that at no point did Dr. Reitman appear to be under the influence. [FOF 56, 59, 82, 95]. Therefore, I find it to be at least a mitigating factor that Dr. Reitman's self-prescribing did not impair his ability to conduct his duties as a physician.

Despite Dr. Reitman's efforts at rehabilitation, the Government asserts that the Respondent has only been ''clean'' for approximately eleven months, and that this is not enough time to be sure that he will not relapse. [Govt. Brief at 9–10]. As the Deputy Administrator has previously determined, ''[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 (1989). It is clear by the Respondent's actions since being confronted by the DEA that he is dedicated to rehabilitation. [FOF 12, 31, 33, 38, 40, 42–44, 46, 50, 54–55, 62, 64, 73, 77, 86–88]. Specifically, he immediately entered not just one but various treatment programs. [FOF 38, 39, 40, 43, 50, 73]. Numerous urinalysis tests have been conducted; they have all been negative. [FOF 46, 73].

The Government further maintains that Dr. Reitman is more likely to relapse if he has access to his drug of abuse. [Govt. Brief at 10]. Though three witnesses did state that the possibility of relapse was greater in such cases, Dr. Friedel added that any doctor with access to a controlled substance is more likely to abuse the controlled substance. [FOF 64]. The witnesses also emphatically stated their opinion that Dr. Reitman was well on the road to recovery. [FOF 54, 55, 62, 64, 77]. Therefore, I find that, under the particular circumstances of this case, nine months is not such a short recovery period that it should serve as grounds for revocation.

Additionally, the Respondent has demonstrated remorse and a dedication to overcoming his addiction and preventing future mis-judgments. Under Agency precedent, where the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must '' 'present[] sufficient mitigating evidence to assure the Administrator that [he] can be trusted with the responsibility carried by such a registration.' '' *Samuel S. Jackson,* 72 FR 23,848, 23,853 (DEA 2007) (*quoting Leo R. Miller,* 53 FR 21,931, 21,932 (DEA 1988)). Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs., Inc.,* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), this Agency has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for its actions and demonstrate that it will not engage in future misconduct. *Medicine Shoppe,* 73 FR 364 (DEA 2008); *see Jackson,* 72 FR at 23,853; *John H. Kennedy,* 71 FR 35,705, 35,709 (DEA 2006); *see also Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor []'' in the public interest determination). An applicant's acceptance of responsibility for his prior misconduct is a highly relevant consideration under this factor. *See Barry H. Brooks,* 66 FR 18,305, 18,309 (DEA 2001); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (DEA 1995); *Carmel Ben-Eliezer, M.D.,* 58 FR 65,400, 65,401 (DEA 1993).

Specifically, Dr. Reitman candidly admitted to his abuse from the moment he was confronted by DEA investigators, even admitting to abuse beyond the Government's proffered evidence. [FOF 12, 15, 26, 31, 35]. He cooperated in almost every way, choosing to follow the advice of his attorney and not to relinquish his registration and controlled substances until the DEA had a warrant, but ultimately did voluntarily surrender the controlled substances. [FOF 17, 19, 20]. Dr. Reitman immediately entered treatment programs. [FOF 38, 39, 40, 43, 50, 73].

The Respondent presented numerous witnesses involved in Dr. Reitman's rehabilitation and medical practice. [FOF 48, 49, 57, 66, 72, 80, 85, 90]. Every witness on the topic of rehabilitation stated that he has excelled and is extremely committed to overcoming his addiction. [FOF 54–55, 62, 64, 70, 77, 87]. Furthermore, he is involved with his synagogue and has the full support of his wife and family. [FOF 67, 69, 70, 79]. Nine months have passed since the day he was confronted by the DEA, and he has not ingested or even ordered a controlled substance since. [FOF 28, 42].

Past DEA cases have involved practitioners whose registrations were either not revoked or their applications were not denied despite more reprehensible conduct than Dr. Reitman's self-prescribing. *See Judy L. Henderson, D.V.M., Grant of Restricted Registration,* 65 FR 5,672 (DEA 2000); *Jimmy H. Conway, Jr., M.D.,* 64 FR 32,271 (DEA 1999) (Respondent was addicted to Lorcet and Soma and used the names and DEA registration numbers of his partners to order the drug for his personal use. He candidly admitted the abuse and began a treatment program. The abuse occurred in 1996, the Order to Show Cause was issued in 1998, and the final order was submitted in 1999. Despite felony convictions, the Respondent was permitted to retain his registration with restrictions.); *Robert G. Hallermeier, M.D.,* 62 FR 26,818 (DEA 1997) (Respondent was an alcoholic with serious prescribing problems; granted a registration with restrictions.); *Thomson,* 65 FR at 75,971 (both DA and ALJ agreed that the physician ''minimized her criminal actions and significant breaches of professional judgment,'' but the evidence of her ''strong efforts to rehabilitate herself'' ultimately warranted granting her a restricted registration); *John Porter Richards, D.O.,* 61 FR 13,878 (DEA 1996) (Applicant had been convicted of two felonies related to controlled substances and subsequently sentenced to thirty years in prison, twenty years of which were suspended. Thereafter, the respondent's license to practice osteopathic medicine was revoked before eventually being reinstated. However, at the application hearing in *Richards,* that applicant ''continued to maintain that he had not committed the crimes for which he had been convicted.'' Nonetheless, in *Richards,* the DA approved the applicant's application without restrictions despite the fact that, at the hearing, the applicant accepted his conviction but did not completely admit to the crimes for which he was convicted.). Here, Dr. Reitman has without a doubt, readily admitted fault and sought treatment, at which he has thrived. [FOF 44, 54–55, 70, 77, 84, 88]. The Respondent testified and was candid and truthful about his past abuse. [FOF 38–47]. Thus, the Deputy Administrator consistently decides each case on its own merits. This case warrants retaining a restricted registration.

I therefore find that Dr. Reitman has presented evidence sufficient to prove that he can be entrusted with a DEA Certificate of Registration.

V. Conclusion and Recommendation

I do not condone nor minimize the seriousness of the Respondent's prior misconduct; however, because the Respondent seems to be well on the road to rehabilitation, I recommend that Dr. Reitman be granted a registration that restricts his handling of controlled substances to merely prescribing and not storing or dispensing such drugs, and requiring that he not issue controlled substance prescriptions to himself or his family members. Further, I recommend the Respondent be subject to quarterly reporting to his local DEA office of his prescribing of controlled substances. I also recommend that Dr. Reitman be ordered to consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant. I recommend these restrictions apply for three years from the date of the final order so directing this result. In this way, the DEA can assure itself of the Respondent's compliance with DEA regulations and of the protection of the public interest.

Date: July 20, 2010.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2011–25227 Filed 9–29–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–14]

Jack A. Danton, D.O.; Decision and Order

On June 17, 2011, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision.[1] Thereafter, the Government filed exceptions to the ALJ's decision.

Having considered the entire record and the Government's exceptions, I have decided to adopt the ALJ's decision except for her legal conclusions with respect to whether the Respondent issued prescriptions for controlled substances to several undercover officers and several of her findings under factor five. However, because I otherwise agree with the ALJ's findings as to the public interest factors, I adopt her ultimate conclusion that the Government has shown that ''Respondent's continued registration would not be in the public's interest'' and that the Respondent ''has not accepted responsibility for all of her wrongdoing, nor has she adequately assured this tribunal of future compliance.'' ALJ at 64. I will therefore order that Respondent's registration be revoked and that any pending application be denied.

The Government's Exceptions

The ALJ concluded that the Government failed to establish that Respondent's prescriptions to three undercover officers (UC) lacked a legitimate medical purpose. ALJ at 42–51; see *also* 21 CFR 1306.04(a) (''A prescription for a controlled substance * * * must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.''). In so concluding, the ALJ explained that the Government ''provided no expert testimony to support this finding,'' and that while the Government ''introduced the transcripts and recordings of the undercover transactions, and a summary of those transactions via officer testimony[,] * * * the Government ha[d] provided no meaningful lodestar by which this court can measure the legitimacy of the Respondent's medical practice under Florida statutory and regulatory requirements.'' *Id.* at 43. The ALJ noted that ''while the [A]gency has considered over fifty cases concerning the legitimacy of a practitioner's prescriptions since [*Gonzales* v. *Oregon,* 546 U.S. 243 (2006)], the [A]gency has seldom found a violation of 21 CFR 1306.04(a) absent expert testimony[,]'' and that ''where the [A]gency has found such illegitimacy without an expert's testimony, that finding was based on patent violations, where diversion was either unrefuted or unquestionable.'' *Id.* at 43–44 (citing cases).

The ALJ also noted that ''expert testimony may not be required'' where the evidence shows that a registrant ''has acted in a manner that clearly contravened state law governing what constitutes a legitimate medical practice,'' such as where a physician

[1] All citations to the ALJ's decision are to her slip opinion as originally issued.

issues a prescription where ''no physical examination or face-to-face communication was conducted'' as through Internet or telephone consultations. *Id.* at 44–45. However, the ALJ then explained that ''when the Government seeks to use a state law violation as a means of establishing a violation of § 1306.04(a), the question remains to what extent that state law violation is so tethered to a finding of actual illegitimacy that, without expert testimony, it can be used as a predicate to a violation of the federal law.'' *Id.; see also id.* at 45–46 (citing *Gonzales,* 546 U.S. at 70 (''the CSA 'bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood' ''); and *Laurence T. McKinney,* 73 FR 43260, 43266 (2008) (rejecting Government's contention that physician's failure to listen to undercover officer's heart and lungs and take her blood pressure established a violation of 21 CFR 1306.04(a); while physician's actions violated a state regulation, the officer had presented a medical complaint, identified a specific area of her body that was the cause of pain and complained of a relatively high pain level and at no point stated that she was not in pain, and physician had put her through several different range of motion tests'')).[2]

I agree with the ALJ that where the Government fails to provide expert testimony to support a finding that a practitioner acted outside of the usual course of professional practice and lacked a legitimate medical purpose, it can nonetheless prove a violation by: (1) Providing evidence that a practitioner committed a violation of a state medical practice standard which is sufficiently tied to a state law finding of illegitimacy to support a similar finding under Federal law,'' or (2) providing evidence showing that Respondent knowingly diverted drugs. However, I also conclude that a violation of a state medical practice standard which has a substantial relationship to the CSA's purpose of preventing substance abuse and diversion is also sufficient to support a violation of 21 CFR 1306.04(a). Moreover, I disagree with the ALJ's conclusion that the Government has not proved a violation of the CSA's prescription requirement.

In its exceptions, the Government argues that it proved that Respondent did not perform a physical examination of either UC1 or UC2. Gov. Exc. at 3. The ALJ found otherwise, noting that Florida law does not define the term ''physical examination,'' and that at the time of the events at issue here, the meaning of the term under the State's law was ''nebulous.'' ALJ at 47 & n.25. The ALJ further explained that Respondent's ''interpretation, in light of the Government's failure to provide a contrary one, must be given considerable weight'' and that Respondent had explained that ''[a] physical examination does not necessarily entail touching the body'' as ''in the case of chronic injury 'you can't see—whether you're putting your hands on the patient or not, you can't see that evidence of chronic inflammation and disease by visual inspection or palpation.'' *Id.* The ALJ also credited Respondent's testimony that she performed a physical examination through ''silent observation,'' *i.e.,* by watching how the patients walked from the waiting room to the exam room and how they sat. Tr. 413, 449; ALJ at 47–48. However, when questioned on cross-examination as to why Respondent had made no findings in the undercover officers' charts as to her observations, Respondent testified that she only recorded observations if the patient had complained of pain and then ''done an inappropriate action'' such as ''complain[ing] of severe low back pain'' and then ''bent over and jumped in the air.'' Tr. 543.

It is far from clear why Respondent's explanation should be entitled to ''considerable weight'' given the ALJ's acknowledgment that it ''has the potential for being self-serving,'' ALJ at 43 n.23; and appears to be patently disingenuous.[3] Moreover, just as jurors are not required in criminal cases to disregard ''their own experiences in doctors' care over their lives'' in assessing evidence as to whether a physician performed a bona-fide physical exam and thus prescribed in the usual course of professional practice, *United States* v. *Armstrong,* 550 F.3d 382, 389 (5th Cir. 2008), so too, an Agency adjudicator can call on her experiences with physicians and conclude that merely watching a patient walk to an office and sit down does not constitute a physical exam, let alone one sufficient to support prescribing narcotics.

However, I need not decide whether Respondent performed a legitimate physical exam of any of the undercover officers, or whether, as the Government argues, ''the plain meaning of the term 'physical examination' is that a physician [must do] something more than watch the patient walk into her office.'' Gov. Exc. at 5. Here, the record contains sufficient other evidence to conclude that Respondent both: 1) knowingly diverted drugs, and 2) violated State medical practice standards that have a substantial relationship to the CSA's purpose of preventing drug abuse and diversion so as to support a finding that she acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescriptions. 21 CFR 1306.04(a).

As the ALJ recognized, the Florida Board of Osteopathic Medicine has, by regulation, promulgated ''Standards for the Use of Controlled Substances for Treatment of Pain.'' ALJ at 47 (citing Fla. Admin. Code Ann. r.64B15–14.005). The Board has explained that the standards ''communicate what the Board considers to be within the boundaries of professional practice.'' Fla. Admin. Code Ann.r.64B15–14.005(1)(g).

The first of these standards is the Board's standard for ''Evaluation of the Patient.'' This provision states:

> A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

Id. r.64B15–14.005(3)(a). In addition, the standards state that ''[a]fter treatment begins, the osteopathic physician should adjust drug therapy to the individual medical needs of each patient.'' *Id.* r.64B15–14.005(3)(b). As

[2] As *McKinney* explained, establishing a violation of the prescription requirement ''requires proof that the practitioner's conduct went 'beyond the bounds of any legitimate medical practice, including that which would constitute civil negligence.' '' 73 FR at 43266 (quoting *United States* v. *McIver*, 470 F.3d 550, 559 (4th Cir. 2006)).

[3] Among the ALJ's findings which she then proceeded to ignore in giving ''considerable weight'' to Respondent's testimony as to the proper scope of a physical examination was Respondent's discussion of UC2's MRI. More specifically, the ALJ found that Respondent had ''explained that she would have 'to take the clinical symptoms and * * * the exam, [and the] neurological examination' of the patient to determine if there was any significance to the bulging disc. She further explained that if 'someone has a bulge but has no symptomatology, now, it's there * * * [but] it's not clinically significant.' '' ALJ at 25 (quoting Tr. 454–55). Respondent did not, however, perform a neurological exam on UC2 at any time. Tr. 289, 297, 300. In addition, as Respondent's testimony suggests, an MRI might well show that a person has a bulging disc but that the condition is asymptomatic. Yet as the evidence shows, Respondent prescribed oxycodone to UC1 and UC2, notwithstanding that neither complained of having pain at a level, which according to Respondent's own statement to UC3, warrants oxycodone.

the Board further explained in its discussion of pain management principles, ''[p]ain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity and duration of the pain.'' *Id.* 64B15–1.005(1)(c).

Of note here, even if the Government has not proved that Respondent's physical examination was medically inadequate to support her diagnoses of UCs 1 and 2, the evidence shows that Respondent's evaluations of them failed to comply with the Board's standards in several other ways. Moreover, because these violations have a substantial relationship to the CSA's purpose of preventing drug abuse and diversion they support the conclusion that the prescriptions violated 21 CFR 1306.04(a).

At her first visit, UC1 (Tanya Hall), who indicated that she was from Illinois, obtained a prescription for 180 oxycodone 15 mg, as well as 30 Xanax 2mg.[4] RX1, at 1, 5. Yet on her intake form, UC1 rated her pain as a 3 on a scale of 1 to 10, and gave as her reason for visiting Respondent, ''soreness in neck and shoulder.'' RX 1, at 2, 6. While during her first meeting with Respondent, UC1 reported that two months earlier, she had been working in a school cafeteria and had some boxes of chicken nuggets fall on her as she was getting one of them out of a freezer and that she also had a slip and fall incident,[5] UC1 did not make any statement to Respondent that she was currently in pain and Respondent did not conduct any further inquiry into the nature and intensity of her pain and what effect, if any, it had on her physical and psychological functioning. GX 14B. Moreover, during her visit with Respondent, UC1 never claimed to suffer from ''breakthrough pain.''

Notably, during an encounter with UC3 (which occurred the same day), Respondent explained that under her pain scale, pain between 1 and 3 was ''mild pain,'' that pain at level 4 was ''comfortable pain,'' and that at this level, ''I can do whatever I want to do because the pain is just not that bad.'' GX 13B, at 12 & 14. Respondent then asked rhetorically: ''Is that the time to take a break with narcotic, an opiate, a dangerous heroin related drug? No, it's not.'' *Id.* at 14. Shortly thereafter, Respondent added: ''So, if the worst pain is being tolerable pain [or level 5 according to Respondent] and it's never being as bad as bitching pain [level 6 according to Respondent], maybe you don't need a narcotic. Or may be some * * * Vicodin * * * You know, Hydrocodone, not an Oxycodone.'' *Id.* As this makes clear, under Respondent's own pain scale, the oxycodone prescriptions she issued to UC1 (and UC2) were not medically necessary to treated UC1's (or UC2's) reported pain level.

Moreover, when Respondent asked UC1 ''what kind of medicine have you been on?,'' UC1 reported that she had been taking Vicodin and Tylenol III (a drug with codeine). GX 14B, at 10. However, Respondent did not ask her whether she had previously been (or was currently being) treated by another physician, and if so, what treatments had been tried. *Id.* Finally, when Respondent offered to prescribe a drug combining oxycodone with acetaminophen, UC1 complained that drugs with acetaminophen hurt her stomach. However, when Respondent then asked: ''Does it make[] you nauseous or bother your stomach? Tell the truth,'' UC1 replied: ''No, not really.'' *Id.* at 12. UC1 persisted in not wanting a drug with acetaminophen, and asked Respondent if she could try oxycodone 15 mg. *Id.* at 13. Respondent then agreed, stating: ''Alright, no big deal,'' and added ''Lucky, I love my patients.'' *Id.* While at this point, Respondent had reason to know that UC1 was not a legitimate patient, but rather a drug seeker, she nevertheless prescribed 180 tablets of Oxycodone 15 mg to UC1, with the dosing instruction to take one tablet every 6 hours and ½; tablet for level 6 breakthrough pain.[6] RX 1, at 5. Notably, at no point did Respondent—even though she had reason to know that UC1 was a drug abuser—question her about her past drug abuse.

At UC1's second visit (Mar. 22, 2010), Respondent indicated on the progress note that UC1 had pain levels of 6–7/10 and 2–3/10. *Id.* at 15. While UC1 had circled her left shoulder on a pain assessment form, she indicated on the form that the worst her pain got was a 3. *Id.* at 16; Tr. 220. Moreover, during the visit, Respondent did not ask UC1 about her condition. Tr. 220–21. Respondent, however, issued UC1 a prescription for 360 Oxycodone 15 mg, double the amount of the original prescription, with the dosing instruction to take two tablets every six hours and one tablet for level six breakthrough pain,[7] as well as 30 Xanax 2mg. RX1, at 19. Moreover, on this day, Respondent saw UC1 and UC2 (Pedro Castillo) together.

On April 20, 2010, UC1 and UC2 returned to Respondent. Once again, they saw Respondent together. While at this visit, UC1 indicated that 2 was her ''acceptable level of pain,'' she left blank the entries on the pain assessment form for indicating the ''[p]resent'' intensity, the ''[w]orst pain gets,'' and ''[b]est pain gets.'' RX1, at 21. Moreover, during the visit, Respondent did not ask her any questions regarding her pain levels and asked her only if she was getting in the pool and the frequency of her doing so, and whether the dosing of the Xanax was working well for her. GX 17C, at 7; 17D, at 6. Respondent, however, issued UC1 more prescriptions, including one for 180 Oxycodone 15 mg and 30 Xanax 2mg. RX1, at 22.

As for UC2, who also represented that he was from Illinois, at his first visit he listed ''stiffness in neck'' as the reason for his visit; however, he left the form for indicating his general health history entirely blank. RX 2, at 5, 12. Moreover, on his pain assessment form, UC2 rated his pain intensity as a 2 on a scale of 1 to 10 and left the rest of the form blank including the entries for describing the ''quality,'' ''onset'', ''manner of expressing,'' ''what relieves your pain,'' and ''what causes or increases your pain.'' *Id.* at 15.

When Respondent asked UC2 what medicine he had been on, UC2 stated that he had not ''gotten anything from a doctor'' and he ''was just getting some Oxys from a friend * * * because that was the only thing that was helping my neck.'' GX 15B, at 34. Respondent noted that UC2 had ''one * * * mild bulging disc * * * which is basically what Tanya has.'' *Id.* Respondent added that he would ''normally say, 'You know what, I have four herniated discs, in fact bulging discs, and I get fine on Percocet' '' 10/325. *Id.* Respondent then said he would prescribe oxycodone 15 mg, but not oxycodone 30s, which UC2 had stated were the ones he was getting from his friend. *Id.* at 35.

Subsequently, Respondent noted that UC2 had one bulging disc, which was neither torn nor herniated, and was ''not even pressing'' on a nerve; Respondent advised that this condition did not warrant oxycodone 30 mg and required only 10/325. *Id.* at 39. Respondent further explained that oxycodone 10/325s cost only twenty-five cents more

[4] UC1 also obtained prescriptions for 30 Soma 350 mg (carisoprodol) and 90 Ibuprofen 800 mg.

[5] UC1 also reported auto accidents in 1999 and 2003. However, this did not prompt Respondent to ask UC1 about the extent of her injuries from these accidents and what treatment had been provided for any injuries.

[6] Respondent also prescribed 30 Xanax 2 mg.

[7] The actual prescription was issued on a script bearing the name Daniel M. Jacobs, M.D., and apparently signed by Dr. Jacobs. *See* RX 1, at 19. However, UCI did not see Dr. Jacobs that day, and received the prescription from Respondent. Tr. 222.

than oxycodone 15mg, and that when he had hurt his neck and had four herniated discs, he had used 10/325s with his pool program. *Id.* at 41–42.

Respondent noted that if UC2 used his pool program and stayed on the Ibuprofen, UC2 would not need to spend $200 on oxycodone ''which you don't need.'' *Id.* at 42. Continuing, Respondent asked: ''So, now that I've given you all the options which do you want?* * * Which medicine you want?'' *Id.* UC2 stated that he wanted the oxycodone 15s and not the oxycodone 10s, because he thought the 15s would be better and he knew his buddy had given him that. *Id.* Respondent then told UC2 that he was out of oxycodone 15mg and that he would have to come back like his ''friend'' UC1. *Id.* at 43. UC2 then asked if ''I'll get the same other stuff that [UC2] got?'' *Id.* Respondent answered: ''Yes, yes, exactly the same.''

Finally, Respondent got around to asking UC2 how he got hurt. *Id.* at 44. Initially, UC2 said that he ''had a little accident at home,'' but Respondent then asked if he had a ''car accident or what?'' *Id.* UC2 said he had been in a motorcycle accident ''in the last year, some time'' and that was how he hurt his neck. *Id.* UC2 stated, however, that he did not hurt his lower back, that he did not have numbness or tingling in his hands, that he did not have pain radiating into his arms or hands, and that his pain was not constant but ''comes and goes sometimes.'' *Id.* at 44–45. Respondent explained that he was going to prescribe 180 oxycodone 15mg and that UC2 should take a half of a 15mg tablet ''[w]hen level five (5) tolerable pain become level six,'' or ''very uncomfortable, miserable, bitching pain.'' *Id.* Respondent then asked UC2 whether he had difficulty sleeping, to which UC2 answered ''sometimes.'' *Id.* at 47. Respondent said he would give him Xanax, even though he had already stated that he would give UC2 the same drugs he gave UC1.[8]

Here again, notwithstanding that UC2 never represented at this visit that he had pain higher than level 2, Respondent issued him prescriptions for 180 oxycodone 15 mg and 30 Xanax 2mg (as well as Ibuprofen and Soma). Moreover, on the progress note documenting the visit, Respondent wrote that UC2 had a neck injury and that his ''pain comes & goes,'' but did not document any pain level. RX 2, at 1.

As noted above, on March 22, UC2 and UC1 saw Respondent together. This time Respondent indicated in the progress note that UC2 had ''Chronic left shoulder pain'' and wrote pain levels of 6–7/10 and 2–3/10. RX 2, at 17. UC2 testified, however, that during the second visit, there was no discussion of whether he had pain. Tr. 297. UC2 further stated that he complained of having only stiffness in his neck, and not chronic pain in his left shoulder. *Id.* at 313–14. Respondent gave UC2 prescriptions (which, just as for UC1, were written on the script and DEA number of Dr. Jacobs[9]) for 360 Oxycodone 15mg (also double the previous dose), 30 Xanax 2mg, Ibuprofen and Soma. RX 2, at 19.

Likewise, at the third visit, UC2 noted a pain level of three on a form, but again complained only of a stiff neck. RX2, at 16; Tr. 300–01. On the progress note, however, Respondent noted that UC2 had pain levels of 6–7/10 and 2–3/10 and had ''chronic left shoulder pain.'' RX 2, at 20. While Respondent asked UC2 how he was doing on ''the 180 program,'' a reference to his oxycodone prescribing, to which UC2 answered ''awesome,'' at no point during the visit did Respondent ask UC2 what his pain levels were. *See* GX 17C & 17D. Respondent then gave UC2 a prescription for 180 oxycodone 15 mg, as well as 30 Xanax, and the other two drugs.[10]

UC2 testified that Respondent did not perform a physical examination of him at any of the three visits. Notwithstanding Respondent's testimony that she silently observed UC2, unexplained is the basis for her diagnosis that UC2 had ''chronic left shoulder pain'' when he never complained of anything other than a stiff neck.

As the forgoing demonstrates, even assuming that Respondent's silent observation of UC1 and UC2 constitutes a valid physical exam,[11] the evidence shows that in multiple other ways, Respondent did not comply with the State's standard for evaluating his patient and determining whether prescribing controlled substances was warranted. She failed to inquire as to whether the UCs had been, or were currently being, treated by other doctors for their purported conditions and what those treatments involved. Likewise, Respondent made no inquiry as to the effect of the UCs' pain on their physical and psychological functioning. Moreover, she did not ask either UC about their history of substance abuse even though Respondent had reason to know that both UC1 and UC2 were drug seekers. Finally, at their second (joint) visit, Respondent doubled the amount and dosage of UC1's and UC2's oxycodone prescriptions even though she did not discuss with either of them their current pain levels and the efficacy of the prior prescriptions.

The ALJ did not address whether these requirements, which Respondent clearly violated, have a substantial relationship to the CSA's core purpose of preventing drug abuse and diversion so as to support a finding that Respondent lacked a legitimate purpose and acted outside of the usual course of professional practice in prescribing controlled substances to UCs 1 & 2. I conclude that they do.

For example, inquiry into whether a patient is currently being treated, or has previously been treated for pain, might reveal that the patient is engaged in, or has a history of, doctor shopping or other non-compliant behaviors consistent with self-abuse or diversion; such inquiry might also show that controlled substances were previously tried and not effective. Fla. Admin. Code r.64B15–14.005(3)(d)(noting important of reevaluating ''the appropriateness of continued treatment''). Inquiry into the effect of pain on a patient's physical and psychological functioning would seem to be an essential step in determining whether the patient's report of pain is consistent with his level of function, and whether prescribing controlled substances is even medically indicated to treat a patient's pain, as well as the appropriate drug and dosage level, another critical step in preventing diversion and self-abuse. Likewise, inquiry into whether a patient has a history of substance abuse has an obvious relationship to the CSA's purpose. Finally, the failure to adjust drug therapy based on a re-evaluation of the patient could lead to a patient's becoming addicted or overdosing.[12]

Respondent's failure to comply with these requirements with respect to UC1 and UC2 is fundamentally different than the situation at issue in *McKinney,* where the practitioner clearly violated a state regulation by not listening to an undercover officer's heart and lungs and taking her blood pressure but otherwise

[8] Respondent also asked UC2 if he got ''muscle spasms at night?'' GX 15B, at 48. UC2 answered, ''yeah.'' *Id.* Respondent then said he would prescribe Soma 350 mg as well, without any further inquiry as to how often UC2 has spasms and how debilitating they were. *See id.*

[9] Here too, UC2 testified that he did not see Dr. Jacobs that day. Tr. 299.

[10] Respondent also asked UC2 if he was ''doing wonderful[ly] on'' the Xanax dosing; UC2 answered that ''[i]t's working for me.'' GX 17D, at 2–3.

[11] It is also noted that Respondent did not document the results of her silent observation.

[12] It could also result in the patient having extra drugs which could be sold on the street.

performed a physical exam. To make clear, this is not a case where a physician made some attempt to comply with various state medical practice standards and the adequacy of those efforts is at issue.[13] Rather, it is a case where a physician has utterly failed to comply with multiple requirements of state law for evaluating her patients and determining whether controlled substances are medically indicated and thus has '''completely betrayed any semblance of legitimate medical treatment.''' *McKinney,* 73 FR at 43266 (quoting *United States* v. *Feingold,* 454 F.3d 1001, 1010 (9th Cir. 2006)). Indeed, the State Board's statement that its standards ''communicate what the Board considers to be within the boundaries of professional practice,'' Fla. Admin. Code r.64B15–14.005(1)(g), provides further support for the conclusion that Respondent, by failing to comply with them, acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing oxycodone to UC1 and UC2 [14] and thus violated Federal law. 21 CFR 1306.04(a); *see also* Fla. Stat. Ann. § 893.05(1) (''A practitioner, in good faith and in the course of his or her professional practice only, may prescribe * * * a controlled substance'').[15]

Moreover, Respondent's testimony makes clear that she does not accept responsibility for her misconduct in prescribing to the UCs. When asked by her own counsel whether her oxycodone prescriptions were medically appropriate, she asserted that they were because ''the PDR allows up to 30-milligrams, which is twice the 15 that I recommended for these patients,'' Tr. 484, ignoring that UC1 and UC2 never complained of pain warranting prescriptions at this level of drug. Likewise, in addressing why she gave UC3 an extra twenty oxycodone pills after he requested them so that he could repay a friend, Respondent offered the disingenuous testimony that she did so so that UC3 would ''have those twenty extra pills as a parachute'' and she ''didn't want him to worry.'' *Id.* at 512. While in her testimony Respondent maintained that this was ''an error of judgment,'' in fact, it was a criminal act. 21 U.S.C. 841(a)(1).

It is true that at UC3's third visit, Respondent refused to give UC3 additional pills. However, here again Respondent gave false testimony, stating that she had told UC3 that ''[i]f you know you're going to be short, you break and take half pills so you won't go into withdrawal.'' Tr. 513. However, as the transcript of the undercover visit makes clear, there was no discussion of withdrawal. Instead, she advised UC3 that if he owed people, he could break the pills and ''take a fifteen instead of a thirty and that way'' he could save the extras and ''give the money back.'' GX 16B, at 22.[16]

Respondent's advice to UC3 is fundamentally inconsistent with a registrant's obligation to prevent drug abuse; her giving of false testimony on this and other issues, as well as the numerous violations of the CSA which have been proved on this record make clear that she cannot be entrusted with a registration. Accordingly, I will adopt the ALJ's ultimate conclusion that Respondent's continued registration would be inconsistent with the public interest and her recommendation that I revoke her registration and deny any pending applications to renew or modify her registration.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FD1749057, issued to Jack A. Danton, D.O., a/k/a/ Jacalyn A. Danton, D.O., be, and it hereby is, revoked. I further order that any pending application of Jack A. Danton, D.O., a/k/a Jacalyn A. Danton, D.O., to renew or modify her registration, be, and it hereby is denied. This Order is effective October 31, 2011.

Dated: September 19, 2011.

Michele M. Leonhart,

Administrator.

Carrie Bland, Esq., for the Government.
Brian Y. Silber, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Procedural Background

Gail A. Randall, Administrative Law Judge. The then Deputy Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause and Immediate Suspension of Registration (''Order'') dated November 19, 2010, proposing to revoke the DEA Certificate of Registration, Number FD1749057, of Jack A. Danton, D.O., (''Respondent'' or ''Dr. Danton ''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such

[13] Such a case would likely require expert testimony to show that a physician did not merely commit malpractice, but rather, acted outside the boundaries of professional practice.

[14] The Government takes exception to the ALJ's finding of fact 116, in which she credited Respondent's testimony that she ''was willing to make a small salary so that people could afford to come and learn'' and that ''if I could dispense the pills at a reasonable price, it would be an incentive for them * * * to come and stay with the program. If they kept with the program and they got used to the program, eventually they would be able to get off of narcotics.'' ALJ at 33–34 (FoF 33–34); Exceptions at 6–7.

That this testimony is patently self-serving and disingenuous is made clear by the undercover visits of UC1 and UC2, in which Respondent prescribed oxycodone to them notwithstanding that the UCs reported low pain levels (which were also well below the levels Respondent stated warranted oxycodone), and Respondent made no inquiry into how each of the UCs' respective pain levels were affecting their physical and psychological function, made no inquiry into whether they had a history of substance abuse, and made no inquiry into whether the UCs had previously been or were currently being treated for pain. In any event, having concluded that Respondent violated 21 CFR 1306.04(a) with respect to UC1 and UC2 and thus unlawfully distributed controlled substances to them, whether Respondent charged the highest price she could or discounted the drugs does not make the distributions any less unlawful.

The Government also takes exception to the ALJ's having given no weight to the testimony of a Diversion Investigator that Respondent had stated that she did not dispense controlled substances at a patient's first visit. Exceptions at 8 (citing FoF 30 & n.5). It is acknowledged that the ALJ stated that she gave ''this testimony no weight.'' ALJ at 10 n.5. However, it is not clear whether the ALJ was referring to the DI's testimony or the statement Respondent made to the DI as the ALJ also noted that Respondent's statement to the DI ''is inconsistent with her conduct regarding the undercover visits.'' ALJ at 10 n.5. However, because it is clear that Respondent issued prescriptions to the UCs at their first visits, I conclude that it is not necessary to resolve what the ALJ meant and whether she improperly gave no weight to the DI's testimony.

[15] In her discussion of factor five—such other conduct which may threaten public health and safety—the ALJ found that many characteristics of Respondent's practice increased the risk of diversion. ALJ at 60–62. More specifically, the ALJ noted that Respondent did not conduct urine drugs screens on the undercover patients, operated a cash-only dispensary thus foreclosing third-party review, did not verify the MRIs that were presented by the UCs, and failed to obtain past treatment records. *Id.*

In contrast to the requirements imposed under the State's standard for ''Evaluation of the Patient,'' the Florida standards then in effect did not explicitly require that a doctor perform urine drug screens or verify the authenticity of an MRI. Moreover, while the State's standard required documenting a patient's past treatments for pain, it says nothing about obtaining past treatment records. Given that these requirements were not explicitly imposed by the State's rules, either expert testimony or perhaps medical treatises (or articles in peer-reviewed medical journals) was necessary to establish that each of these is required as part of the accepted standard of professional practice. Because there is no such evidence, the ALJ's conclusions that each of these omissions constitutes conduct which may threaten public health and safety must be rejected.

As for Respondent's operation of a cash-only clinic, while this may be probative evidence of illegal activity when considered with the other evidence in the case, by itself, operating a cash-only clinic does not constitute conduct which may threaten public health and safety.

[16] The evidence shows that UC3 was given a prescription for 180 Oxycodone 30 mg at his third visit by Dr. Jacobs. *See* RX 3, at 11–12.

registration pursuant to 21 U.S.C. 823(f), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order also immediately suspended the registration pursuant to 21 U.S.C. 824(d), because the Respondent's continued registration constituted an imminent danger to the public health or safety. [Administrative Law Judge Exhibit (''ALJ Exh.'') 1]. The Respondent was served with the Order on November 23, 2010. [ALJ Exh. 2].

The Order asserted that the Respondent dispensed ''inordinate amounts'' of controlled substances, primarily oxycodone and alprazolam, under circumstances where the Respondent knew or should have known ''that such prescribing and dispensing are for other than legitimate medical purposes and are outside the usual course of professional practice.'' [ALJ Exh. 1 at 2].

Next the Order asserted that many of the patients are from out of state, and that they have indicated that the Respondent failed to perform physical examinations and only accepted payment in cash. [*Id.*].

Next, the Order asserted that between February and April of 2010, the Respondent treated three law enforcement personnel, operating in an undercover capacity. At each of at least eight visits the Respondent issued prescriptions for other than legitimate medical purposes and outside the usual course of professional practice. The Respondent's prescribing of controlled substances to these individuals violated both State and Federal law, per the Order. [*Id.*].

By letter dated December 14, 2010, the Respondent, through counsel, timely filed a request for a hearing in the above-captioned matter. [ALJ Exh. 3].

At the Respondent's request, the hearing was held in Fort Lauderdale, Florida, on April 5–7, 2011. [ALJ Exh. 5–8; Transcript (''Tr.'') Volume I–III]. At the hearing, Counsel for the DEA and Counsel for the Respondent called witnesses to testify and introduced documentary evidence. After the hearing, the Government [17] submitted Proposed Findings of Fact, Conclusions of Law and Argument.

II. Issue

The issue in this proceeding is whether or not the record as a whole establishes by a preponderance of the evidence that the Drug Enforcement Administration should revoke the DEA Certificate of Registration Number FD1749057of Jack A. Danton, D.O., as a practitioner pursuant to 21 U.S.C. 824(a), and deny any pending applications to renew or modify this registration under 21 U.S.C. 823(f), because to continue Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). [Transcript (''Tr.'') at 6].

III. Findings of Fact

I find, by a preponderance of the evidence, the following facts:

A. Stipulated Facts

1. Respondent is registered with DEA as a practitioner in Schedules II–V under DEA registration number FD1749057.

2. Respondent's DEA registration expires by its terms on June 30, 2012.

B. Background Facts

3. The Respondent is a doctor of osteopathic medicine who practices in cosmetic dermatology, cosmetic surgery, and some family practice. [Tr. 378]. She has practiced in those areas for thirty-five years. [Tr. 379]. A greater percentage of her practice was ''dealing with musculoskeletal injury.'' [Tr. 384]. In 2009, after the demand for cosmetic surgery declined, the Respondent added pain management to her area of practice. [Tr. 385–87].

4. Dr. Danton is a veteran of the United States Army and the Viet Nam war. [Tr. 379–80].

5. ''Palliative care'' means that ''once the acute injury heals, that there's still something going on from either pinched nerves or some kind of pressure or spinal problems that cause the pain nerve to remain in active pain, even though the initial injury might heal.'' [Tr. 386]. Up to the time of the hearing, the Respondent treated from five to ten-thousand pain management patients seeking treatment for acute injuries all the way to chronic palliative care. [Tr. 390]. However, the Respondent is not Board certified in pain management. [Tr. 391].

6. At the hearing, Dr. Danton was recognized as an expert in the field of osteopathic medicine with extensive experience in pain management assessment and treatment. [Tr. 392].

7. Dr. Danton described how the human body becomes dependent on pain medications and how the body grows to tolerate pain medication. [Tr. 395–399]. The Respondent testified that she restricted her patients to taking four 15 mg oxycodone tablets a day. [Tr. 400].

8. In diagnosing muscular-skeletal injuries, the more important part of the diagnostic tools would be the MRI, for it is objective evidence of such an injury. [Tr. 558].

9. Prior to opening her own practice, the Respondent worked at a pain clinic called the Pain Center of Broward. [Tr. 554]. She also supervised a physician assistant, signing all the controlled substance prescriptions herself. The role of the physician assistant is to examine patients and to either continue or follow the physician's treatment plan, or if the physician assistant sees any noted change in the patient's condition based on the examination, to inform the physician of the change. The physician would write the prescription appropriately. [Tr. 570].

10. The Respondent testified that, although over 400,000 dosage units of oxycodone were attributable to her per the ARCOS reports, she in fact did not see all of the patients represented by this dosage number. The physician assistant saw multiple patients per day as well. [Tr. 526, 554]. Another physician was hired, and the Respondent does not know whether controlled substances purchased using the Respondent's DEA registration were actually dispensed by this physician as well. [Tr. 555]. The Respondent left that practice when her ''180 program'' was not being followed. [Tr. 526]. She left her DEA Form 222s at the Pain Center of Broward when she left the practice. [Tr. 556].

11. When asked if ''any time an order was placed using your DEA number, was that an order done appropriately and legitimately or for other purposes,'' the Respondent replied that she was not sure. Specifically, she stated that the DEA Form 222s she signed ''were done appropriately and legitimately, but if my former employer went and ordered stuff and signed my name to it, I had no knowledge or concept that it was being done.'' [Tr. 574–75]. It's possible that some of the over 400,000 dosage units were ordered without the Respondent's knowledge. [Tr. 575].

12. The Respondent primarily wrote prescriptions using a computer. However, she did have prescription pads, and it was possible that such a pad was outside her control on the day the search and seizure warrant was executed, although she did not intentionally leave such a pad outside her control. [Tr. 557]. The Respondent was a dispensing physician. [Tr. 210, 237, 341, 346–47, 362].

13. A pain management clinic would dispense a large number of oxycodone

[17] The Respondent attempted to submit her post-hearing brief late. Her request for permission to submit it late was denied. The Government timely submitted its brief.

because the clinic's patients are being seen regularly for chronic pain problems and obtaining controlled substances every month. [Tr. 527]. The Respondent also believed this over 400,000 dosage units figure reported in ARCOS actually corresponds to the number of chronic pain patients she and Dr. Jacobs treated. [Tr. 528].

14. Dr. Danton developed a treatment program she described as the ''180 program.'' [Tr. 402]. The essential point of the 180 program was to help patients control their pain without developing tolerance to the pain medication and to keep the patient safe from a drug overdose. [Tr. 402]. To her knowledge, Dr. Danton is the only physician who limits oxycodone prescriptions to 180 dosage units of 15 mg oxycodone. [Tr. 403]. However, depending on the patient's pain level and the diagnosis, the Respondent would sometimes prescribe 30 mg oxycodone. [Tr. 403].

15. Dr. Danton described a bulging disc as a disc between vertebrae in the back that acts as a gel-filled shock absorber. After a high velocity injury, the gel begins to thin out and form a bulge of the disc material outward, pressing on the nerve roots, causing pain. [Tr. 406–09].

16. Dr. Danton described a herniated disc as a disc where the gel actually cracked out of the disc and escapes into a very small space in the spine, causing more pressure on the nerve roots, thus causing more pain. [Tr. 410]. The added pressure can also cause inflammation, which causes swelling around the nerve roots, making the pain worse as well. [Tr. 410–11].

17. Scoliosis is an abnormal curvature of the spine and can cause pain. [Tr. 417–19]. The nerve roots in the back become impinged and inflammation around the nerve roots results which causes the pain. [Tr. 419]. Scoliosis comes in degrees, and the severity of the scoliosis impacts upon the severity of the pain. [Tr. 419–20]. If a patient elects not to have surgery, then the appropriate treatment is pain management with analgesics. [Tr. 420].

18. To diagnose and treat scoliosis, Dr. Danton would ask about the patient's history, to determine whether the scoliosis was developmental and to find out what kind of past treatment the patient has experienced. [Tr. 421]. A prior physician would have prescribed an MRI, and the patient would bring that MRI report for Dr. Danton to review. [Tr. 421–23]. Unlike an X-ray, an MRI shows soft tissue changes such as impingement of nerves caused by a herniation of a disc. [Tr. 423–24].

19. To determine if a patient has either a bulging disc or a herniated disc, the Respondent listens to the level of the patient's complaint, looks at the medical history forms, and evaluates how the patient moves into the treatment room, watching how the patient walks and sits as part of the physical examination. [Tr. 412–13]. Next, Dr. Danton would look at a purely objective evaluation, such as an MRI. [Tr. 414]. She is also evaluating the consistencies of the MRI with the patient's complaint, and looking to see if the patient is honest and truthful. [Tr. 414]. Patients who are not honest and truthful tend to exaggerate their pain levels, so that their complaints do not match up with their MRI results. [Tr. 415–16]. The Respondent also testified that when patients subjectively rated their pain level, she interpreted that rating to mean their pain level with medication. Therefore, if a patient rated his pain at 2, then she interpreted the patient's pain to be at a level 7 without pain medication. [Tr. 469–70].

20. According to Dr. Danton, a physical examination does not necessarily ''entail touching the body.'' [Tr. 425]. For example, in the chronic injury ''you can't see—whether you're putting your hands on the patient or not, you can't see that evidence of chronic inflammation and disease by visual inspection or palpation.'' [Tr. 428]. But the physician can inspect the painful area, can get an idea of the pain by watching the patient move the body, which is also a part of the physical examination. [Tr. 428–29]. Although different now, in early 2010, the physician also needed to get a urinalysis test within the first four to six months of treatment with oxycodone. [Tr. 429].

21. The Respondent prescribed 2 mg tablets of Xanax or alprazolam. She described this as a moderate dose, and she instructed her patients to take .5 mg during the day, .5 mg in the evening, and 1 mg at night. If the patient stops taking Xanax in these quantities, there would be no adverse side effects. [Tr. 535].

22. The Respondent was aware that a complete medical history and physical examination must be conducted and noted in a patient's medical file. [Tr. 557].

23. The Respondent has been convicted of four counts of mail fraud, but the record contains no information that this conviction entailed the handling of controlled substances. [Tr. 560].

C. Respondent's Practice

24. The Respondent is neither a DATA-waived physician nor registered as a Narcotics Treatment Program. [Tr. at 533]. The Respondent denied providing her patients with detoxification services. [Tr. 533]. However, she did see her role as ''to educate patients how to take medicine safely and how to safely get off, away from the narcotics. That was my goal.'' [Tr. 581]. She also stated her goal was to have patients functioning at ''100%.'' [Tr. 500]. The Respondent is also not registered as a pain management clinic with the Florida Department of Health. [Tr. 185].

25. Mr. Gordon Berman worked with the Respondent as the primary administrator of her practice. He owned the building. [Tr. 163].[18] He ordered the medications, maintained the records, and ensured the practice's procedures were consistent with the legal requirements. [Tr. 505]. He was also responsible for dispensing the medications and for conducting the inventories. [Tr. 163]. As of November of 2010, no inventories had been conducted. [Tr. 178, 183]. Mr. Berman is not a licensed pharmacist, and has had no previous experience dispensing drugs or controlled substances. [Tr. 190].

26. Mr. Berman told DEA personnel that he was aware of the State law which had come into effect on October 1, 2010, providing that only a 72 hour supply of medication could be dispensed. [Tr. 185]. However, in November of 2010, he had dispensed 180 oxycodone 30 mg., a one-month supply. [Govt. Exh. 2 at 4–6; Tr. 185]. He stated that he knew of the limitations, but that he had just dispensed the entire amount. [Tr. 185].

27. Mr. Berman had told DEA personnel that every patient basically received the same thing; 180 oxycodone 30 mg., Xanax, Ibuprofen, and Soma. [Tr. 185–86; *see also* Govt. Exh. 2–5]. The medication was purchased in pre-measured volumes of 90 oxycodone, and the physician would issue an order sheet showing the amount to be dispensed. Mr. Berman would receive the order sheet, he would hand an employee the requisite amount of medication, and the employee would take the medication to the physician for review, the physician would sign the order sheet and either hand the medication to the patient or instruct the employee to do so. [Tr. 190]. The Respondent did not have access to the computers, and when questioned about them, she referred DI McRae to Mr. Berman. [Tr. 170].

[18] Mr. Berman did not testify at the evidentiary hearing. Therefore, to the extent that the conversation he had with DI McRae constitutes hearsay, I will analyze the weight to give such evidence accordingly.

28. The Respondent accepted cash as a form of payment. It is unclear whether this was the sole form of payment accepted. The Respondent stated to DI McRae that to accept insurance would require a billing department, and that would cost a lot. [Tr. 165–66]. Further, a Diversion Investigator overheard the receptionist tell a patient that the clinic only accepted cash. [Tr. 226–7]. However, Mr. Berman stated that the practice also accepted Medicaid and Medicare. [Tr. 184]. The office visit cost $200.00,[19] and the medication cost $600.00 per patient. [Tr. 170].

29. Mr. Berman had a nine-year-old daughter who would sometimes come to the office after school. When Ms. Hall saw Mr. Berman and his daughter walking in the hallway, Mr. Berman said that his daughter was a good little helper, and that he had her counting pills.[20] [Tr. 215; Govt. Exh. 14B at 27]. However, Ms. Hall did not observe the child handling pills and the Respondent credibly testified that she never saw the daughter touch any pills. [Tr. 259, 589].

30. The Respondent's job was patient care, making sure the patients were appropriately treated. The Respondent also managed the front office. [Tr. 505]. The Respondent told DI McRae that she saw between 25 and 50 patients a day. [Tr. 166]. She had told DI McRae that she did not dispense controlled substances on the first visit of a patient. [Tr. 167].[21]

31. Another physician in the practice, Dr. Jacobs, is also practicing the Respondent's ''180 program.'' [Tr. 592].

32. The Respondent acknowledged that the medications were ordered under her DEA registration number and that she took full responsibility for them. [Tr. 506, 516]. Yet she acknowledged that she gave people authority to take certain actions using her registration. [Tr. 507]. She stated that to the best of her knowledge ''we were doing everything that we thought'' was within the law. [Tr. 507]. There was no power of attorney on file affording Mr. Berman with the authority to sign the order forms for the controlled substances. [Tr. 163].

33. When the Respondent became aware of discrepancies, she made corrections. She learned that her pain patients could be manipulative, and she ''became a little harder and a little more careful in how'' she responded to her pain patients. [Tr. 508–09].

34. The Respondent's office was burglarized four times, and her computer systems with all the backups were stolen. [Tr. 515]. The computers the Respondent had on November 23, ''were basically only a month old, and the information on them was basically information from a month or two.'' [Tr. 515]. Three of the four break-ins occurred when the Respondent had no oxycodone on the premises. But in the instances that drugs were stolen, the Respondent did not handle informing the DEA. The thefts were reported to the Sheriff's Department but not to the DEA. [Tr. 122–23, 125, 549]. The Sherrif's Department made no mention of the Respondent's obligation to inform the DEA. [Tr. 514]. The Respondent credibly testified that she believed the Sherrif's Department would handle that responsibility. [Tr. 550]. No DEA theft and loss reports were found. [Tr. 125].

35. For security measures, the Respondent had an alarm system, video camera system, and security doors as required between the treatment area and the medication room. [Tr. 518]. The oxycodone was stored in the medication room. [Tr. 518]. Mr. Berman told the Respondent that the facility had been inspected and found to be in compliance. However, the Respondent did not know who had inspected the facility, and the record does not contain any inspection reports indicating such compliance. [Tr. 550].

36. Ms. Danielle Demers, an employee of the Respondent's, would bring her Rottweiler to the office wearing a police service dog vest. The dog was a deterrent and stayed in the administrative area of the office. [Tr. 516–17]. Ms. Demers wore a police belt with a tazer and a baton, but she did not carry a firearm in the clinic. [Tr. 517–18]. Ms. Demers was subsequently terminated from her employment. She worked for the Respondent approximately five months. [Tr. 520].

37. Ms. Demers had access to all the records in the practice, to include inventory records, DEA Form 222s, and invoices. She also had access to the computer systems. [Tr. 520–21]. She knew what security measures were in place. [Tr. 521].

38. The Respondent used two large safes behind the secured medicine room doors. One safe was for the Respondent's medications, and the other safe held the medications of Dr. Jacob.[22] [Tr. 521–522, 592]. A pharmacy tech, Ms. Teresa Way, had access to the medication, Mr. Berman had access, and Ms. Demers had access. Ms. Terry Friedman, an employee who worked with the Respondent since she started this practice, may also have had access to the medications. [Tr. 522].

39. The physician would prepare a charge sheet, noting the prescriptions authorized for the patient. The charge sheet would go to the pharmacy technician for filling. [Tr. 590]. [*See* Resp. Exh. 1–3]. For her patients, the Respondent would then sign the prescriptions. [Tr. 590].

40. The Respondent has interpreted approximately four or five thousand MRI written reports in the course of her medical practice. [Tr. 561]. In reviewing the MRI reports pertaining to the undercover individuals, the Respondent saw nothing that led her to believe the reports were fraudulent, modified or illegitimate. [Tr. 561].

41. The Respondent tried to ''correspond the patient's history and their presentation with the MRI report, and in those three (undercover) cases they seem to match.'' [Tr. 561]. Later in her practice, the Respondent instructed her front office personnel to call and verify the MRI report. If the office staff was unable to do so, they were instructed to require the patient to take another MRI locally. [Tr. 586]. ''We didn't do that in the first three months because at that point in time I was, and I accept responsibility for it, I was naïve. And I believed if somebody brought in an MRI that had their name on it and the doctor's signature, that it was a real MRI. I found information to the contrary. I changed.'' [Tr. 586].

D. DEA's Investigation

42. On November 23, 2010, the DEA served a Federal search warrant at the Respondent's office, as well as the Immediate Suspension Order. [Tr. 19]. The clinic had the name posted as J.A. Danton. [Tr. 47]. During the search, Group Supervisor Susan Langston discovered a closet containing video equipment and several bottles of oxycodone 30 mg, 100 count each. [Tr. 21, 112–13; *see also* Tr. 111; Govt Exh. 9]. This closet was located in Mr. Berman's office on the second floor of the clinic. [Tr. 22]. GS Langston testified that the closet was not a securely locked, substantially constructed cabinet suitable for the storage of controlled substances, however could not testify as to why it did not meet this requirement. [Tr. 22]. The pill bottles

[19] However, I note that the undercover officers paid $150.00 for their office visits. [Tr. 288, 337].

[20] As Mr. Berman did not testify at this proceeding, I am unable to determine the credibility or sincerity of this comment. Therefore, I give this exchange no weight.

[21] This is inconsistent with her conduct regarding the undercover visits. Therefore, I give this testimony no weight.

[22] It is unclear when these safes were added to the premises. The Government did not see any safes when personnel conducted a search of the offices in November of 2010. [Tr. 63, 115] In addition, it is similarly unclear whether a safe is depicted in Government Exhibit 9.

were all sealed. [Tr. 112]. GS Langston did not know whether the closet was locked, and did not inspect the closet. [Tr. 48, 55]. In addition, DI Milan, who also saw the closet, stated she did not know whether the closet was locked or could be locked, she was not the first to see the closet, it was already open when she saw it, and that she did not otherwise investigate whether the Respondent had security on the premises. [Tr. 109–111].

43. Also during the search, GS Langston located an empty prescription bottle with a label showing that the bottle had contained 360 Oxycodone 30 mg tablets. The bottle was found in the Respondent's office on the first floor of the facility, and the label indicated that the medication was prescribed by Dr. Jack Danton to patient Jacqueline Danton, a name the Respondent also used. [Tr. 23, 377].

44. During an interview with a local reporter, the Respondent asserted that she was not providing her patients with large quantities of oxycodone, she was weaning them off the drug. [Govt. Exh. 19].

45. GS Langston identified ''red flags'' from the Respondent's practice. First, she received telephone calls from pharmacists inquiring as to whether prescriptions written by the Respondent were legitimate. [Tr. 36–37, 45]. GS Langston also thought it significant that the Respondent saw a large number of people from out of state. [Tr. 45–46; *see also* Tr. 93–95; Govt. Exh. 4].

1. The Audit

46. DI Marjorie Milan also participated in the serving of the Immediate Suspension Order. [Tr. 68]. Her assignment was to collect any controlled substances that were on the premises. [Tr. 69]. DI Milan found bottles of oxycodone 30 mg. She found a total of 4,000 pills. [Tr. 69–70].

47. DI Milan ran an ARCOS [23] report, searching for the oxycodone purchases made using the Respondent's DEA registration number from January 1, 2009, through March 31, 2011. [Tr. 70–71]. The first transaction date was December 28, 2009, and the last transaction date was November 15, 2010. [Tr. 72; Govt. Exh. 18]. To order oxycodone, the purchaser would need to use a DEA Form 222. [Tr. 72]. The Respondent was ranked in the top 100 practitioners purchasing oxycodone throughout the United States. [Tr. 151].

48. DI Milan used the ARCOS information to identify the suppliers of oxycodone to the Respondent. [Tr. 73]. She then contacted the suppliers and received copies of the DEA Form 222 and invoices for the purchases made to the Respondent from Paragon Enterprises, Inc., Dispensing Solutions, Sunrise Wholesale, Inc., and Anda, Inc.. [Tr. 74–80; Govt. Exh. 6]. The DEA Form 222 indicates the drug shipped, the date shipped, and the quantities shipped. [Tr. 77]. The DEA Form 222s were those issued to the Respondent. [Tr. 108].

49. DI Milan also reviewed the purchase orders that were seized from the Respondent during the execution of the search warrant. [Tr. 81–82; Govt. Exh. 7].

50. DI Milan conducted an audit of oxycodone products from the beginning of business on December 1, 2009, through the close of business on November 23, 2010. [Tr. 87–88; Govt. Exh. 1]. DI Milan did not find an initial inventory in the records that were seized, so the beginning inventory amounts were recorded as ''0''. The computation chart is as follows:

CONTROLLED SUBSTANCES COMPUTATION CHART

Drug name, strength, form	Initial inventory	Received* [1]	Total accounted	Closing Inventory	Distributed* [2]	Total accounted	Deviation	Percent deviation
	A	B	A + B = C	D	E	D + E = F	F − C = G	G/C = %
Oxycodone 30 mg Tablets	0	260,700	260,700	4,224	156,753	160,977	−99,723	−38.25
Oxycodone 15 mg Tablets	0	18,340	18,340	0	8,880	8,880	−9,460	−51.58
Oxycodone 10 mg Tablets	0	500	500	0	200	200	−300	−60.00
Oxycodone 5 mg Tablets	0	1,600	1,600	0	100	100	−1,500	−93.75
Oxycodone 10 mg/325 mg Tablets	0	3,700	3,700	0	2,580	2,580	−1,120	−30.27
Oxycodone 5 mg/325mg Tablets	0	3,600	3,600	0	300	300	−3,300	−91.67

[1] Suppliers: Paragon Enterprises, Dispensing Solutions, Sunrise Wholesale, ANDA Inc. (December 2009–November 2010).
[2] Daily Dispensed Prescriptions.
* Includes Returns from Customers.
** Includes Returns to Suppliers, Thefts and Surrenders.

[Tr. 87–90; Govt. Exh. 1]. The Respondent was unable to account for a shortage of 99,723 dosage units of oxycodone 30 mg, and a shortage of 9,460 dosage units of oxycodone 15 mg tablets. [Govt. Exh. 1]. Only the Respondent's DEA registration was used to compute the audit figures. It is unclear in the record whether Dr. Jacobs' DEA number was ever used to order controlled substances. [Tr. 190–91].

51. In looking at the prescriptions, DI Milan discovered that a number of the prescriptions did not have the required dispensing labels on the back of the prescriptions. [Tr. 97]. Further, a number of the paper copies of DEA Form 222s failed to have the received column and the date column properly completed. [Tr. 121–23; Govt. Exh. 7]. A power of attorney from the Respondent authorizing another to act on her behalf in filling out the DEA Form 222 was not found during the search of the Respondent's premises. [Tr. 122].

2. Patient Interviews [24]

52. DI McRae interviewed a patient from Kentucky. He had heard about the

[23] ARCOS stands for automation of reports and consolidated ordering system. [Tr. 70; *see also* 99–101].

[24] To the extent that this evidence constitutes hearsay, I will afford it less weight in forming my opinion below.

Respondent from someone in Kentucky, and he had been to the clinic several times. [Tr. 174]. He said he had been buying Lorcet or Lortab off the street, and ''he realized that it was cheaper for him to come drive to South Florida to get oxycodone at the pain clinic.'' [Tr. 174].

53. GS Langston interviewed some of the Respondent's patients. She interviewed a lady, D. L., who admitted that day to having taken 5 oxycodone 30 mg tablets. GS Langston observed that this woman was ''highly under the influence'' of the medication. [Tr. 25, 44]. The woman was one of three people from Kentucky, and she had seen the Respondent the day before. The lady had received 180 oxycodone 30 mg. tablets. GS Langston saw the pill bottle, and credibly testified that there were at least twenty pills missing. [Tr. 26]. The lady's husband was to see the Respondent that day, and the third person, the lady could not remember her name, was waiting to join them for the return trip to Kentucky. [Tr. 25].

54. Also during the March 2010 visit, Ms. Hall talked with two individuals from Kentucky. One of the individuals explained that the doctor would not give him 180 30 mg. pills, but he would give the man 360 15 milligram pills. [Tr. 218].

55. Task Force Officer (''TFO'') Thomas interviewed patients of the Respondent in August of 2010. [Tr. 128]. The patients were from Ohio, and they stated that they could not get the quantity of oxycodone in Ohio that they could get in Florida. They had heard of the Respondent's practice through word of mouth in Ohio. [Tr. 128–29]. They first started seeing the Respondent in June of 2010, when they received 180 dosage units of 30 mg oxycodone, some Soma, Xanax, and Ibuprofen. [Tr. 129]. The doctor and the patients talked about pain levels and locations of pain, but no physical examination or range of motion testing was conducted. [Tr. 129]. The encounter lasted probably less than ten minutes. [Tr. 129]. The same procedures were used on the second and third visits. During the first two visits, the patients were dispensed medication from the clinic, but on the third visit, the patients received prescriptions because the clinic had just moved to a new location, and the dispensary had not been set up yet. [Tr. 129–30].

E. Undercover Transactions

56. At the time Dr. Danton treated the undercover personnel, it was not a requirement to conduct a urinalysis or a blood test prior to treating a pain patient. [Tr. 429–30]. Effective November 8, 2010, the law changed and required the physician to order a urinalysis before being allowed to prescribe controlled substances. [Tr. 430–31, 577–79; Fla. Admin. Code r. 64B15–14.0051(2)(f) (2010)]. The urinalysis will determine whether or not the patient is taking the prescribed controlled substances, and whether or not the patient ingested illicit drugs. [Tr. 596]. If a patient is found to have taken illicit drugs, the physician is to discharge that patient from the doctor's practice. [Tr. 431]. On the day of the search warrant, November 23, 2010, DI McRae noted that she was told that the Respondent had run out of urinalysis kits, and no such tests had been taken for the past three days. [Tr. 168].

57. Sometimes the Respondent saw patients in a group. She would explain her ''180 program,'' and if the patients did not object, she would review each person's MRI and fill out the drug order form for that patient in the group setting. Sometimes she would have as many as a dozen people sitting through this process. [Tr. 168–69]. If a patient wanted to be seen one-on-one, the Respondent would accommodate that request. [Tr. 186, 169].

58. The Respondent did not refer any of her patients out to other doctors. [Tr. 169].

59. During follow-up visits, the Respondent did not ask any of the undercover individuals how many oxycodone, Xanax, or Soma they had left from their previous prescriptions. [Tr. 537]. However, if the patient did not have to take any medication for break-through pain, the Respondent would lower the quantity of medication prescribed to that patient. [Tr. 579]. However, none of the medical charts in this record demonstrate such action. [Resp. Exh. 1–3].

60. If the Respondent's medical files had no notations regarding her observations of a patient's movements, that indicated to the Respondent that she had not observed anything inappropriate or inconsistent with the patient's complaint and diagnosis. [Tr. 543]. If the Respondent did witness suspicious conduct, *i.e.* ''complained of pain * * * bent over and jumped up in the air'' that would have been noted. [Tr. 543].

61. Per the Respondent, the majority of the patients received a prescription for oxycodone. [Tr. 548]. Previous doctors may have prescribed hydrocodone, felt uncomfortable prescribing oxycodone, and would refer the patients to a pain management clinic for further treatment. [Tr. 548–49].

62. The patient files in this record contain no medical reports or documents from prior physicians as related to the three undercover personnel. When asked if she had ordered such information, the Respondent stated that she could not recall. [Tr. 576–77; Resp. Exh. 1–3].

1. Tanya Hall [25] (Special Agent Hayes)

63. On February 15, 2010, Ms. Hall visited with the Respondent, and the visit was audio-recorded. [Tr. 203; Govt. Exh. 14A [26]]. The audio recording was subsequently transcribed. [Tr. 205; Govt. Exh. 14B]. Ms. Hall signed in and placed her reason for the visit as ''for meds.'' [Tr. 206]. Ms. Hall was asked for a copy of her identification and for her MRI report. [Tr. 207]. Ms. Hall was informed that she had to watch a video before seeing the doctor. The video was of Dr. Danton describing her prescribing of medications and her ''180 program.'' [Tr. 207].

64. Ms. Hall was given paperwork to fill out, including a pain assessment form. Pain was to be rated from one to ten, and Ms. Hall rated her pain at a level 3. [Tr. 207; Resp. Exh. 1]. Ms. Hall signed a document stating ''there will be no exception to [the rule that the maximum amount of 2.0 mg Xanax should be no more than 60 tablets in a 28 day cycle], so please do not ask the doctor to make an exception for you.'' [Resp. Exh. 1 at 8]. In addition, Ms. Hall signed documents consenting to be drug screened and acknowledging that a positive test result ''disclosing the prescence of an illegal substances no prescribed my [sic] any physician associated with Boca Pain and Wellness, will result in immediate termination as a patient * * *.'' [Respt. Exh. 1 at 9, 10]. Further, Ms. Hall signed a document stating that ''lost, stolen or misplaced narcotics will not be replaced'' and another form documenting that it is a third degree felony under Florida law to possess or attempt to possess a controlled substance by fraud.'' [Respt. Exh. 1 at 11, 12].

65. Ms. Hall was directed to sit in a chair across the desk from the Respondent. [Tr. 208]. She was not required to provide a urine sample during the visit. [Tr. 208]. Ms. Hall stated that she did not receive a physical examination. [Tr. 208]. Ms. Hall told the Respondent that she had used Vicodin before. However, she did not tell the Respondent that she was currently using Vicodin or any other controlled substances. [Tr. 209]. The

[25] I will refer to the undercover operatives by their undercover names to coincide with the documentary evidence in this case. [Tr. 208; Resp. Exh. 1].

[26] The actual visit begins at the 1 hour and 45 minute point of the audio recording. [Tr. 204].

Respondent told Ms. Hall that she had probably built up a tolerance to the Vicodin, and then offered to provide Ms. Hall with Percocet. Ms. Hall declined the Percocet, saying that the acetaminophen in the Percocet upset her stomach. [Tr. 274]. Although the Respondent clearly doubted the upset stomach, and Ms. Hall subsequently stated it didn't upset her stomach, the Respondent offered the oxycodone 15 mg rather than Percocet, pursuant to the patient's request. [Tr. 274; Govt. Exh. 14B at 11–13]. The Respondent later reiterated that she would have preferred to have given the patient Percocet. [Govt. Exh. 14B at 19].

66. Ms. Hall complained of neck and shoulder pain. [Resp. Exh. 1 at 6]. Her MRI report stated that the bottom of her spine had evidence of thinning of the disc. [Tr. 444; Resp. Exh. 1]. Under impressions, the MRI reported mild spondylosis, which means that there was some slippage of one vertebra onto another, which can cause pressure on the spine. [Tr. 444; Resp. Exh. 1]. Such spondylosis may cause ''a chronic impingement of that nerve'' which would cause chronic pain. [Tr. 445]. Such an MRI impression was ''more significant than the patient's description of their pain levels because * * * patients tend to under-exaggerate or over-exaggerate their symptoms.'' [Tr. 445].

67. Ms. Hall told the Respondent that she had had an automobile accident in 1999 and in 2003, and she had slipped and fallen on the ice in December of 2009, [Govt. Exh. 14B at 9], which could have aggravated her spinal condition. [Tr. 446–47; 245; 612]. She also had an accident where a box of chicken tenders had fallen on her while she worked in a cafeteria. [Tr. 245; Govt. Exh. 14B]. The Respondent noted that the injury in 1999 could have resulted in osteophytes and slippage, and the slip and fall on the ice could have aggravated the situation, as well as the accident resulting in the box of chicken tenders falling on the patient. [Tr. 246, 447].

68. The MRI also noted disc osteophytes, which are bony protrusions on the discs that develop over time. [Tr. 446, 452]. The osteophytes were consistent with Ms. Hall's history of having been in accidents in 1999 and 2003. [Tr. at 446–447]. Osteophytes indicate that the injuries were chronic. [Tr. 451]. Ms. Hall's MRI showed more damage to her spine than the MRIs for Mr. Castillo and Mr. Swanson. [Tr. 542–43]. The Respondent further found that ''[i]t had more extensive damage, but the extent of the extensive damage I didn't consider warranted increasing the medication beyond the starting dose of 15 milligrams.'' [Tr. 563].

69. The Respondent did not find that the MRI was suspicious, in that it did not look fraudulent, modified or illegitimate. [Tr. 561]. Specifically, the Respondent was able to correspond the patient's history and her presentation with her MRI report. [Tr. 561]. The MRI report stated that it was conducted at Ingalls Memorial Hospital in Harvey, Illinois. [Respt. Exh. 4 at 5]. The Respondent asked Ms. Hall whether she always ''drove this way'' from Harvey Illinois, to which the patient responded, ''Well, I'm kind of back and forth; I'm thinking about moving here 'cause I recently lost my jobs and I got some friends'' down here. [Govt. Exh. 14B at 7].

70. The Respondent did not notice anything specifically when observing Ms. Hall walking and standing. [Tr. 449]. Such an observation would be consistent with the MRI results, however, since the initial accident which would have caused the initial injury happened seven to eleven years earlier. [Tr. 448–49]. The Respondent credibly testified that Ms. Hall may have ''compensated * * * for that injury.'' [Tr. 449].

71. The Respondent diagnosed Ms. Hall as having a bulging disc with mild spondylosis, a disc slippage, and disc osteophytes. [Tr. 464]. Ms. Hall had been given Vicodin and Tylenol No. 3 by another provider. [Tr. 464; Resp. Exh. 1 at 1]. The Respondent relied upon the history of two motor vehicle accidents, her slip and fall, and the accident with the boxes. [Tr. 464]. The Respondent also relied upon Ms. Hall's description of her pain as a level three. [Tr. 465].

72. Ms. Hall presented no red flags, per the Respondent, for she was not ''over-exaggerating'' her pain. [Tr. 466].

73. The Respondent's treatment plan was to enter Ms. Hall into her ''180 program.'' [27] [Resp. Exh. 1 at 1]. Ms. Hall's patient chart indicates under ''plan'' the controlled substances prescribed by the Respondent on each visit, yet does not document anything else. [Respt. Exh. 1 at 1, 15, 20].

74. The first visit lasted about 15 to 20 minutes. [Tr. 209]. Ms. Hall refused the offered Percocet, and the Respondent then offered oxycodone. [Tr. 210]. The Respondent prescribed her 180 oxycodone 15 mg. [Tr. 211, Resp. Exh. 1 at 1]. When asked if she had anxieties, Ms. Hall responded ''sometimes.'' [Tr. 210]. Ms. Hall credibly testified that the Respondent said she would prescribe the Xanax but ''didn't care if I took it.'' [Tr. 210; Govt. Exh. 14B at 16]. The Respondent prescribed her 30 Xanax 2 mg. [Resp. Exh. 1 at 1].

75. When asked if she had trouble sleeping, Ms. Hall again responded ''sometimes.'' [Tr. 210]. The Respondent then agreed to prescribe the Soma, and she told Ms. Hall to take the Xanax and Soma together to help her sleep. [Tr. 210].

76. Ms. Hall partially filled the prescriptions in house with the Respondent. Ms. Hall received 30 Xanax 2 mg, 30 Soma 350 mg, and 90 Ibuprofen, 800 mg. [Tr. 212–13; Govt. Exh. 10; Resp. Exh. 1 at 5]. The Respondent told her that the clinic had run out of oxycodone 15 mg., and Ms. Hall returned on the 17th of February to get the oxycodone prescription filled. [Tr. 211–12; Govt. Exh. 10]. Although the receipt indicates that Ms. Hall received 90 oxycodone, she actually received 180 oxycodone. [Tr. 212].

77. Ms. Hall next visited the Respondent on March 22, 2010. The receptionist took Ms. Hall's blood pressure and weighed her. Ms. Hall asked Ms. Demers, the receptionist, if she and Mr. Castillo could get in to see the Respondent faster, and Mr. Castillo offered Ms. Demers $100.00. Ms. Demers took the money and said she'd see what she could do. [Tr. 216–17, 254].

78. During this visit, Ms. Hall observed a male patient yelling at a female patient, saying ''What are you doing with 15 milligrams?'' He pointed to the examining room and told the female patient to ''Get back in there and get 30.'' [28] [Tr. 217]. The male patient then asked for the price of prescriptions for four individuals, and he paid cash for their prescriptions. [Tr. 217].

79. During this visit, Ms. Hall was with Mr. Castillo.[29] The Respondent saw Ms. Hall and Mr. Castillo together. They were directed to sit in front of the Respondent's desk. The Respondent gave Ms. Hall a pain assessment sheet, and Ms. Hall circled her left shoulder. Ms. Hall did not participate in a urinalysis test on this visit. [Tr. 219–22]. Ms. Hall told the Respondent that she did kickboxing. [Tr. 276]. The Respondent gave Ms. Hall the same prescription as on February 15, 2010. [Tr. 220]. Again, Ms. Hall testified that she was not physically examined. [Tr. 220]. Ms. Hall asked if the Respondent would up the dosage of the Xanax, and

[27] This program will be discussed in greater detail *infra.*

[28] The record contains no evidence, however, that the Respondent actually prescribed or otherwise provided 30 mg. oxycodone for this patient. In addition, the Respondent testified that this patient was later discharged. [Tr. 545].

[29] Mr. Castillo is Mr. Cesar Flores. [Tr. 219].

the Respondent refused to do that. [Tr. 221]. The Respondent did not note in Ms. Hall's medical file the number of pills she had left over from the first prescription. [Tr. 537; Respt. Exh. 1].

80. Ms. Hall received a receipt for 360 oxycodone 15 mg, and the receipt reflected Dr. Jacobs' name, even though Ms. Hall had seen Dr. Danton that day. [Tr. 222]. Further, Dr. Danton only prescribed 180, 15 mg. oxycodone, but Ms. Hall actually received 360 oxycodone 15 mg., 30 Xanax, 30 Soma and 90 Ibuprofen. [Tr. 222–23; Govt. Exh. 10].

81. Next, Ms. Hall visited the clinic on April 20, 2010. Again, she was accompanied by Mr. Castillo. A video was taken of the visit, and a transcription was also made of the visit. [Tr. 223–25; Govt. Exh. 17A, B]. Again, Ms. Hall and Mr. Castillo saw the Respondent together. [Tr. 228]. The Respondent asked Ms. Hall if the medication was working for her, and Ms. Hall responded yes. [Tr. 229]. Ms. Hall received prescriptions from Dr. Danton, and the receptionist explained that the clinic had run out of medication. [Tr. 236; Govt. Exh. 10]. The Respondent provided prescriptions for the same quantity, strength, and type of medications as the last visit. [Tr. 237; Govt. Exh. 10]. At no time did the Respondent ever try to lower the dose of oxycodone. [Tr. 275]. The Respondent again did not ask how many pills Ms. Hall had left over from the prior prescription. [Tr. 537].

2. Pedro Castillo (Special Agent Flores)

82. Mr. Castillo visited with the Respondent in February, March, and April of 2010. [Tr. 285; Govt. Exh. 15A [30] and B]. His first visit was on February 15, 2010. [Tr. 287]. He paid $150.00 for the office visit. [Tr. 288]. Mr. Castillo told the Respondent that he had stiffness in his neck. He stated that he did not receive a physical examination, and he did not participate in a urinalysis test. [Tr. 289]. The Respondent described to the patient her ''180 Program'' including the exercise component. [Govt. Exh. 15B at 23–42]. The Respondent described the medications that she offered, acknowledged that the Respondent had a mild disc bulge and stated that 30 mgs would be ''overkilling'' and that the Respondent does not need more than 15 mgs of oxycodone. [Govt. Exh. 15B at 34–35]. The Respondent then asked the patient ''which medicine do you want?'' The patient responded ''I want oxys.'' The Respondent confirmed that the patient wanted 15 mgs and not 10 mgs. [Govt. Exh. 15 at 42]. Then, the Respondent discussed with the patient how he acquired his injuries. The patient told the Respondent that he had been in a motorcycle accident. [Govt. Exh. 15B at 44]. On the pain assessment form, Mr. Castillo noted that his pain was at level 2. [Tr. 290; Resp. Exh. 2 at 15]. Mr. Castillo told the Respondent that he was getting oxycodone from a friend. [Tr. 290]. Mr. Castillo did not complain of problems sleeping or of anxiety. [Tr. 290].

83. Mr. Castillo's MRI [31] noted mild scoliosis, with the ''vertebral body heights and disc spaces * * * maintained despite the scoliosis, according to his interpretation.'' [Tr. 453]. Yet, when a specific analysis was written, the radiologist noted that there was mild bulging of the disc in the cervical spine. [Tr. 454]. The radiologist recommended that the physician interpret these results in conjunction with the clinical symptoms. [Tr. 454]. Dr. Danton explained that she would have ''to take the clinical symptoms and * * * the exam, [and the] neurological examination'' of the patient to determine if there was any significance to the bulging disc. [Tr. 454]. She further explained that if ''someone has a bulge but has no symptomatology, now, it's there * * * [but] it's not clinically significant.'' [Tr. 455]. The Respondent did not find that the MRI was suspicious, in that it did not look fraudulent, modified or illegitimate. [Tr. 561]. Specifically, she was able to correspond the patient's history and his presentation with his MRI report. [Tr. 561].

84. Dr. Danton's diagnosis for Mr. Castillo was a bulging disc in the cervical spine area. [Tr. 455, 463; Resp. Exh. 2 at 1]. The proper treatment for this chronic condition would be analgesics, for ''nobody would do surgery on a * * * bulge.'' [Tr. 456]. Mr. Castillo's patient chart indicates under ''plan'' the controlled substances prescribed by the Respondent on each visit, yet does not document anything else. [Resp. Exh. 2 at 1, 17, 20].

85. Mr. Castillo presented no red flags in Dr. Danton's observations, which meant that he was probably legitimate, for he also was not over-emphasizing his injury. [Tr. 456]. Dr. Danton also noted that Spanish men, like her assessment of Mr. Castillo, ''in general tend to minimize * * * any descriptions that they have.'' Further, they tend to under-describe their levels of pain. Someone who is faking pain will generally go overboard in their descriptions of their pain. [Tr. 457–58].

86. The appropriate treatment was to use a moderate analgesic. [Tr. 463]. The Respondent prescribed 180 oxycodone 15 mg., 30 alprazolam (Xanax) 2 mg, 30 tablets of carisoprodol (Soma) 350 mg., 90 Ibuprofen, 800 mg. [Tr. 291–93; Govt. Exh. 12]. Mr. Castillo signed forms identical to those signed by Ms. Hall regarding Xanax, urinalysis, lost medication, and fraud. [Resp. Exh. 2 at 8–11, 13].

87. Mr. Castillo next visited the Respondent on March 22, 2010.[32] [Tr. 293, 315]. He stated that he did not receive a physical examination. [Tr. 297]. Again, Mr. Castillo did not do a urinalysis. [Tr. 297]. Mr. Castillo received a receipt for the medication he received, indicating that he received 360 oxycodone 15 mg from Dr. Jacobs, whom he had not seen that day. [Tr. 298–99; Govt. Exh. 12]. The Respondent actually ordered 180 oxycodone 15 mg. [Tr. 299; Resp. Exh. 2 at 17–18]. Yet Mr. Castillo actually received 360 oxycodone 15 mg. [Tr. 299]. Mr. Berman dispensed the controlled substances. [Tr. 328]. The Respondent did not note in Mr. Castillo's medical file how many pills he had left over from the first prescription. [Tr. 537].

88. Mr. Castillo's last visit was in April of 2010. [Tr. 285]. He stated he was not physically examined by the Respondent or asked to provide a urine sample. [Tr. 300, 328–29]. He was asked to assess his pain level, and he wrote a 3 for his level of pain, on a scale of one to ten. [Tr. 301].

89. Mr. Castillo received the same prescriptions, and he did not fill them at the clinic that day. [Tr. 301; Govt. Exh. 12]. Again, the Respondent did not ask how many pills remained from the last prescription. [Tr. 537].

3. Ron Swanson [33] (TFO Kevin Doyle)

90. Mr. Swanson visited the Respondent's clinic in February, March, and April of 2010. [Tr. 334]. The February visit was recorded, and the recording was transcribed. [Govt. Exh. 13A and B]. Mr. Swanson paid $150.00 for the first visit. [Tr. 337]. Mr. Swanson signed forms identical to those signed by Ms. Hall and Mr. Castillo regarding Xanax, urinalysis, lost medication, and fraud. [Respt. Exh. 3 at 17–21]. Mr. Swanson explained that he had been in

[30] The actual visit with the Respondent begins at 2 hours and 23 minutes on the audio recording. [Govt. Exh. 15A].

[31] The MRI did not have the name of the radiology facility written on it, but a physician's name was written on it [Resp. Exh. 4 at 1; Tr. 532]. The Respondent did not verify this MRI. [Tr. 532].

[32] This visit was not audio or video recorded. [Tr. 315].

[33] Mr. Swanson is actually Task Force Officer Kevin Doyle. [Tr. 333].

a car accident, a friend had given him oxycodone, and that he had come to the Respondent to obtain oxycodone. [Tr. 337]. He did not indicate that he was currently taking oxycodone, however. [Tr. 338]. Mr. Swanson was not required to provide a urine sample. [Tr. 337–38]. The Respondent did ask Mr. Swanson to raise and lower his arms, and that was the extent of the physical examination. [Tr. 338]. Mr. Swanson had rated his pain at a level 2. [Tr. 338].

91. At the first visit, when asked, Mr. Swanson stated that he had problems sleeping and that he had anxiety. [Tr. 339]. Mr. Swanson was given a receipt for 90 oxycodone 15 mg., but that was not what had been prescribed that day. He actually was prescribed and received 180 oxycodone 15 mg. [Tr. 340, 374; Govt. Exh. 11]. He also received 30 alprazolam 2 mg. (Xanax), 30 carisoprodol 350 mg. (Soma) and 90 ibuprofen 800 mg. [Tr. 340–41; Govt. Exh. 11]. All of the prescriptions were dispensed on-site from a back room, out of sight of the patients. [Tr. 341, 362].

92. When looking at Ron Swanson's MRI,[34] Dr. Danton noted that if Mr. Swanson and Mr. Castillo had come into her office at the same time, she would have noticed that their MRIs were almost exactly the same. [Tr. 459]. However, at that time, the Respondent did not find that the MRI was suspicious, in that it did not look fraudulent, modified or illegitimate. [Tr. 561].

93. Dr. Danton noted that the MRI identified a bulging disc. She explained that ''there was no pressure on the spinal cord as such from this bulge, but if there's a bulge, it means there's a narrowing of the disc, and if there's a narrowing of the disc, then there is going to be some impingement or some kind of abnormal pressure on that disc space which is going to effect those lateral nerves that are coming out and are going to effect things like the shoulder or parts of the neck.'' [Tr. 459].

94. The MRI also described a mild scoliosis, which means that ''there was an abnormal curvature to the spine, and that abnormal curvature can put abnormal pressures on nerve roots, as well.'' [Tr. 459–60]. Dr. Danton acknowledged that the MRI showed very small changes, ''but if you multiply those small changes, it can build into something.'' [Tr. 460].

95. Mr. Swanson complained of pain in his right shoulder. [Tr. 354, 460; Resp. Exh. 3]. Although he had minimal complaints, Dr. Danton noted that if he had taken medication, that would have lowered his pain levels. [Tr. 460]. Mr. Swanson had also told the Respondent that on December 23, 2009, he had had a motor vehicle accident. [Tr. 461]. Dr. Danton had also observed that there were no red flags concerning her observations of his behavior. [Tr. 461]. Specifically, she was able to correspond the patient's history, complaints, and his presentation with his MRI report. [Tr. 460, 561].

96. Mr. Swanson had reported to Dr. Danton that he had taken roxicodone, a form of oxycodone, for his pain. [Tr. 468; Resp. Exh. 3 at 2]. However, the documentation is unclear as to whether he had taken the medication recently. [Tr. 338; Resp. Exh. 3 at 2].

97. Putting all the information the Respondent had available, she determined that Mr. Swanson had chronic pain that was ''not that bad'' when he took pain medicine. [Tr. 461, 469]. The Respondent credibly testified that a mild to moderate pain killer would be appropriate. [Tr. 462]. Given his condition, absent medication, Dr. Danton would expect his pain level to be a five to a seven. [Tr. 469]. At a level seven, a person would be dysfunctional. [Tr. 470].

98. The Respondent confirmed that she did not need to do any further physical examination to reach her diagnosis in Mr. Swanson's case. [Tr. 470]. Under plan, the Respondent documented in the patient's chart her prescription of controlled substances. [Respt. Exh. 3 at 1].

99. During the March 22, 2010 visit, Mr. Swanson informed the Respondent that he owed a friend some oxycodone, and he asked for 20 extra oxycodone in his prescription. [Tr. 345, 512]. The Respondent gave Mr. Swanson prescriptions for 200 oxycodone 15 mg., and the same amount of the previous prescriptions for [35] Xanax, Soma, and ibuprofen. [Tr. 345–46; Govt. Exh. 11]. He had the prescriptions filled at the Respondent's clinic. [Tr. 346–47]. Mr. Berman brought the bag containing the medicine bottles to the receptionist, who handed it to Mr. Swanson. [Tr. 374]. Mr. Swanson did not see who actually placed the tablets in the medicine bottles. [Tr. 374].

100. The Respondent told Mr. Swanson not to borrow pills, and she gave him an extra twenty pills. Later, she realized this conduct was wrong, and she ''decided that I would never do it again.'' [Tr. 511]. She credibly testified that she knows not to give more that a thirty-day supply, that her giving of the twenty extra pills was ''an error of judgment,'' but that she corrected it, and she has ''never done it since.'' [Tr. 513]. In fact, when Mr. Swanson asked for additional pills on his next visit, the Respondent refused to give them to him. [Tr. 350, 513].

101. Mr. Swanson's second visit in March was not recorded due to malfunctioning equipment. [Tr. 342]. The waiting area was quite crowded, Mr. Swanson provided the receptionist with $50.00 to be seen earlier, and the receptionist kept the money. [Tr. 344].

102. During the second visit, Mr. Swanson testified that the Respondent did not perform a physical examination on him. [Tr. 373]. The Respondent did not ask Mr. Swanson for a urine sample or how many pills he had left over from the first prescription. [Tr. 373, 537].

103. During the third visit, Mr. Swanson again paid the receptionist $50.00 to be seen ahead of other waiting patients. [Tr. 347]. On this April visit, Mr. Swanson was seen by Dr. Jacobs. [Tr. 347–48]. This visit was also recorded and a transcription was made of the recording. [Tr. 348; Govt. Exh. 16A and B]. Dr. Jacobs asked Mr. Swanson whether he had any oxycodone remaining from his earlier prescription which he answered ''no.'' Dr. Jacobs noted that in the patient's chart as well as that the patient was to continue the 180 program. [Govt. Exh. 16B at 15; Respt. Exh. 3 at 9]. Mr. Swanson received prescriptions for the controlled substances, and this time his prescription was for 180 oxycodone 30 mg. The remaining prescriptions for Xanax, Soma, and ibuprofen remained the same. [Tr. 352; Govt. Exh. 11].

104. Subsequently in the hallway, he saw the Respondent and again asked for 20 additional pills. The Respondent refused that request. [Tr. 350, 513; Govt. Exh. 16B at 21–23]. The Respondent did however instruct Mr. Swanson that if he had to repay anyone, to break down the 15's. [Tr. at 350].

F. The ''180 Treatment Program''

105. The Respondent began her ''180 Treatment Program'' in January of 2010, and the program was discontinued by the DEA's action in November of 2010. [Tr. 495].

[34] The MRI did not have the name of the radiology facility written on it, but a physician's name was written on it [Resp. Exh. 4; Tr. 532]. The Respondent did not verify this MRI. [Tr. 532].

[35] I do not find credible the Respondent's testimony that she gave the Respondent 20 extra oxycodone to save in case he did not make it back to her office in 30 days, since he was traveling from the Chicago area. Further, I do not find it credible that she gave him the extra 20 mills so he would not fear ''the concept of withdrawal.'' [Tr. 510–11]. Rather, given her subsequent testimony concerning the wrongfulness of her conduct, I find it more credible that she prescribed the extra 20 mills at the patient's request for repaying his friend.

106. Dr. Danton explained to DI McRae that the ''180 program'' involved prescribing patients 180 oxycodone 30 mg, 30 Xanax 2 mgs, 90 Ibuprofen 800 mg, and either Soma or Flexoril. [Tr. 157–58]. The Ibuprofen helped with swelling and inflammation, and the patient was to take this medication three times a day with meals. [Tr. 158]. The Xanax tablet was to be broken into four parts, and the patient was to take one part in the morning, one part in the afternoon, and two parts at bedtime. The morning and afternoon portions were to control anxiety, and the bedtime portion was to assist with sleep. [Tr. 158].

107. After six hours, a pain medicine becomes ineffective. However, depending on what a patient is doing, the patient may need additional medication before the six hours is over to handle breakthrough pain. When the pain medication metabolizes down, pain starts to increase, and the patient's ability to function can be compromised. [Tr. 479–80]. ''And so the object of the program is to make people able to function at a hundred percent level all the time.'' [Tr. 480].

108. Yet for breakthrough pain, Dr. Danton credibly testifies that the patient may not be given a dose equal to the original dose. A half of the original dose would control the breakthrough pain. [Tr. 480]. Dr. Danton would teach her patients to take this one-half tablet when their functioning was compromised. [Tr. 480]. Thus, a patient would be able to take 4 full-strength tablets and 4 half-strength tablets in a twenty-four hour time period, or six doses. That equals to 180 tablets in a month. [Tr. 481]. If the patient did not need the one-half tablet, the patient was to save these extra pills in a bottle the Respondent called an ''emergency parachute.'' [Tr. 159]. These pills were to be used in the event the patient could not get back to see Dr. Danton in exactly thirty days. [Tr. 482]. If the patient saved up 180 tablets in the ''emergency parachute,'' the patient would have a visit which was free, and the patient would not be prescribed any oxycodone on that visit. [Tr. 159]. Yet the patient medical files in this record do not demonstrate that the Respondent annotated the whereabouts of the extra pills or the exact quantity of pills consumed or retained by the patients. [Resp. Exh. 1–3].

109. The Respondent testified that it would still be medically appropriate for the patient to take the full 180 oxycodone pills during the course of a month. One hundred and eighty 30 mg dose tablets is the maximum safe dose for oxycodone. Such action by the patient, however, would not be consistent with the Respondent's treatment plan, and she would discharge the patient on that basis. [Tr. 488–89].

110. Dr. Danton credibly testified that prescribing 180, 15 mg oxycodone, was medically appropriate for the three undercover transactions. [Tr. 483–84].

111. Sometimes a patient will report anxiety and the lack of ability to sleep as well as pain. The Respondent instructed her patients to take .25 milligrams or .5 milligrams of Xanax for this problem. That dosage would ''take care of anxiety, but it will still enable (the patient) to function at the hundred percent full level.'' [Tr. 500; Govt. Exh. 15B at 47]. The Respondent instructed the patients not to take the Xanax if they did not need it. [Tr. 500; Govt. Exh. 14B and 15B]. The Respondent also prescribed a muscle relaxer to take at night to help a patient with sleep, while still allowing the patient to wake up after a full-night's sleep and to be able to function at a hundred percent. [Tr. 500].

112. The Respondent asked the three undercover patients if they were having anxiety problems or muscle spasm problems, the patients answered ''Yes,'' and the Respondent wrote prescriptions for Xanax and Soma. The patients were told to take these medications only when needed. [Tr. 501; Govt. Exh. 14B and 15B].

113. Lastly, the Respondent prescribed ibuprofen, an anti-inflammatory medication that will treat the inflammation around the nerve roots. [Tr. 502]. For para-spinal inflammation, the Respondent credibly testified that a patient would need 2400-milligrams of ibuprofen per the twenty-four hour day. [Tr. 502]. Dr. Danton credibly concluded that ''someone who's got a chronic permanent injury is going to have to take an anti-inflammatory for most of their life.'' [Tr. 503].

114. Also part of the ''180 program'' was an exercise component involving a swimming pool. The exercise was to assist the patient in pain management. [Tr. 160, 490–492]. Such exercising would produce endorphins, which create potent analgesic-like effects in the brain. [Tr. 492].

115. After four months, if the patient was saving a large quantity of medication, the Respondent would begin the weaning portion of the program.[36] [Tr. 485–86]. The weaning process consisted of weaning safely and slowly to 90 oxycodone tablets within a month. [Tr. 486–87, 497]. This process avoided placing the patient into withdrawal. [Tr. 498]. ''No one had a problem with withdrawal on the 180 program * * *.'' [Tr. 498]. Yet when asked if anyone had successfully completed the program, ''she said that there were a couple of patients who had called her and said that they no longer needed the medication.'' [Tr. 161]. Yet the patient files of these individuals did not contain any annotations concerning these calls. [Tr. 161].

116. The Respondent credibly testified that she ''was willing to make a small salary so that people could afford to come and learn.'' [Tr. 494]. Dr. Danton also stated that ''if I could dispense the pills at a reasonable price, it would be an incentive for them (the patients) to come and stay with the program. If they kept with the program and they got used to the program, eventually they would be able to get off of narcotics.'' [Tr. 495].

117. To determine if a patient was following the ''180 Treatment Program,'' the Respondent would ask the patient three distinct questions and the answers would tell the Respondent if the patient was actually following the program. [Tr. 496]. The patient was asked:

1. How many whole pills were they allowed to take in a 24-hour time period?
2. How many one-half pills were they allowed to take in a 24-hour period?
3. When could they take the one-half pills?

If the patient failed two quizzes, the patient would be discharged from the practice. [Tr. 496]. However, the record fails to demonstrate that on the subsequent visits of the undercover officers, these questions were asked. [Resp. Exh. 1–3].

IV. Statement of Law and Discussion

A. Position of the Parties

1. Government's Position

The Government asserts that the Respondent failed to properly dispense and maintain readily retrievable records as required by Florida statutes for a dispensing physician. [Government's Proposed Findings of Fact and Conclusions of Law ''(Govt. Brief) at 11]. The Respondent also violated Florida law when she dispensed more than a 72-hour supply of controlled substances after October 1, 2010. [Govt. Brief at 11].

The Government notes that the Respondent was unable to account for more than 100,000 dosage units of oxycodone, failed to have an initial inventory, failed to properly execute DEA Form 222s, and had multiple DEA

[36] The Respondent credibly testified that the three undercover personnel did not stay in the program long enough to begin the weaning portion of the program.

Form 222s missing, in violation of DEA regulations. [Govt. Brief at 11]. The Government concludes on this point that the ''Respondent's inability to maintain effective controls against diversion and lack of compliance with State and Federal Laws regarding controlled substances is clear and weighs heavily in favor of revocation of her DEA Certificate of Registration.'' [Govt. Brief at 11].

The Government next argues that prescriptions were issued not for a legitimate medical purpose nor in the usual course of professional practice, as required by law. Specifically, the Government asserts that undercover patients Hayes and Castillo asserted that they did not receive a physical examination. [Govt. Brief at 12]. The Government asserts that Florida law requires that a physician perform a physical examination and document that exam in the patients' files, institute a treatment plan and document that plan in the patients' files. [Govt. Brief at 8 (citing Fla. Admin. Code R. 64B8–9.013), 12]. The Government notes that what the Respondent did with Hayes and Castillo was not a physical examination, and even if it was, the exam results were not documented in the patient files. The only treatment plan was to continue prescribing controlled substances. [Govt. Brief at 12]. In conclusion on this point, the Government argued that the Respondent ''did little that would indicate that she established a bona fide physician-patient relationship or that the controlled substances she distributed were for a legitimate medical purpose in the usual course of professional practice.'' [Govt. Brief at 13].

Next, the Government argues that the Respondent knowingly engaged in diversion when she provided Mr. Swanson with extra oxycodone to repay a friend 20 tablets. [Govt. Brief at 13]. The Government further argues that instructing Mr. Swanson on how to break down pills to repay his friends constituted intentional diversion. [*Id.*].

Lastly, the Government argues that the Respondent did not truly accept responsibility for her misconduct, for her acceptance of responsibility ''was often followed by an excuse, or a shift of blame.'' [Govt. Brief at 14]. Although the medical files clearly established that Ms. Hall and Mr. Castillo were dispensed 360 oxycodone tablets when only 180 tablets had been authorized by the Respondent, the Respondent failed to address that error to the patients on their subsequent visit. Rather, at the hearing, the Respondent justified the error by stating that even 360 tablets would be within the standard of care for a chronic pain patient. [Govt. Brief at 15].

Next, the Respondent failed to note that two patients, seen on the same day, actually gave the Respondent the same MRI. The Respondent ignored such red flags, and she presented ''no evidence demonstrating that the Respondent could be trusted with a DEA registration and would not engage in similar misconduct should Respondent retain a DEA registration.'' [Govt. Brief at 15]. In conclusion, the Government asserts that revocation of the Respondent's DEA registration is needed to protect the public health and safety. [Govt. Brief at 16].

2. Respondent's Position [37]

In reviewing the public interest factors from 21 U.S.C. 823(f), the Respondent first asserts that there were no recommendations from a state licensing board concerning these matters. [Tr. 605]. The Respondent's experience in dispensing controlled substances was limited to her practice within the last two years. She asserts a large learning curve, and she states that the undercover officers came into the clinic during the first three months of operation. [Tr. 605]. The Respondent asserted that, as time progressed, she ascertained the rules and changed and modified her conduct to be consistent with those rules. [Tr. 605–06]. As she found errors or omissions in conduct, she took corrective action. [Tr. 606]. Also, as new requirements came into effect, such as urinalysis testing, she took action to adhere to that requirement. [Tr. 606].

Further, with experience, the Respondent realized that some of her patients were drug seeking individuals, and she instituted a policy of checking out all the MRI's that were submitted, and if she had doubts, she would send her patients out to obtain a local MRI. [Tr. 606].

Next, the Respondent notes that she has had no convictions that relate to the manufacture, distribution or dispensing of controlled substances. [Tr. 606].

As for complying with state, federal or local laws in handling controlled substances, the Respondent admits she has made errors, especially in the accounting and inventory of controlled substances. [Tr. 607]. Yet, as she learned that her pharmacy technician was failing to handle controlled substances correctly, she terminated that technician. [Tr. 607]. She also terminated Ms. Demers when the Respondent suspected, but could not prove, that Ms. Demers was involved in the theft of oxycodone. [Tr. 607]. Also, whenever there was a break-in, it was reported to the police. [Tr. 608]. Computers were stolen, which resulted in missing records. The Respondent believes that those missing records ''would correlate to the missing oxycodone that the Government is saying is not accounted for.'' [Tr. 608].

Next, the Respondent suggests that, in considering any other conduct that may threaten the public health and safety, I see the two main issues as the inventory and record-keeping problems, and the legitimacy of the Respondent's prescriptions. [Tr. 610]. As for the legitimacy of the prescriptions, the Respondent notes that the Government failed to produce an expert witness to address that topic in the context of this case. [Tr. 610]. The Government has put on no evidence to explain to this Court what the appropriate standard in diagnosing a patient and when prescribing a treatment regimen. [Tr. 618]. Although the Government relies upon a Florida statute that requires a physical examination, there is no expert testimony that defines what an appropriate physical examination entails. ''The only evidence before this Court is the evidence provided by Dr. Danton as testified in her expert capacity in the field of osteopathic medicine with experience in pain management, and her testimony is not refuted.'' [Tr. 610]. The Respondent asserts that, rather than rely on my own personal knowledge of what a physical exam consists of, I should rely upon the Respondent's testimony in light of her training and experience. [Tr. 611].

The Respondent argues that I should look closely at the evidence as it was before the Respondent when she made her diagnosis and treatment plan for the three undercover officers. [Tr. 611–12]. I should hear the patients' complaints in light of their previous automobile or motorcycle accidents and the corresponding MRI reports. [Tr. 612]. Even though the patients complained of mild pain, the record contains no evidence that only severe or moderate pain should be treated. [Tr. 612]. ''The field of palliative medicine addresses all chronic pain.'' [Tr. 612–13].

The Respondent asks me to consider the Respondent's ''180 program,'' and her true intent in implementing this program. [Tr. 613]. The Respondent argues that this program ''is a legitimate and well thought out'' program, with the results of treating her patients' pain and to eventually wean them off narcotics. [Tr. 614].

[37] The Respondent failed to timely file her post-hearing brief. However, Counsel for the Respondent made a closing argument at the hearing. From this argument, I find the Respondent's position regarding this case. [Tr. 603–619].

As for the regulatory violations, the Respondent acknowledged that she takes full responsibility for all discrepancies. [Tr. 614]. Given the learning curve and the complicated nature of the regulatory scheme, the Respondent asserts that revocation of her registration is too extreme of a sanction. [Tr. 615]. Rather, the Respondent proposes that her registration should be suspended and she be placed on probation, that she be required to take additional medical education on how to operate a pain management practice consistent with all the ''legal requirements of the [C]ontrolled [S]ubstances [A]ct.'' [Tr. 615].

The Respondent concludes that the public interest is best served by ''having doctors who care like Dr. Danton,'' who make changes when they learn that their practice is not in compliance, and who train their patients in how to properly consume controlled substances and to wean themselves off narcotics. [Tr. 616]. The Respondent argues that I should formulate an appropriate remedy, given the Respondent's acknowledged failings in this matter. [Tr. 618–19].

B. Statement of Law

Pursuant to 21 U.S.C. 824(a)(4) (2006), the Deputy Administrator [38] may revoke a DEA Certificate of Registration if she determines that the continuance of such registration would be ''inconsistent with the public interest'' as determined pursuant to 21 U.S.C. 823(f). Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

These factors may be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of these factors, and may give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied. [David H. Gillis, M.D., 58 FR 37,507, 37,508 (DEA 1993); *see also* D & S Sales, 71 FR 37,607, 37,610 (DEA 2006); Joy's Ideas, 70 FR 33,195, 33,197 (DEA 2005); Henry J. Schwarz, Jr., M.D., 54 FR 16,422, 16,424 (DEA 1989)].

As the Supreme Court recently explained, ''the prescription requirement * * * ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' [Gonzales v. Oregon, 546 U.S. 243, 274 (2006) (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975))]. When an administrative tribunal elects to disregard the uncontradicted opinion of an expert, it runs the risk of improperly declaring itself as an interpreter of medical knowledge. [*Ross* v. *Gardner,* 365 F.2d 554 (6th Cir. 1966)]. Whether expert testimony is needed in any case necessarily depends on the nature of the allegations and the other evidence in the case. Where, for example, the Government produces evidence of undercover visits showing that a physician knowingly engaged in outright drug deals, expert testimony adds little to the proof necessary to establish a violation of Federal law. [Michael J. Aruta, M.D., 76 FR 19,420, n. 3 (DEA 2011)].

Also, in an action to revoke a registrant's certificate, the DEA has the burden of proving that the requirements for revocation are satisfied. [21 CFR 1301.44(e) (2010)]. Once the Government has met its burden of proof, the burden of proof shifts to the Respondent to show why her continued registration would be consistent with the public's interest. [Medicine Shoppe, 73 FR 364, 381 (DEA 2008); *see also* Thomas Johnston, 45 FR 72,311, 72,312 (DEA 1980)]. Specifically, the Respondent must present ''sufficient mitigating evidence to assure the Administrator that [she] can be entrusted with the responsibility carried by such a registration.'' [Medicine Shoppe, 73 FR at 387].

DEA precedent has also held that ''past performance is the best predictor of future performance.'' [*ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995)]. Further, DEA has repeatedly held that ''where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [her] actions and demonstrate that [she] will not engage in future misconduct.'' [Medicine Shoppe, 73 FR at 387; *see also* Samuel S. Jackson, 72 FR 23,848, 23,853 (DEA 2007)].

C. Analysis

1. Factor I. Recommendation of the Appropriate State Licensing Board

In this case, it is undisputed that the Respondent holds a valid and current State license to practice medicine. [Finding of Fact (''FOF'') 3]. The record contains no evidence of a recommendation regarding the Respondent's medical privileges by any State licensing board or professional disciplinary authority.

However, that a State has not acted against a registrant's medical license is not dispositive as to whether continuation of her registration is consistent with the public interest. [Patrick W. Stodola, M.D., 74 FR 20,727, 20,730 (DEA 2009); Jayam Krishna-Iyer, 74 FR 459, 461 (DEA 2009)]. It is well-established Agency precedent that a ''state license is a necessary, but not a sufficient condition for registration.'' [Robert A. Leslie, M.D., 68 FR 15,227, 15,230 (DEA 2003); John H. Kennedy, M.D., 71 FR 35,705, 35,708 (DEA 2006)]. Therefore, I find this factor neither weighs in favor of nor against a finding that the Respondent's continued registration is consistent with the public interest.

2. Factors II and IV. Respondent's Experience in Dispensing Controlled Substances and Compliance with Applicable Laws.

a. Legitimate Medical Purpose

Under a longstanding DEA regulation, a prescription for a controlled substance is not ''effective'' unless it is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' [21 CFR 1306.04(a)]. This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning and intent of [21 U.S.C. 829] and * * * the person issuing it, shall be subject to the penalties provided for violations of the provisions of law related to controlled substances.'' [*Id. See also* 21 U.S.C. 802(10) (defining the term ''dispense'' as meaning ''to deliver a controlled substance to an ultimate user by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance'')].

Under the Controlled Substances Act (''CSA''), it is fundamental that a practitioner must establish and maintain a bonafide doctor-patient relationship in order to act ''in the usual course of * * * professional practice'' and to

[38] The Deputy Administrator has the authority to make such determinations pursuant to 28 CFR § 0.100(b) and 0.104 (2010).

issue a prescription for a ''legitimate medical purpose.'' [Laurence T. McKinney, 73 FR 43,260, 43,265 n.22 (DEA 2008); see also *Moore*, 423 U.S. 122, 142–43 (1975) (noting that evidence established that physician ''exceeded the bounds of 'professional practice,' '' when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against * * * misuse and diversion'')]. The CSA, however, generally looks to state law to determine whether a doctor and patient have established a bonafide doctor-patient relationship. [*See* Kamir Garces-Mejias, 72 FR 54,931, 54,935 (DEA 2007); United Prescription Services, Inc., 72 FR 50,397, 50,407–08 (DEA 2007)].

Here the Government asks this tribunal to conclude that the Respondent's prescriptions to the three undercover officers, who presented fraudulent MRI's to the Respondent, were for an illegitimate medical purpose. The Government, however, provided no expert testimony to support this finding. Rather, the Government introduced the transcripts and recordings of the undercover transactions, and a summary of those transactions via officer testimony. In that regard, the Government has provided no meaningful lodestar by which this court can measure the legitimacy of the Respondent's medical practice under Florida statutory and regulatory requirements.

The Respondent, however, did present expert testimony. The Respondent was qualified as an expert in the field of osteopathic medicine with extensive experience in pain management, assessment and treatment.[39] [FOF 6]. She asserted that her issuance of prescriptions for controlled substances to the undercover agents, based on the objective evidence of their medical conditions as presented in the MRI reports and as corroborated by their subjective reporting, was well-within the standard of care for appropriate pain management. [FOF 68–71, 84–85, 93–96, 98–99].

The importance of expert testimony to support a finding of illegitimacy has been underscored by this agency in its post-*Gonzales* decisions. Specifically, while the agency has considered over fifty cases concerning the legitimacy of a practitioner's prescriptions since *Gonzales*, the agency has seldom found a violation of 21 CFR § 306.04(a) absent expert testimony. [*See e.g.* Cynthia M. Cadet, M.D., 76 FR 19,450 (DEA 2011) (expert); Roni Dreszner, M.D., 76 FR 19,434 (DEA 2011) (expert); *Aruta*, 76 FR at 19,420 (expert); George C. Mathew, M.D., 75 FR 66,138 (DEA 2010) (expert)].

In those instances where the agency has found such illegitimacy without an expert's testimony, that finding was based on patent violations, where diversion was either unrefuted or unquestionable. For example, in *Robert F. Hunt*, 75 FR 49,995 (2010), the Deputy Administrator concluded that expert testimony was not required to make a finding of illegitimacy where the Respondent told the patient he was documenting a diagnosis of osteoporosis ''just to cover [his] ass.'' [*Id.* at 50,003]. Similarly, in *Peter W.S. Grigg*, 75 FR 49,992, 49,993 (DEA 2010), the agency found a violation where the Respondent met with an undercover police officer in a parking lot and sold the officer 60 tablets of oxycodone in exchange for $100. [*See also* Armando B. Figueroa, M.D., 73 FR 40,380, 40,382 (DEA 2008) (where Respondent's issuance of prescriptions to patients without seeing them and as many as twenty prescriptions at a time was tantamount to drug pushing), *Kennedy*, 71 FR 35,705 (where Respondent wrote prescriptions for a patient and instructed the patient to sell the drugs and return a portion of the profits to the Respondent)]. Such patent violations of § 1306.04(a) can best be described as ''outright drug deals'' as that phrase was used by the Deputy Administrator in her most recent decision on this point. [*Aruta*, 76 FR at 19,420, n. 3; *See also* Dispensing Controlled Substances for the Treatment of Pain, 71 FR 52,715, 52,717 (DEA 2006) (stating ''that the types of cases in which physicians have been found to have dispensed controlled substances improperly under Federal law generally involve facts where the physician's conduct is not merely of questionable legality, but instead is a glaring example of illegal activity).]

Similarly, where the Respondent has acted in a manner that clearly contravened state law governing what constitutes a legitimate medical practice, expert testimony may not be required. Violations in those instances are most obvious in Internet prescribing practices were no physical examination or face-to-face communication was conducted. [*Garces-Mejias,* 72 FR at 54,931 (where Respondent's involvement in Internet scheme constituted drug dealing); Dale E. Taylor, 72 FR 30,855 (DEA 2007) (similar conclusion)]. However, when the Government seeks to use a state law violation as a means of establishing a violation of § 1306.04(a), the question remains to what extent that state law violation is so tethered to a finding of actual illegitimacy that, without expert testimony, it can be used as a predicate to a violation of the federal law.

DEA precedent indicates that when a state law violation would compel a finding of illegitimacy under state law, the agency should reach a similar conclusion. For example, in *Kamir Garces-Mejias,* 72 FR 54,931 (DEA 2007), the Respondent's failure to conduct an in person physical exam violated certain state laws including (1) a California law making it a crime to issue prescriptions via the Internet to its residents; (2) an Ohio law stating that a failure to conduct a physical examination would constitute the issuance of a prescription for an ''illegitimate medical purpose;'' and (3) a Virginia statute establishing no bona-fide physician-patient relationship exists without a medical examination. [*Id.* at 54,935]. There, a clear nexus existed between the violation and a finding of illegitimacy under state law, and therefore, easily facilitated a similar conclusion under federal law.

However, absent such a nexus, a finding of per se illegitimacy under federal law under the circumstances of this case cannot be made. Indeed, to hold otherwise may result in the unfortunate corollary of a Respondent's violation of *any* state law predicating a violation of § 1306.04(a), a holding that would be inconsistent with the Supreme Court's decision on this point and DEA precedent. [*See Gonzales*, 546 U.S. at 270 (stating the CSA ''bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking *as conventionally understood*'') (emphasis added); *See also McKinney*, 73 FR at 43,266 (finding that the Respondent's failure to listen to the undercover officer's heart and lungs and take her blood pressure may have violated Pennsylvania regulations, however, it does not support a finding that the Respondent engaged in illicit drug dealing, and noting the Government's failure to create a connection between that regulatory violation and a violation of the Pennsylvania Controlled Substances Act)].

Therefore, it is clear that to establish a violation of § 1306.04, absent expert testimony, the Government must provide either (1) evidence that the Respondent committed a violation that is sufficiently tied to a state law finding of illegitimacy so as to make a similar finding under the federal law or (2)

[39] I acknowledge that the Respondent's testimony has the potential for being self-serving, however, and I take that factor into account when determining the weight to give her expert conclusion.

other evidence of ''outright drug dealing.''

i. Violations of § 1306.04 Based on State Law Violations

The Government argues that *all* of the Respondent's prescriptions to the undercover officers were issued for an illegitimate medical purpose, as they violated certain professional standards.[40] However, I find that the Government has either (1) not sufficiently proven a violation of those standards or (2) proven a violation yet not established a nexus between that violation and a finding of illegitimacy under state law to justify a *per se* violation under federal law.

First, it should be noted that although the Government, in its brief, cites to the regulatory provisions that govern a medical doctor's practice in Florida, those regulations are inapplicable to the Respondent. [Govt. Brief at 8 (citing Fla. Admin. Code r. 64B8–9.013(g))]. The Respondent is a Doctor of Osteopathy, and the State of Florida treats the practice of medicine as an osteopathic physician distinct from the practice of medicine as a medical doctor. Indeed, each profession has separate boards, licensure requirements, and statutory and regulatory schemes. [*See* Fla. Stat. Ann § 458.001, *et seq.* (statutory scheme governing medical doctors); Fla. Stat. Ann. § 459.001, *et seq.* (statutory scheme governing osteopathic physicians); Fla. Admin. Code r. 64B8–9 (regulations governing practice of medicine set forth by Board of Medicine); Fla. Admin. Code r. 64B15 (regulations promulgated by the Board of Osteopathy (''Board''))]. In that regard, the standards that govern medical doctors cannot be used to ascertain the scope of professional practice for osteopathic physicians. Conveniently, however, the regulation governing appropriate pain management for osteopathic physicians is identical to that governing appropriate pain management for medical doctors. [*Compare* Fla. Admin. Code r. 64B15–14.005 (2009) *with* Fla. Admin. Code r. 64B8–9.013 (2009)].

The Government alleges that the Respondent failed to conduct a physical examination on the patient. [Govt. Brief at 12]. However, I find that the Government has not met its burden of proof regarding this violation. First, the meaning of physical examination, as that term was used in Florida state law during the time of the Respondent's actions here,[41] is nebulous, and the Respondent's expert interpretation, in light of the Government's failure to provide a contrary one, must be given considerable weight. The Respondent testified that ''[a] physical examination does not necessarily entail touching the body.'' [FOF 20]. For example, in the case of chronic injury ''you can't see—whether you're putting your hands on the patient or not, you can't see that evidence of chronic inflammation and disease by visual inspection or palpation.'' [*Id.*]. Further, she stated that her clinical observations of how the patients moved, coupled with the MRI reports and medical histories, provided an adequate and consistent basis for her diagnoses and treatment. [FOF 110, 41, 60, 69, 70, 83, 95, 98]. Therefore, without expert testimony to the contrary, I cannot find that the Respondent failed to conduct a physical examination of the three undercover patients as that term is used under Florida law. [*See McKinney,* 73 FR at 43,266 (''[n]otwithstanding that Respondent failed to perform several steps required by Pennsylvania law, the physical exam he conducted cannot be characterized as deficient or cursory in the absence of expert testimony establishing as much.'')].[42] Accordingly, I find the Government has failed to sufficiently prove a violation of state law on this basis.

Next, the Government asserts that the Respondent failed to document a physical examination in the patient's chart, as required by the Florida law.[43] [Govt. Brief at 12]. Similarly, however, I find that the Government has failed to prove that the Respondent's documentation regarding the patient's symptoms/physical examination in the chart fell below the state's standard. To the extent that the review of an MRI report, coupled with a physical observation of the patient constitutes a ''physical examination,'' the Respondent included the MRI reports in her charts and would record those physical observations that she deemed suspicious. [FOF 60; Resp. Exhs. 1,2,3]. In addition, while I do find her decision not to write down her observations suspicious,[44] absent expert testimony to the contrary, I cannot find, however, that the Respondent's lack of documentation failed to satisfy the Florida physical examination recordation requirement. [*See* Jacobo Dreszer, M.D., 76 FR 19,386, 19,400 (DEA 2011) (basing a finding of a violation of Florida's patient recordkeeping violations on unrefuted expert testimony)].

Last, the Government asserts that the Respondent failed to record a treatment plan in the patients chart and hence issued prescriptions for an illegitimate medical purpose. [Govt. Brief at 12–13]. While I find that the Respondent did violate this professional standard, I do not find that based on this violation, the Respondent issued prescriptions for an illegitimate medical purpose. Florida law states ''the written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the osteopathic physician should adjust drug therapy to the individual medical needs of each patient.'' [Fla. Admin. Code. r. 64B15–14.005(3)(b) (2007)].

Here, the Respondent's recordkeeping clearly violates Florida law. While the Respondent's charts indicate a continued plan of treating the patient with narcotics, there is no statement of objectives that she would use to ascertain treatment success, nor is there any indication of other potential treatment or diagnostic evaluation. [*See* FOF 73, 84, 98]. Further, the Respondent did not tailor her treatment to meet the individual needs of her patients. All of the undercover patients, for example, were prescribed the exact same combination of controlled and non-controlled substances at each visit despite the varying MRI reported results. [FOF 27, 61, 86, 91; *see also* FOF 53, 55]. Also, the Respondent's treatment records failed to document any justification for this continued prescribing. Although the Respondent testified that she questioned her patients

[40] The Government also argues that the Respondent ''did little that would indicate a bona fide patient relationship.'' However, I find this argument unpersuasive as the Government has the burden of proof with regard to § 1306.04(a) violations. Further, I am not persuaded by the argument that the agency should find a violation in this case based on its similarity to another DEA matter where the Government met its burden of proof by providing expert testimony. [*See* Govt. Brief at 13 citing *Jacabo Dreszer, M.D.,* 76 FR 19386 (DEA 2011) (where the ALJ relied on expert testimony, that was unchallenged, to find the recordkeeping and documentation in patient files were substandard and that Respondent's practice didn't resemble a legitimate one)].

[41] *See* Fla. Admin. Code r. 64B15–14.005(2) (2009) (failing to define ''physical examination'').

[42] This interpretation is also supported by the Board's new regulation, effective November 8, 2010, which states that ''the exact components of a physical examination shall be left to the judgment of the clinician who is expected to perform a physical examination proportionate to the diagnosis that justifies the treatment.'' Fla. Admin. Code r. 64B15–14.0051(2)(a) (2010).

[43] *See* Fla. Admin. Code. r.B15–14.005(e) and (f) (requiring a physical examination and documentation of such but not further defining it).

[44] Although Mr. Swanson was asked to raise and lower his arms, even in Mr. Swanson's case, the Respondent did not record her observations concerning this ''physical examination.'' [FOF 60, 65, 83, 88, 90, 91, 103].

to ensure compliance with her ''180 program,'' she did not engage the three undercover patients in such a dialogue. [FOF 77–81, 87–88, 103, *but see* FOF 103 (where Dr. Jacobs engaged Mr. Swanson in such a dialogue on his third visit and recorded such)].

Therefore, I find that the Respondent violated the Board of Osteopathy's regulations in not properly documenting a treatment plan. However, I do not find that based on this failure, the Respondent issued prescriptions to the undercover officers for an illegitimate medical purpose. Specifically, I find that the Government has not sufficiently created a nexus between that violation and a finding of illegitimacy under state law so as to reach a similar conclusion under federal law.

The Florida Board of Osteopathic Medicine (''Board'') defined the bounds of prescription legitimacy when it stated that it ''will consider prescribing, ordering, administering, or dispensing controlled substance for pain to be for a *legitimate medical purpose* if based on accepted scientific knowledge of the treatment of pain or if based on sound clinical grounds.'' [Fla. Admin. Code r. 64B15–14.005(e) (2007) (emphasis added)]. In the preamble to its regulation, the Board states ''[t]he following guidelines are not intended to define complete or best practice, but rather to communicate what the Board considers to be within the boundaries of professional practice.'' *Id.* at (g). Recently, the DEA concluded that that language ''supports an inference that the standards provide the *minimum* requirements for establishing conduct that comports with the professional practice of controlled substance-based pain management in the state.'' *Dreszer*, 76 FR at 19,398 (emphasis in original). However, as the Deputy Administrator indicated in *McKinney*, a physician who falls below such minimum standards commits malpractice, yet he does not necessarily engage in illicit drug dealing. *See McKinney*, 73 FR at 43,266 (finding a violation of Pennsylvania's ''minimum standards'' for pain management yet no violation of federal law).

Here, I find that the Respondent's failure to document a treatment plan, as that term is defined in Florida law, does not lead to the conclusion that all of the Respondent's prescriptions to the undercover officers were for an illegitimate medical purpose. The Board states, ''Osteopathic physicians should not fear disciplinary action from the Board * * * for prescribing * * * controlled substances for a legitimate medical purpose and that is supported by appropriate documentation establishing a valid medical need and treatment plan.'' [Fla. Admin. Code. r. 64B15–14.005(b) (2009)]. Thus, it is possible under Florida law that a practitioner could issue prescriptions for a legitimate medical purpose, *i.e.* based on sound clinical grounds, yet fail to provide sufficient documentation of a treatment plan. While that failure may subject the physician to professional discipline, it does not predicate a conclusion that the physician engaged in illicit drug dealing.

Based on this interpretation, I find that the Government has not proven that the Respondent issued prescriptions for an illegitimate medical purpose when she failed to record a proper treatment plan in her patient's charts.

ii. Out-right Drug Dealing

However, I do find that there is evidence of outright drug dealing by the Respondent, and, therefore the Government has proved a violation of § 1306.04(a) on that basis. Specifically, when the Respondent prescribed an additional twenty pills to Ron Swanson on his second visit to her practice, that conduct constituted actual diversion. The Respondent admitted that she provided twenty extra pills to Ron Swanson upon his request for those pills and on the basis that he had borrowed twenty pills from his friend. In this circumstance, the Respondent knew or should have known that the patient was planning to re-pay his friend with those pills and that he would not use them for his own pain management.[45] [FOF 100]. Obviously, since the Respondent's friend was not a patient of the Respondent, the Respondent's issuance of those extra pills was outside the scope of her medical practice and therefore a violation of § 1306.04(a). [*See Garces-Mejias*, 72 FR at 54,935; *United Prescription Services*, 72 FR at 50,407 (requiring a bona-fide patient/physician relationship)]. Certainly no bona fide patient-physician relationship can exist, where absolutely no patient-physician contact has occurred.

I do not find, however, that the Respondent violated § 1306.04(a), when she instructed Mr. Swanson on how to break-down his pills, [FOF 104], although I do believe such evidence weighs in favor of revocation under Factor V, as discussed *infra.* Although Mr. Swanson certainly presented red flags of diversion when he indicated that he needed additional pills, the Respondent did not supply him with additional pills on the subsequent visit. [FOF 104]. Thus, to the extent that she believed the prescription she issued him was necessary to manage his pain, I do not find the Respondent's actions tantamount to actual diversion on this occasion.

Last, while I find suspicious the Respondent's conversation with Pedro Castillo, I do not find that, without expert testimony, that conversation is sufficient evidence that the Respondent issued prescriptions to him for an illegitimate medical purpose. During her patient interview with Mr. Castillo, the Respondent explained her 180 program, including the exercise component. The Respondent then explained the controlled substances that she issued as part of that program. She then asked the patient ''which medicine do you want?'' The patient chose oxycodone, and the Respondent confirmed that he wanted 15 mgs and not 10 mgs. [FOF 82]. While I find that giving the patient the decision to choose his/her prescription could lead to the conclusion that those prescriptions were issued ''on demand,''[46] I find that here, given the context of that question, these circumstances do not rise to the level of outright drug dealing. The Respondent was presented with an MRI report documenting objective injury, explained her program and the drugs she typically prescribed as part of that program, and confirmed with the patient the nature of his injuries. [FOF 82]. Therefore, without expert testimony to the contrary, I do not find that such conduct rises to the level of outright drug dealing and thus justifies a conclusion that the Respondent issued prescriptions to Pedro Castillo for an illegitimate medical purpose.

b. Dispensing Violations

As of October 1, 2010, a dispensing practitioner in Florida ''may not dispense more than a 72-hour supply of a controlled substance listed in Schedule II, Schedule III, Schedule IV,

[45] I do not find credible the Respondent's explanation that she gave the patient extra pills to help him avoid possible withdrawal symptoms. [FOF 100, n.19]. Such an explanation is inconsistent with the Respondent's later testimony that providing him with those pills was ''wrong.'' [FOF 100]. If the Respondent believed that such pills were necessary to treat him for his medical condition and prevent the onset of withdrawal, then the Respondent would not have testified that the prescription was ''wrong.'' Furthermore, if the Respondent believed that that quantity of medication, 200 dosage units, was necessary to manage the patient's condition, such belief does not explain her decision to later issue a lesser quantity, 180 dosage units, to the patient. [*see* FOF 103]. Therefore, I find it more likely that the Respondent knew the twenty pills would not be used by the patient but were intended to be given to his friend.

[46] *See* Robert L. Dougherty, 60 FR 55,047, 55,049 (DEA 1995); Harold Footerman, M.D., 56 FR 58,400 (DEA 1991).

or Schedule V * * * for any patient who pays for the medication by cash, check or credit card in a clinic registered under [section] 459.0137.'' [Fla. Stat. Ann § 465.0276]. Section 459.0137 requires ''[a]ll privately owned pain-management clinics, facilities, or offices, hereinafter referred to as ''clinics,'' which advertise in any medium for any type of pain-management services, or employ an osteopathic physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, must register with the department unless'' certain exceptions which do not apply here. [§ 459.0137].

As of the date of this hearing, the Respondent's clinic was not registered as a pain management clinic. [FOF 24]. Under a strict reading of the statute, the 72 hour requirement would apply to only those clinics actually registered with the state. However, I find it more likely that the Florida legislature intended this requirement to apply more broadly to clinics who are *required to* register and not just those who actually are. In line with that reading, I find that this requirement applies to the Respondent, and that the Government has proved by a preponderance of the evidence that the Respondent failed to abide by this limitation. [FOF 26].

d. Recordkeeping Violations

The Respondent credibly testified that on one occasion her office was broken into and controlled substances were stolen. However, she failed to report the theft and loss of the controlled substances to the DEA, in violation of federal law. [47] [FOF 34].

Under Florida law, a dispensing physician is required to abide by the statutory and regulatory recordkeeping provisions identical to those levied against a pharmacy. [Fla. Stat. Ann. § 465.0276(2)(b) (2009)]. That includes compliance with 21 CFR 1304.04, which requires dispensed prescriptions to be maintained in a readily retrievable manner for two years after dispensing. [*See* Fla. Admin. Code r. 64B16–28.140 (2009) (stating a pharmacy must comply with § 1304.04)].

In addition, under federal law, a dispensing physician is required to keep certain records similar to those kept by retail pharmacies. For example, 21 CFR § 1304.03(d) requires a registered practitioner who regularly dispenses to keep records of Schedule II–V controlled substances that he dispenses. Specifically, the registrant is required to keep inventories of schedules I and II controlled substances. In addition, the registrant is required to keep inventories of schedules III through V controlled substances either separate from all other records of the respondent or in a manner that is readily retrievable. [§ 1304.04 (f)(1) and (2); *See also* § 1304.04(g) (imposing this requirement on registered practitioners required to maintain records)].

Federal regulations also set out in detail the requirements of those inventories. [*See* § 1304.11(e)(3) (specifying that a dispensing practitioner's inventory of Schedules I and II must be conducted by hand count but that Schedules III through V can be estimated provided the container holds less than 1000 tablets and requiring the practitioner to maintain records identical to those maintained by manufacturers under § 1304.11(e)(1)(iii) and (iv)].

Here, the Respondent failed to meet such requirements. Specifically, the Respondent failed to conduct required inventories of controlled substances. [FOF 25, 50]. Next, when conducting an accountability audit, the DEA found that the Respondent was unable to account for 99,723 dosage units of oxycodone 30 mg tablets, 9,460 dosage units of oxycodone 15 mg tablets, 300 dosage units of oxycodone 10 mg tablets, 1,500 dosage units of oxycodone 5 mg tablets, 1,120 dosage units of oxycodone 10 mg/325 mg tablets, and 3,300 dosage units of oxycodone 5 mg/325 mg tablets. [FOF 50]. Here, there is evidence that those shortages resulted from actual diversion in the cases of Ms. Hall and Mr. Castillo. [FOF 76, 80, 87]. Further, this agency has made clear that it ''need not find that diversion was the cause of the shortages to conclude that Respondent does not maintain effective controls against diversion.'' [McBride Marketing, 71 FR 35, 710 (DEA 2006). *See also* Sunny Wholesale, Inc., 73 FR 57,655 (DEA 2008), Alexander Drug Company, Inc., 66 FR 18,299 (DEA 2001)].

Further, the receipts given to the Respondent's undercover patients fail to correctly record what was actually dispensed, and in two instances, the correct name of the dispensing physician was missing. [FOF 76, 80, 87, 91]. Such recordkeeping errors contribute to the inability of the Respondent and subsequently the DEA to conduct an accountability audit with accurate results. In addition, it violates federal law. [*See* 21 CFR 1304.22(c) (requiring dispensing practitioners to record ''name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser'')].

Next, the Respondent failed to safeguard her DEA Form 222s. Specifically, when she left the Pain Center of Broward, the Respondent left her DEA Form 222s there. [FOF 9, 10]. Also, Mr. Berman was given unsupervised access to the Respondent's DEA Form 222s to order controlled substances for the Respondent's practice. [FOF 25, 32]. The Respondent did not know, at any given time, whether the ordering was done in compliance with DEA statutory and regulatory provisions. Next, when asked if at ''any time an order was placed using your DEA number, was that an order done appropriately and legitimately or for other purposes,'' the Respondent replied that she was not sure. [FOF 11]. Indeed, ARCOS data reflects that the Respondent was one of the top 100 purchasers of oxycodone from January 1, 2009, through March 31, 2011, however, she believed that all of the dosage units purchased under her registration during that time frame, over 400,000, were not necessarily dispensed to patients that she personally saw. [FOF 47, 10]

Although the Respondent intimated that copies of her 222's were stolen during the thefts and break-ins, the Respondent failed to report the lost or stolen 222's to DEA in violation of federal law. [§ 1305.16(b)–(e); FOF 34]. Therefore, the Respondent failed to handle the DEA 222's, a critical form used to account for Schedule II controlled substances, in a responsible manner.

Even though the Respondent credibly testified that she relied upon Mr. Berman to properly handle inventories, ordering and dispensing,[48] such reliance does not absolve the registrant from her responsibilities to ensure compliance with DEA regulations. Indeed, wrongful conduct by the registrant's agent is imputed to the registrant. [Edmund Chein, M.D., 72 FR 6580 (2007) (stating ''under DEA precedents, a registrant is responsible for violations of the CSA committed by his employees and his practice's failure to comply with the Act'') (citing *Merkow,* 60 FR at 22,076)].

[47] *See* 21 CFR 1301.76(b) (2010) (stating ''the registrant shall notify the Field Division Office of the Administration in his area, in writing, of the theft or significant loss of any controlled substances within one business day upon discovery of such loss or theft. The registrant shall also complete and submit to the Field Division Office DEA Form 106 regarding the loss or theft'').

[48] FOF 25.

e. Failure To Conduct Urinalysis Screening as Required by State Law

At the time the Respondent treated the undercover personnel, it was not a requirement to conduct a urinalysis prior to treating a chronic pain patient. However, effective November 8, 2010, the law changed, requiring a physician to order a urinalysis and review the results before the initial prescribing of controlled substances.[49] On the day the search warrant was executed, November 23, 2010, DI McRae noted that the Respondent had run out of urinalysis kits, and that no such tests had been taken for the past three days. [FOF 56]. However, the Government provided no evidence that the Respondent actually saw new patients and actually issued initial controlled substances prescriptions during that three-day window. Therefore, the Government has failed to meet its burden of proof regarding this violation.

f. Prescribing Controlled Substances for Her Own Use

Under Florida statutory law, the grounds for professional discipline of an osteopathic physician include ''[p]rescribing or dispensing any medicinal drug appearing on any schedule set forth in chapter 893 by the osteopathic physician for himself or herself or administering any such drug by the osteopathic physician to himself or herself unless such drug is prescribed for the osteopathic physician by another practitioner authorized to prescribe medicinal drugs.'' Fla. Stat. § 459.015(u) (2009). During the search of the Respondent's clinic, the DEA found evidence that the Respondent was prescribing oxycodone for her own use. [FOF 43]. Therefore, the Respondent violated Florida law by self-prescribing this controlled substance.

g. Lack of Physical Security

Federal law requires that a registrant store controlled substances in a ''securely locked, substantially constructed cabinet.'' 21 CFR 1301.75. During the search of the Respondent's clinic, the DEA found evidence of the Respondent's failure to store controlled substances in a secured location. Oxycodone was found in a closet containing security monitoring equipment. [FOF 35, 42]. GS Langston testified that this closet failed to comply with 21 CFR 1301.75(b) as ''it was not a securely locked, substantially constructed cabinet suitable for the storage of controlled substances.'' [FOF 42]. However, GS Langston testified that she did not know whether the cabinet was or could be locked and DI Milan was similarly unaware. [FOF 42]. Therefore, I find that GS Langston had an inadequate basis upon which to draw her conclusion concerning the adequacy of the storage cabinet. Likewise the photograph is unclear concerning the nature of this cabinet. The record does contain evidence that the cabinet was in the dispensing area of the clinic. [FOF 42].

Further, although the Government failed to locate the safes that the Respondent purportedly maintained on the premises, [FOF 38], the Government bears the burden of proof, and absent GS Langston's conclusory statements, its evidence fails to establish that the Respondent violated this regulation. [*See* FOF 42]. Therefore, I find the Government has failed to prove the Respondent violate § 1301.75(b).

In sum, I find that the Government has proved by a preponderance of the evidence that the Respondent violated federal law when she prescribed an additional twenty pills to Ron Swanson and failed to maintain adequate dispensing records. In addition, I find that the Respondent violated state law when she failed to record a treatment plan, self-prescribed controlled substances, and dispensed controlled substances for more than a 72 hour period. Further, her failure to adequately account for over 100,000 dosage units of controlled substances is an egregious failure. To the extent that these violations represent her experience in handling controlled substances, they certainly do not merit a finding that her continued registration would be in the public's interest. In total, Factors 2 and 4 weigh in favor of revocation of the Respondent's registration.

3. Factor III. Respondent's Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution, or Dispensing of Controlled Substances

It is uncontested that the Respondent has not been convicted of a federal or state crime relating to the manufacture, distribution, or dispensing of controlled substances. While a history of criminal convictions for offenses involving the distribution or dispensing of controlled substances is a highly relevant consideration, there are any number of reasons why a registrant may not have been convicted of such an offense, and thus, the absence of such a conviction is of considerably less consequence in the public interest inquiry. [*Krishna-Iyer,* 74 Fed Reg. at 461; *Chein,* 72 FR at 6,593 n.22]. Accordingly, that Respondent has not been convicted of an offense related to the distribution or dispensing of controlled substances is not dispositive of whether the continuation of her registration is consistent with the public interest.

4. Factor V. Such Other Conduct Which May Threaten The Public Health and Safety

a. Diversion Risks

Although factor five is quite broad, the Deputy Administrator has qualified its breadth by limiting the considerations made under that factor to those where there is ''a substantial relationship between the conduct and the CSA's purpose of preventing drug abuse and diversion.'' [Tony T. Bui, 75 FR 49,979, 49, 988 (DEA 2010)].

Here, I find that many characteristics of the Respondent's practice significantly increased the risk of diversion. I also find that the Respondent did little to otherwise mitigate that risk, to the peril of her practice and the public.

First, the Respondent testified that her ''180 Program,'' if successful, would result in patients having extra pain medication remaining at the end of the month. [FOF 108, 112]. However, on nearly all follow up visits, the Respondent did not account for those extra pills. [FOF 79–81; 87–88; 103; *see* Resp. Exh. 1,2,3; *but see* Respt. Exh. 3 at 9 (where Respondent indicated in Ron Swanson's chart that he had no remaining pills at the end of the month)]. Also, while Respondent instructed her patients not to take the Xanax if they didn't need it, she provided her patients with a Xanax prescription at each visit and did not inquire whether or not the patient had taken the prior prescribed Xanax. She also did not conduct urine screens of the undercover officers to ensure they were actually taking the medication. [FOF 59, 74, 115]. Therefore, by conducting her practice in this manner, the Respondent created the opportunity for her patients to divert their medication, yet failed to otherwise screen whether such diversion was occurring.

Second, I find disturbing the Respondent's choice to operate a cash-only dispensary concerning, in light of her refusal to adopt other effective controls against diversion. [FOF 28]. By eliminating pharmacies and third party payors, the Respondent removed necessary checks on patient doctor

[49] Fla. Admin. Code r. 64B15–14.0051(2)(f) (2010) (stating ''patient drug testing * * * shall be conducted and the results reviewed prior to the initial issuance or dispensing of a controlled substance prescription, and thereafter, on a random basis at least twice a year and when requested by the treating physician).

shopping as well as her own prescribing.

In addition, while the Respondent attempted to mitigate the risk of doctor-shopping and diversion by other means, such as doctor-patient contracts, consent for urinalysis, warnings about lost medication, [FOF 64, 86, 90], she did so ineffectually. While she instructed patients to acknowledge their criminal liability for perpetuating fraud, she did not verify the source of a patient's diagnostic report despite the fact that those reports either (1) purported to be conducted at out-of-state facilities or (2) had no contact information for the facility. [FOF 64, 86, 90, 69, 83, 92]. For example, when the Respondent was presented with fraudulent MRI reports, she was unable to detect such as she failed to verify their authenticity. [FOF 40].

Further, despite physical conditions that were years' old, the Respondent did not obtain prior treatment records. [FOF 62]. Such treatment records would also provide a prescribing history so the Respondent could confirm prior drug use.

Third, I find it significant that, when risks of actual diversion were present, the Respondent failed to take action. For example, Mr. Castillo and Mr. Swanson told Respondent that, prior to their visits, they had received oxycodone from a friend. [FOF 82, 90]. However, the Respondent continued to prescribe them controlled substances. [FOF 86, 91]. Further, in the March 2010 visit, both Mr. Castillo and Ms. Hall were given twice what the Respondent had prescribed for them, 360 oxycodone 15 mg rather than 180 oxycodone, thus affording the patients with the opportunity to divert 180 dosage units of oxycodone each. [FOF 81, 89]. This prescribing was not discussed and subsequent prescribing altered accordingly in the April visit. [FOF 81, 88, 89].

The Respondent also instructed Mr. Swanson to ''break down'' his 15 mg pills if he needed to repay his friend, which is an inappropriate response to the patient's indication that he may be illegally obtaining controlled substances. [FOF 104]. It also interferes with the DEA's responsibility to prevent diversion.

In addition, the Respondent was often presented with large groups of out of state patients. [FOF 45, 57]. Her decision not to verify MRIs and to obtain past treatment records in those situations, if not culpable, may equate to turning a blind eye.

Fourth, I am not persuaded that the Respondent's choice to delegate dispensing authority to a non-pharmacist was a wise one. [FOF 25]. Indeed, the Respondent exacerbated the risk that her delegate would irresponsibly handle the controlled substances by not conducting her own audits. Hence, the Respondent had no way of detecting whether controlled substances were being diverted under her registration, which they clearly were. [*See* FOF 76, 80, 87 (where Ms. Hall and Mr. Castillo received twice the number of oxycodone as actually prescribed)].

In sum, while a registrant may operate her practice in any manner she chooses provided she does so lawfully, when the means chosen increase diversionary risks and fail to otherwise mitigate those risks, her registration threatens the public interest. Here, I find that despite the increased risks the Respondent created through her practice's design, she failed to implement other adequate controls against diversion, thus weighing against her continued registration.

b. Subsequent Remedial Measures and Contrition

In general, the Respondent argues that she naively entered the practice of pain management, and has since become more aware of diversion risks as well as the specific legal requirements that govern her practice. However, naivety regarding the handling of controlled substances can weigh as heavily against continued registration as culpability. [*See* Paul J. Caragine, Jr., 63 FR 51562, 51601 (DEA 1998) (stating ''just because misconduct is unintentional, innocent or devoid of improper motivation, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify revocation'')]. Thus, if the Registrant is unable to adequately assure the agency of future compliance, a lack of intentional violation will do little to save her. [Jon Karl Dively, M.D., 72 FR 74332 (2007) (a proceeding under 303 ''is a remedial measure based upon the public interest and the necessity to protect the public * * * Respondent must prove by a preponderance of the evidence that she can be entrusted with the authority that a registration provides by demonstrating that she accepts responsibility for her misconduct and that the misconduct will not re-occur.'')].

Here, I find the Respondent credibly acknowledged some of her wrongdoing. Specifically, I find it highly persuasive that the Respondent did not prescribe additional pills to the undercover officer on his third visit, and admitted her earlier decision to do so was ''wrong.'' [FOF 100]. I find this admission, in light of its occurrence prior to her becoming aware of the DEA's investigation of her registration, highly probative of a finding that the misconduct will not reoccur. [FOF 100].

Yet, I also find that while the Respondent recognized her ultimate responsibility for the dispensing and accounting errors found at her practice, I did not find her remorseful for improperly managing that responsibility. Throughout the hearing she justified dispensing errors on the fact that those responsibilities were delegated to her business partner and justified that delegation. [FOF 32]. In addition, she alluded that some of her recordkeeping errors and, the corresponding shortages, may have been attributed to thefts. However, the record makes clear that at least some of those shortages were attributable to actual diversion, and, despite that clarity the Respondent failed to acknowledge her wrongfulness in irresponsibly managing her registration and creating the opportunity for that diversion.

As for future assurance of compliance, the Respondent presented evidence that she has, or would, implement some changes in her practice to address the DEA's concerns regarding her practice. Specifically, the Respondent testified that she instructed her staff to verify patients' MRI reports. [FOF 41]. Next, she has installed two safes for the storage of controlled substances. [FOF 38]. The Respondent also augments her prescribing of controlled substances with the requirement of exercise to help alleviate chronic pain. [FOF 114]. As for the myriad of other issues the Respondent was silent. The Respondent failed to provide any assurance that she would better account for controlled substances, better prevent the reoccurring thefts and break-ins at her practice, and address the diversion that occurred through her dispensary. Thus, I am not convinced that if the Respondent were allowed to continue operating under her DEA registration, that she would be able to adequately manage that responsibility.

V. Conclusion and Recommendation

In Conclusion, I find that Factors II, IV, and V weigh in favor of discontinuing the Respondent's registration. The Government proved by a preponderance of the evidence that the Respondent violated Florida law in failing to adequately document a treatment plan and by self-prescribing controlled substances. Also, the Government proved that the Respondent violated federal law in failing to adequately account for her controlled

substances and maintain her DEA 222 forms. More importantly, however, the record clearly reflects that the Respondent created serious risks of diversion through her practice and failed to otherwise mitigate those risks. Thus, I find the Government has met its burden of proof that the Respondent's continued registration would not be in the public's interest.

The Respondent, however, has not accepted responsibility for all of her wrongdoing, nor has she adequately assured this tribunal of future compliance.

In balancing the statutory public interest factors and the Respondent's remedial efforts, I conclude that revocation of the Respondent's DEA Certificate of Registration, and denial of any pending renewal applications, would be consistent with the public interest in this case.

Accordingly, I recommend that the Respondent's Certificate of Registration be revoked and any pending applications for renewal be denied.

June 17, 2011.

Gail A. Randall,
Administrative Law Judge.

[FR Doc. 2011–25231 Filed 9–29–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–77]

Kimberly Maloney, N.P.; Decision and Order

On February 4, 2011, Administrative Law Judge Timothy D. Wing issued the attached recommended decision. Neither party filed exceptions to the decision.

Having reviewed the entire record, I have decided to adopt the ALJ's ruling, findings of fact, conclusions of law (except as explained below), and recommended order. Accordingly, Respondent's application for a registration will be granted subject to a condition.

In his discussion of factor three—Respondent's ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances,'' 21 U.S.C. 823(f)—the ALJ found that she had pled guilty to a felony count of obtaining a narcotic drug by means of a forged prescription in violation of Cal. Health & Safety Code § 11368. ALJ at 15–16.[1] However, pursuant to Cal. Penal Code § 1000.1, Respondent was allowed to participate in the deferred entry of judgment program, GX 10, and upon her successful completion of treatment, her guilty plea was set aside and the charge was dismissed. GX 11.

Noting that California law provides that ''[a] defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to'' Cal Penal Code § 1000.3, and that Agency precedent holds that a deferred adjudication is nonetheless a conviction for purposes of the CSA, the ALJ explained that ''the fact that a finding of guilt was specifically not entered as to Respondent and the charges dismissed, leaves open the question as to whether Respondent's plea constitutes a conviction under 21 U.S.C. 823(f).'' ALJ at 17. The ALJ deemed it unnecessary to reach the issue, however, reasoning that the offense committed by Respondent ''does not 'relate[] to the manufacture, distribution, or dispensing of controlled substances,' the standard embraced in'' 21 U.S.C. 823(f)(3). *Id.* (citing *Super-Rite Drugs,* 56 FR 46014 (1995)).

Contrary to the ALJ's understanding, the Agency has long since resolved both issues. In *Edson W. Redard,* 65 FR 30616 (2000), a practitioner, who was charged with three felony counts of obtaining and attempting to obtain hydrocodone by fraud under California law, pled *nolo contendere* to a single count and was allowed to participate in the State's deferred entry of judgment program (the same statutory scheme at issue here), which he successfully completed. *Id.* at 30617–18. Thereupon, the state court granted deferred entry of judgment and the charges were dismissed. *Id.* at 30618.

Thereafter, the Agency proposed the revocation of the practitioner's registration on the ground that he had been convicted of a felony offense relating to controlled substances under state or Federal law. *Id.* (citing 21 U.S.C. 824(a)(2)). In opposition, the practitioner argued that he had not been ''convicted of a felony offense [because] no judgment was entered against him and the criminal proceedings were dismissed.'' *Id.*

The Agency rejected the practitioner's argument, explaining that ''there is still a 'conviction' within the meaning of the Controlled Substances Act even if the proceedings are later dismissed. * * * [A]ny other interpretation would mean that the conviction could only be considered between its date and the date of its subsequent dismissal.'' *Id.* (int. quotations omitted). The Agency thus held that the practitioner had ''been convicted of a felony relating to controlled substances'' and that this was ground to revoke his registration under 21 U.S.C. 824(a)(2). *Id.*

In *Harlan J. Borcherding,* 60 FR 28796 (1995), a practitioner who had been indicted under Texas law on three counts of prescribing a controlled substance ''without a valid medical purpose,'' was allowed to plead guilty to a single misdemeanor count and was placed on probation; following the practitioner's completion of his probation, the proceeding was dismissed without an adjudication of guilt. *Id.* at 28797. While the practitioner argued ''that he had not been 'convicted' of any offense within the meaning of 21 U.S.C. 823(f)(3),'' the Agency rejected the argument, holding that ''[t]he law is well settled that a DEA registrant may be found to have been 'convicted' within the meaning of the Controlled Substances Act, despite a deferred adjudication of guilt.'' *Id.* (citations omitted).

More recently, in *Pamela Monterosso,* 73 FR 11146, 11148 (2008), a case in which an applicant pled guilty to a state law controlled substance offense but was granted probation before judgment and the charge was dismissed, I explained that ''DEA has long taken the view that even when a court withholds adjudication and ultimately dismisses the charge after the completion of probation, the proceeding is still a conviction within the meaning of the Controlled Substances Act.'' *See also Thomas G. Easter II,* 69 FR 5579, 5580–81 (2004) (''DEA has consistently held that a deferred adjudication of guilt following a guilty plea, is a conviction within the meaning of the Controlled Substances Act.''); *Clinton D. Nutt,* 55 FR 30992 (1990); *Eric A. Baum,* 53 FR 47272 (1988); *Stanley Granet Rosen,* 50 FR 46844 (1985).

Moreover, the Superior Court form evidencing Respondent's guilty plea includes the ''Court's Finding And Order.'' GX 9, at 3. This section of the form concludes by stating: ''The Court accepts the defendant's plea and admissions, and the defendant is convicted thereby.'' *Id.* For purposes of the CSA, including whether this action must be disclosed on an application for registration and whether it provides ground to deny an application or revoke a registration, *see* 21 U.S.C. 824(a)(1) & (2), Respondent's plea and the Superior Court's finding constitutes a conviction notwithstanding that her plea was eventually set aside and the charge dismissed.

As discussed above, the ALJ also concluded that Respondent's offense of obtaining a prescription for a controlled

[1] All citations to the ALJ's decision are to the slip opinion as issued by him.

substance by fraud ''does not relate to the manufacture, distribution, or dispensing of controlled substances.'' ALJ at 17 (quoting 21 U.S.C. 823(f) and citing *Super-Rite Drugs,* 56 FR 46014, 46015 (1991)). However, the underlying offense at issue in *Super-Rite Drugs* was a state law offense of possession of cocaine and not possession with intent to distribute. *See* 56 FR at 46014. The case thus does not stand for the proposition cited by the ALJ.[2]

Most significantly, in several cases, the Agency has held that the offense of obtaining controlled substances by using fraudulent prescriptions constitutes an offense related to the manufacture, distribution, or dispensing of controlled substances within the meaning of factor three. *See Redard,* 65 FR at 30619 (practitioner obtained controlled substances by issuing fraudulent prescriptions); *Ronald D. Springel,* 62 FR 67092, 67094 (1997) (holding that conviction for federal offense ''of obtaining a controlled substance by fraud'' was actionable under factor three); *Rick's Pharmacy, Inc.,* 62 FR 42595, 42597 (1997) (same); *Ronald Phillips,* 61 FR 15304, 15305–06 (1996) (same). Forging a prescription to obtain a controlled substance clearly relates to the ''distribution[] or dispensing of controlled substances,'' 21 U.S.C. 823(f)(3), whether the practitioner wrote the prescriptions on her own pad, or, as here, stole prescriptions from another practitioner's pad.

However, aside from the ALJ's analysis of factor three, I agree with the ALJ's findings as to the remaining factors. Moreover, I agree with the ALJ that Respondent has ''credibly'' accepted responsibility for her misconduct and that she has put forward compelling and unrebutted evidence of her rehabilitation, thus demonstrating that ''she will not engage in future misconduct.'' ALJ at 22. Because there is no evidence that Respondent harmed others or diverted the drugs she illegally obtained, and this episode is, in essence, a first offense, I conclude that consideration of the Agency's interest in deterrence is not warranted. Accordingly I will adopt the ALJ's recommended order and grant Respondent's application for registration subject to the following condition.

(1) Any violation of either condition 13 or 14 of the California Board of Registered Nursing's Order shall be deemed an act inconsistent with the public interest and subject her registration to proceedings under 21 U.S.C. 824(a).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Kimberly Maloney, N.P., for a DEA Certificate of Registration as a mid-level practitioner be, and it hereby is, granted. This Order is effective immediately.

Dated: September 19, 2011.

Michele M. Leonhart,

Administrator.

Paul E. Soeffing, Esq., for the Government.

Kimberly Maloney, N.P., Pro Se, for the Respondent.

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

Introduction

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* to determine whether the Drug Enforcement Administration (DEA) should deny a nurse practitioner's application for a Certificate of Registration (COR) as a mid-level [1] practitioner. Without this registration the nurse practitioner, Kimberly Maloney, N.P. (Respondent), of Chula Vista, California, will be unable to lawfully handle controlled substances in the course of her practice.

On September 10, 2010, the DEA Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause [2] (OSC) to Respondent, giving Respondent an opportunity to show cause why the DEA should not deny her application for a DEA COR, assigned Control No. W09131151M, pursuant to 21 U.S.C. 824(a)(4), and deny any other pending applications for a DEA COR, alleging that Respondent's registration would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).

In substance, the OSC alleges that:

1. On February 18, 2009, Respondent applied for a DEA COR (Control No. W09131151M) as a mid-level practitioner in Schedules II through V with a registered address of 3855 Health Sciences Drive, La Jolla, CA 92093–9191 and a mailing address of 1503 Apache Drive, Unit A, Chula Vista, CA 81910;

2. In a letter dated April 3, 2009, Respondent requested that the registered address for her application be changed to eStudysite, 452 Medical Center Court, Chula Vista, CA 91911;

3. In 2006, Respondent forged prescriptions on a doctor's prescription pad for Actiq (fentanyl) and OxyContin (oxycodone), both Schedule II controlled substances, to support a drug habit for Respondent. Respondent injected herself with Actiq after dissolving it in saline. Respondent used her health insurance to pay for these forged prescriptions;

4. On January 19, 2007, the San Diego District Attorney's Office filed a felony complaint against Respondent for violations of Cal. Health & Safety Code § 11173(a) (obtaining prescriptions by fraud or deceit) and Cal. Penal Code § 459 (burglary). On April 17, 2007, Respondent pleaded guilty to a felony count of obtaining a narcotic drug (OxyContin) by means of a forged prescription, in violation of California Health & Safety Code § 11368. The court deferred entry of judgment for eighteen months and ordered Respondent to enroll in and complete a California Penal Code § 1000 drug treatment program;

5. On December 21, 2006, Respondent began the McDonald Center Intensive Outpatient Alcohol and Drug Rehabilitation Program a seven-week, three-nights-per-week program. Respondent completed this program on February 8, 2007. Subsequently, Respondent enrolled in Scripps McDonald Center's Chemical Dependency Aftercare program, a one-year, one-night-per-week program. Respondent completed this program on February 7, 2008. On October 22, 2008, the court dismissed the felony criminal complaint against Respondent; and

6. On July 31, 2009, the California Board of Nursing filed an Accusation against Respondent alleging unprofessional conduct for possession of controlled substances without a prescription and unprofessional conduct for use of a controlled substance. The administrative adjudication of the Accusation is ongoing.[3]

[2] It is acknowledged that there are a number of older cases which held that convictions for the offense of simple possession of a controlled substance could be considered under factor three. However, in *Alvin Darby,* 75 FR 26993, 27000 (2009), I explained that a conviction for simple possession does not fall within factor three. However, as I also noted in *Darby,* such a conviction can be considered under factor five. *Id.*

[1] *See* 21 CFR 1300.01(b)(28) (2010).

[2] ALJ Ex. 1.

[3] Respondent's post-hearing brief, filed on January 25, 2011, indicates that the California Board of Registered Nursing (BRN) adopted the proposed decision of the California Administrative Law Judge (ALJ) on December 28, 2010, and notes that the BRN took the extraordinary step of reducing Respondent's period of probation to one year and cost recovery to zero. The Government filed with its post-hearing brief a December 28, 2010 Order of the BRN entitled ''Decision After Non-Adoption,'' of which I take official notice. (*See* Gov't Br. at Gov't Ex. 17.) Under the APA, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). In accordance with the APA and DEA's regulations, Respondent is ''entitled on timely request, to an opportunity to show to the contrary.'' 5 U.S.C. 556(e); 21 CFR 1316.59(e) (2010); *see, e.g., R & M Sales Co.,* 75 FR 78,734, 78,736 n.7 (DEA 2010). Respondent can dispute the facts of which I take official notice by filing a properly supported motion for reconsideration

Continued

Respondent, appearing *pro se,* timely requested a hearing on the allegations in the OSC. Following prehearing procedures, a hearing was held in San Diego, California, on December 14, 2010, with the Government represented by counsel and Respondent appearing *pro se.* Both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law and argument. All of the evidence and post-hearing submissions have been considered, and to the extent the parties' proposed findings of fact have been adopted, they are substantively incorporated into those set forth below.

Issue

Whether the record establishes by substantial evidence that Respondent's application for a DEA COR, Control Number W09131151M, as a mid-level practitioner, should be denied pursuant to 21 U.S.C. 823(f) and 824(a)(4), because Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Evidence and Incorporated Findings of Fact

I. Background

The parties stipulated as fact the allegations contained within the OSC. (Tr. 17.) Additionally, at hearing the parties stipulated to the admission and consideration of Government Exhibits 1–16 and Respondent Exhibits 1–8. (Tr. 16.)

Respondent's education includes: A 1992 Bachelor of Science degree in Biology from San Diego State University, a 1995 Bachelor of Science degree in nursing from San Diego State University and a 2000 Masters of Science/Nurse Practitioner Critical Care degree from the University of Pennsylvania. (Resp't Ex. 2.) Additionally, Respondent's professional experience between August 2000 and November 2006 includes work as a nurse practitioner in various medical settings to include neurosurgical patient care, neuro-radiology and a trauma department. (*Id.*) Respondent's professional experience between August 2007 and October 2009 includes work as a lecturer, bone marrow transplant patient care, and care of patients involved in various research studies. (*Id.*) More recently, Respondent has stopped seeking employment pending final resolution of her application for a DEA COR, explaining that most ''of the positions I have sought require a DEA certificate or else eligibility within a year.'' (Tr. 54–55.)

II. The Investigation of Respondent

At hearing, the Government presented the testimony of two witnesses: DEA Diversion Investigator Lucia Bartolomeo (DI Bartolomeo) and DEA Diversion Investigator Ayoma Rudy (DI Rudy). DI Bartolomeo credibly testified in substance that she has been a diversion investigator with DEA for approximately twenty-two years and has been assigned during that time to the DEA San Diego Field Division. (Tr. 21.) DI Bartolomeo's education and training includes basic diversion investigator training along with a Bachelor of Science degree. (Tr. 21.) DI Bartolomeo began an investigation of Respondent in 2006 after receiving an investigative lead that Respondent was in possession of a prescription pad, not her own, and possibly forging controlled substance prescriptions to obtain oxycodone and fentanyl for herself. (Tr. 22.)

The evidence further included two California Controlled Substance Utilization Review and Evaluation System (CURES) patient activity reports for Respondent, obtained by DI Bartolomeo as part of her investigation of Respondent. (Gov't Ex. 3; Tr. 22.) The first CURES report covers the time period from September 2003 to October 2006 and the second from December 2006 to April 2007. (Gov't Ex. 3.) The first report reflects numerous prescriptions for oxycodone and Actiq, the brand name for fentanyl; in the majority of instances the pharmacy listed is Bonita Pharmacy. (*Id.*) DI Bartolomeo further testified to obtaining prescriptions from Bonita Pharmacy in Respondent's name, many of which had been issued in the name of Dr. [JR]; DI Bartolomeo noted discrepancies to include sequential serial numbers and inconsistent hand writing. (Tr. 24–26.) DI Bartolomeo also testified to meeting with Dr. [JR], who confirmed that ''many of the prescriptions were not his true signature.'' (Tr. 26.)

DI Bartolomeo testified that she met with Respondent on December 18, 2006, and Respondent admitted to forging prescriptions and identified nine prescriptions that she forged. (Tr. 27; *see* Gov't Ex. 2 at 9, 14, 16, 18, 20, 22, 24, 26 & 28.) DI Bartolomeo explained that Respondent admitted ''[t]hat she had forged those prescriptions in order to obtain Actiq and some oxycodone, and she explained that she wasn't getting additional prescriptions from her physician. So that's why she had done this activity.'' (Tr. 29.)

Documentary evidence submitted by the Government also included a July 31, 2009 Accusation filed by the California BRN, alleging four causes of discipline against Respondent for unprofessional conduct, specifically: ''Possession of Controlled Substances Without a Prescription''; ''Use of a Controlled Substance''; ''Prescription Forgery''; and Violation of the Nursing Practice Act.'' (Gov't Ex. 13.) The Accusation states in relevant part that

> [o]n or about December 18, 2006, an RxNET agent interviewed Respondent at the San Diego Bureau of Narcotics Enforcement office. Respondent initially denied forging any prescriptions, but eventually admitted that she had stolen Dr. [JR]'s prescription pad from his La Jolla office. Respondent stated that she forged prescriptions for Oxycontin and Actiq to administer to herself for migraine headaches. Respondent further admitted that she would dissolve the Actiq in a saline solution and inject herself with it.
>
> (*Id.* at 6.)

On April 1, 2007, Respondent voluntarily surrendered her DEA COR ''while in treatment for substance abuse.'' (Gov't Ex. 1 at 3.)

DI Rudy credibly testified in substance that she has been assigned to the DEA San Diego Field Division as a diversion investigator since 2005, and her education includes a Bachelor's degree in criminal justice. (Tr. 35.) DI Rudy testified that she became involved in the investigation of Respondent in February 2009 when Respondent applied for a DEA registration as a mid-level practitioner. (Tr. 36.) DI Rudy further testified that at the time of application, Respondent was exempt from payment of an application fee because Respondent's proposed registered location at that time was a state university. (Tr. 37–38, 41; *see* Gov't Ex. 1.) Subsequent to Respondent's initial application, Respondent wrote a letter, dated April 3, 2009, requesting that DEA change the address of her intended registered location to a facility that is a non-exempt entity for purposes of registration fee. (Tr. 38; *see* Gov't Ex. 14.) DI Rudy further testified that there was no indication or implication that Respondent intended to avoid paying the application fee. (Tr. 41.)

The Government's documentary evidence included a handwritten confession by Respondent dated December 18, 2006, describing several life stresses and admitting to taking ''the prescription pads because I was scared that my migraines were out of control, that I would need more medicine.

within twenty days of service of this Recommended Decision, which shall begin on the date it is mailed. *See, e.g., Joseph Gaudio, M.D.,* 74 FR 10,083, 10,088 (DEA 2009) (granting respondent opportunity to dispute officially noticed facts within fifteen days of service).

* * *'' (Gov't Ex. 4.) The Government also submitted as evidence three photographs (Gov't Ex. 5), which Respondent testified were taken on the day she met with DI Bartolomeo and another person (Tr. 60). Respondent speculated that investigators photographed her arm because ''they wanted to prove that I was a drug addict.'' (Tr. 61.) Respondent was candid: ''I'm not here to dispute the fact that I got addicted to drugs. I mean, I accept what happened, and I'm here to tell you what happened after that. So I don't dispute that they took pictures of me on that day.'' (Tr. 61.) No other testimony or evidence was offered with regard to the photographs.

The record also contains a February 8, 2007 letter from the McDonald Center for Alcoholism and Drug Addiction Treatment, La Jolla, California (McDonald Center), certifying that Respondent successfully completed an intensive, seven-week outpatient alcohol and drug rehabilitation program on February 8, 2007, noting that Respondent ''showed a high level of commitment to her sobriety * * * was a willing participant in all aspects of the program [and] completed all of her written assignments on time.'' (Gov't Ex. 6.)[4] A February 7, 2008 Chemical Dependency Aftercare Letter of Completion from the McDonald Center confirms that Respondent successfully completed fifty-two sessions required by its Nursing Diversion Program. (Gov't Ex. 7.)[5] The letter also notes that Respondent ''met all requirements and expectations of the aftercare program. Her positive attitude and adherence to the Aftercare requirements have shown a concern and care for her continued recovery.'' (Gov't Ex. 7.)

Finally, the record reveals that on January 19, 2007, the San Diego District Attorney's Office filed a felony complaint against Respondent for violations of Cal. Health & Safety Code § 11173(a) (obtaining prescriptions by fraud or deceit) and Cal. Penal Code § 459 (burglary). (Gov't Ex. 8.) On April 17, 2007, Respondent pleaded guilty to a felony count of obtaining a narcotic drug (OxyContin) by means of a forged prescription, in violation of California Health & Safety Code § 11368. (Gov't Ex. 9.) The court deferred entry of judgment for eighteen months and ordered Respondent to enroll in and complete a California Penal Code § 1000 drug treatment program. (Gov't Ex. 10.) On October 22, 2008, the court dismissed the felony criminal complaint against Respondent. (Gov't Exs. 11 & 12.)

III. Respondent's Evidence

Respondent testified at hearing and also presented testimony from her father, Mr. William Mayer. Respondent credibly testified in substance that she became a registered nurse in 1995 and candidly admitted to the fact that she became addicted to prescription medications and was ''guilty of egregious behavior when I made unprofessional choices that led to my chemical dependence.'' (Tr. 44.)

Respondent explained that in or about 1990 she began having migraine headaches ''and saw many health practitioners for this problem, and tried every therapy that was recommended.'' (Tr. 45.) In 2000 her neurologist began prescribing different narcotic medications such as OxyContin, Vicodin, Actiq and Dilaudid for maintenance and rescue therapy. (Tr. 45.) Respondent stated the medications helped initially but did not resolve the migraine headaches, and she was prescribed more of the same narcotic or larger doses over time. (Tr. 45–46.) Respondent also testified that she experienced a series of very difficult life events which increased her stress,[6] and the migraine headaches grew worse. (*See, e.g.,* Tr. 46.)

Respondent next testified that she attempted to discuss her concern that she was becoming addicted to narcotics with her treating physician, but the physician did not believe that intervention was warranted. (Tr. 46.) Responded admitted that she ''eventually betrayed his trust'' by forging his name to acquire more narcotics, but that not ''long after, I called a therapist I had recently been seeing, and told him what I had done, and asked for help.'' (Tr. 46.)

Respondent testified that she started an outpatient drug treatment program on December 21, 2006, and completed the program on February 8, 2007. (Tr. 46.) Thereafter, Respondent completed a year-long aftercare program running between February 8, 2007 and February 2008. (Tr. 46.) From April 2007 to February 2009, Respondent participated in the BRN Nursing Diversion Program, but was dismissed on the grounds that she ''admitted a patient to the hospital ward, and the computer admission orders included orders for [o]xycodone.'' (Tr. 46–47.) Respondent was told that this was equivalent to dispensing oxycodone. (Tr. 47.) In mitigation, Respondent testified that ''I have not dispensed medications in over ten years, and the orders were part of a standardized set for all cancer patients.'' (Tr. 47.)

With regard to the circumstances of Respondent's dismissal from the BRN Nursing Diversion Program, the evidence also included the following factual information:

> Respondent successfully participated in the Nursing Diversion Program for 22 months when she was asked to leave the program because of a technical violation of the Diversion Program's rules. While in the Diversion Program, respondent was working as a Nurse Practitioner in the bone marrow transplant unit at the University of California, San Diego (UCSD) Medical Center. When patients were admitted to the unit, respondent, using a preprogrammed computer check sheet, admitted the patients by checking the appropriate admission box that appeared on the computer screen. By checking the box, the computer program automatically issued a standard set of admission orders. In some instances, the set orders included an order for the patient to receive Oxycodone. Consequently, when the fact respondent had been ''prescribing'' Oxycodone came to the attention of the Diversion Program, respondent was asked to leave even though she had been in full compliance with the strict Diversion Program requirements, including: Calling every morning between 6 and 7 a.m.; taking random drug tests several times per month with no ''dirty'' tests; turning in monthly paperwork on time; attending AA and NA meetings five to seven days per week; attending weekly nurse-to-nurse meetings; completing 16 CEU's on substance abuse; calling monthly to check in with her case manager; and always getting permission before leaving San Diego.
>
> (Resp't Ex. 1 at 4.)

Respondent's father, Mr. Mayer, credibly testified in part and in substance that he is a retired Certified Public Accountant, and lives approximately three miles from Respondent, seeing her at least weekly. (Tr. 81.) Mr. Mayer testified to what he described as a ''double whammy'' inflicted on Respondent by her treating physician and two drug companies, explaining that Respondent's treating physician ''prescribed OxyContin and Actiq for [Respondent's] migraine headaches, although her stresses were far beyond migraine headaches at that time.'' (Tr. 70.) Mr. Mayer further explained that prescribing ''OxyContin, which was marketed as less addictive and less subject to abuse, when it was not, and Actiq, which the FDA had only approved for cancer patients'' in combination to treat Respondent's migraine headaches, significantly contributed to Respondent becoming

[4] Government Exhibit 6 duplicates Respondent Exhibit 7 at 3.

[5] Government Exhibit 7 duplicates Respondent Exhibit 7 at 4.

[6] As the BRN succinctly summarized, Respondent ''was going through a tumultuous divorce, a death in the family, caring for her child, and she was the victim of criminal voyeurism.'' (Resp't Ex. 1 at 3.)

addicted. (Tr. 76–77.) Mr. Mayer also testified that Respondent has put the issues that contributed to her addiction behind her and has been drug free since her sobriety date of November 29, 2006.[7] (Tr. 80.) In terms of Respondent's current state of mind regarding use of medications, Mr. Mayer testified to a February 2010 emergency room visit by Respondent for an acute illness causing pain during which Respondent refused to accept pain medication such as morphine or Dilaudid for fear of becoming addicted again. (Tr. 79.)

Respondent's documentary evidence included, *inter alia,* an April 7, 2010 Proposed Decision (Proposed Decision) of an ALJ of the California BRN. The Proposed Decision ordered Respondent's Registered Nurse License, Nurse Practitioner Certificate, Nurse Practitioner Furnisher Certificate and Health Nurse Certificate revoked, but stayed the revocation and placed Respondent on probation for two (2) years with specified terms and conditions. (Resp't Ex. 1 at 6–7.) The Proposed Decision followed a March 29, 2010 administrative hearing regarding the July 31, 2009 Accusation filed by the BRN, alleging four causes of discipline against Respondent. (*See* Gov't Ex. 13.) In that proceeding, the BRN had requested that Respondent be placed on probation for three years with terms and conditions; the ALJ, however, concluded that two years probation was adequate ''in view of the substantial evidence of rehabilitation and sobriety presented by'' Respondent. (Resp't Exs. 1 at 6.)

Respondent also submitted a September 6, 2008 Certificate of Attendance reflecting successful completion of eight hours of continuing education in Pharmacology In Addiction and eight hours in Relapse Prevention. (Resp't Ex. 3.) Respondent also submitted letters dated September and August 2009 from two friends and colleagues, Linda Long, R.N., M.S.N., F.N.P., and Linnea Trageser, N.P., both attesting to Respondent's professionalism and qualifications to practice. (Respt' Ex. 4 at 1–4.) A September 2009 letter from Respondent's parents thoughtfully describes Respondent's addiction to prescription medications, including the causes, as well as her successful efforts at rehabilitation and continued abstinence. (Resp't Ex. 4 at 5.) A March 11, 2010 letter of personal reference from Alison McManus, Family Nurse Practitioner, a friend of Respondent and her co-worker from April to November 2009, describes Respondent as ''always professional'' and ''punctual and reliable, organized, efficient, and competent.'' (Resp't Ex. 5 at 1.) Three other letters dating from February 2008 to February 2009, written by a former student, supervisor and co-worker, respectively, refer to Respondent as a dedicated professional and ''inspirational role model.'' (*Id.* at 2–4.) A September 1, 2009 letter from a friend and ''sponcee'' at Alcoholics Anonymous (AA) credibly describes Respondent's acceptance of responsibility for her actions as well as Respondent's demonstrated willingness to change her behavior. (Resp't Ex 8 at 2.)

The record reflects that on September 10, 2007, Respondent was recertified as an Acute Care Nurse Practitioner, effective September 1, 2007, to August 31, 2012. (Resp't Ex. 6.)

Letters dated March 25, 2008, and September 9, 2009, from Steven F. Bucky, PhD, Clinical Psychologist, report in relevant part that Respondent has been seen in psychotherapy for approximately two years and ''is progressing well with no evidence of drug, alcohol, or prescription drug use.'' (Resp't Ex. 7 at 1–2.)

A July 5, 2007 letter by Dr. Marina Katz, M.D., documents a June 18, 2007 psychiatric evaluation of Respondent. The report assesses Respondent's opiate dependence and finds that it is in remission, noting that Respondent is active in Narcotics Anonymous (NA), and cautiously gives Respondent a favorable prognosis. (Resp't Ex. 7 at 5–6.)

A September 4, 2008 letter from Kristine M. Vickery, R.N., Facilitator of the San Diego Nurse to Nurse peer support group, notes Respondent's weekly attendance at the support group since April 2007, describing Respondent as a ''determined, motivated individual who is genuinely committed to recovery from chemical dependency.'' (Resp't Ex. 8 at 1.) The letter further notes Respondent's ''sobriety date is November 29, 2006 and she maintained negative drug/ETG tests since her entrance into the [Nursing] Diversion Program. Additionally, a hair follicle test was performed in June 2007, and it was negative, as well.'' (*Id.*)

Discussion

I. The Applicable Statutory Provisions

The Controlled Substances Act (CSA) provides that any person who dispenses (including prescribing) a controlled substance must obtain a registration issued by the DEA in accordance with applicable rules and regulations.[8] ''It shall be unlawful for any person knowingly or intentionally to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.''[9] ''A separate registration shall be required at each principal place of business or professional practice where the applicant * * * dispenses controlled substances.''[10] DEA regulations provide that any registrant may apply to modify her registration to change her address but such modification shall be handled in the same manner as an application for registration.[11]

It is unlawful for any person to possess a controlled substance unless that substance was obtained pursuant to a valid prescription from a practitioner acting in the course of professional practice.[12]

A. The Public Interest Standard

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA COR if she determines that such registration would be inconsistent with the public interest. In determining the public interest, the Deputy Administrator is required to consider the following factors:

(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.

As a threshold matter, the factors specified in Section 823(f) are to be considered in the disjunctive: The Deputy Administrator may properly rely on any one or a combination of those factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied.[13]

[7] Although I find Mr. Mayer's testimony credible, I do note a disparity between the November 29, 2006 sobriety date he and others identified (*see* Tr. 80; *see also* Resp't Ex. 8 at 1), and DI Bartolomeo's testimony suggesting that Respondent forged a prescription as late as December 6, 2006 (Tr. 27; *see* Gov't Ex. 2 at 28).

[8] 21 U.S.C. 822(a)(2).

[9] 21 U.S.C. 843(a)(3).

[10] 21 U.S.C. 822(e).

[11] *See* 21 CFR 1301.51 (2010)

[12] 21 U.S.C. 844(a).

[13] *See Henry J. Schwarz, Jr., M.D.,* 54 FR 16,424 (DEA 1989).

B. Other Factors

In addition to the public interest factors discussed above, 21 U.S.C. 824(a) provides four other factors that the Deputy Administrator may consider in a proceeding to suspend or revoke a DEA COR.[14] Despite the lack of an explicit provision applying these factors to a denial of an application [t]he agency has consistently held that the Administrator may also apply these bases to the denial of a registration, since the law would not require an agency to indulge in the useless act of granting a license on one day only to withdraw it on the next.[15] In addition, I conclude that the reference in § 823(f)(5) to ''other conduct which may threaten the public health and safety'' would as a matter of statutory interpretation logically encompass the factors listed in § 824(a).[16]

II. The Factors To Be Considered

Factor 1: The Recommendation of the Appropriate State Licensing Board

As described in the Evidence and Incorporated Findings of Fact Section of this Recommended Decision, Respondent holds active state authority [17] in California as a mid-level practitioner, which has been the subject of prior disciplinary action. (*See, e.g.,* Gov't Ex. 13.) The gravamen of the misconduct which formed the basis of the California BRN Accusation filed on July 31, 2009, related solely to Respondent's actions between June 2006 and December 2006, which were attributable to an addiction to prescription pain medications. (*See* Gov't Ex. 13 at 6–7.)

The evidence at hearing reflects that the BRN complaint against Respondent was the subject of a March 29, 2010 California administrative hearing, during which the BRN recommended that Respondent be placed on a three-year period of probation, with specified terms and conditions. (*See* Resp't Ex. 1 at 6.) The April 7, 2010 Proposed Decision of the state ALJ concluded that cause for discipline exists under applicable California law, finding that Respondent committed acts of unprofessional conduct by possession and use of Schedule II controlled substances without valid prescriptions; and that Respondent forged prescriptions for controlled substances using a prescription pad stolen from a physician. (Resp't Ex. 1 at 5–6.)

In mitigation, the Proposed Decision ordered revocation of Respondent's state nursing licenses, but stayed the revocation and placed Respondent on probation for two years, with specified terms and conditions. (Resp't Ex. 1 at 6–7.) Of note, the state ALJ found substantial evidence of Respondent's rehabilitation and sobriety, concluding that two rather than three years of probation would be ''adequate for the board to monitor respondent to ensure public protection.'' (Resp't Ex. 1 at 6.) On December 28, 2010, the BRN issued a Decision After Non-Adoption, which was consistent with the Proposed Decision, except it further reduced the period of probation to one year and reduced Respondent's costs to zero. (Gov't Br. at Gov't Ex. 17.) [18]

The most recent action by the California BRN reflects a determination that notwithstanding findings of unprofessional conduct, Respondent can be entrusted with an active license subject to probationary terms and conditions. While not dispositive,[19] I find the careful deliberations and action by the state licensing authorities weigh in favor of a finding that Respondent's registration would be consistent with the public interest under 21 U.S.C. 823(f).

Factor 3: Respondent's Conviction Record

As noted above, one of the factors in determining whether Respondent's registration would be inconsistent with the public interest is ''[t]he applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3).[20] The OSC alleges that Respondent pled ''guilty to a felony count of obtaining a narcotic drug (OxyContin) by means of a forged prescription, in violation of California Health & Safety Code § 11368.'' (ALJ Ex. 1 at 2.) Pursuant to applicable state law,[21] the entry of judgment was deferred and upon successful completion of a treatment program, the charges were dismissed. (Gov't Ex. 11.) The California statute provides in pertinent part that a ''defendant's plea of guilty pursuant to this chapter shall not constitute a conviction for any purpose,'' unless judgment of guilt is entered.[22] But even the clearest statement of state law is not controlling on the question of what constitutes a ''conviction'' pursuant to the federal CSA. The question therefore remains whether Respondent's plea of guilty, which was ultimately dismissed, constitutes a ''conviction'' on the facts of this case.

Federal case law has established that ''[a] conviction *alone* is sufficient to allow the Attorney General (through the DEA Administrator) to revoke or suspend a DEA registration.'' *Pearce* v. *DEA,* 867 F.2d 253, 255 (6th Cir. 1988) (citing *Fitzhugh* v. *DEA,* 813 F.2d 1248, 1253 (DC Cir. 1987)). Agency precedent takes an expansive view of what constitutes a ''conviction.'' ''The law is well settled that a DEA registrant may be found to have been 'convicted' within the meaning of the Controlled Substances Act, despite a deferred adjudication of guilt.'' *Harlan J. Borcherding, D.O.,* 60 FR 28796–01, 28798 (DEA 1995) (citing *Mukand Lal Arora, M.D.,* 60 FR 4447, 4448 (DEA 1995) (fine, two years of probation and deferred adjudication deemed sufficient), *Clinton D. Nutt, D.O.,* 55 FR 30,992, 30,992 (DEA 1990) (nolo contendere plea and deferred adjudication of guilt deemed sufficient) and *Eric A. Baum, M.D.,* 53 FR 47,272, 47,272 (DEA 1988) (''best interest'' plea, probation, drug counseling and withholding of adjudication deemed sufficient)).

The policy underlying this precedent is founded in the doctrine of claim preclusion. ''When the judge decided to withhold adjudication and sentence and instead placed the defendant on probation * * * it is clear that the defendant could no longer be tried on the information.'' *United States* v. *Cook,*

[14] That subsection provides that a DEA COR may be revoked upon a finding that the registrant: (1) Has materially falsified an application; (2) has been convicted of a felony under the CSA or any other federal or state law relating to any controlled substance; (3) has had a state license or registration suspended, revoked or denied and is no longer authorized by state law to handle controlled substances; (4) has committed such acts as would render his registration under 21 U.S.C. 823 inconsistent with the public interest; or (5) has been excluded from participation in incorporating the public interest factors from § 823(f). *See* 21 U.S.C. 824(a)(4).

[15] *Kuen H. Chen, M.D.,* 58 FR 65,401, 65, 402 (DEA 1993) (citing *Serling Drug co. & Detroit Prescription Wholesaler, Inc.,* 40 FR 11,918, 11,919 (DEA 1975)); *accord Scott J. Loman, D.D.S.,* 50 FR 18,941 (DEA 1985); *Roger Lee Palmer, D.M.D.,* 49 FR 950 (DEA 1984).

[16] *See Chen,* 58 FR at 65,402.

[17] Registered Nurse Licdense No. 513926; Nurse Practitioner Certificate No. 12026; Nurse Practitioner Furnisher Certificate No. 12026; Public Health Nurse Certificate No. 55127.

[18] *See supra* note 3.

[19] *Mortimer B. Levin, D.O.,* 55 FR 8209, 8210 (DEA 1990) (finding DEA maintains separate oversight responsibility and statutory obligation to make independent determination whether to grant registration).

[20] I note that 21 U.S.C. 824(a)(2) (factor considering whether registrant ''has been convicted of a felony under the Controlled Substances Act or any other federal or state law relating to any controlled substance'') was not cited in either the OSC or otherwise noticed prior to hearing, and therefore is not applicable to this Recommended Decision. *See CBS Wholesale Distribs.,* 74 FR 36,746, 36,749 (DEA 2009).

[21] Cal. Penal Code 1000.1.

[22] *Id.* § 1000.1(d).

10 M.J. 138, 139 (U.S. Ct. Mil. App. 1981) (cited, but not quoted, in *Eric A. Baum, M.D.,* 53 FR 47,272 (DEA 1988)). Accordingly, a registrant whose criminal adjudication has been deferred is nevertheless considered to have been ''convicted'' under DEA precedent.

In this case, the fact that a finding of guilt was specifically not entered as to Respondent and the charges dismissed, leaves open the question as to whether the foregoing Agency precedent is controlling on the issue of whether Respondent's plea constitutes a conviction under 21 U.S.C. 823(f).[23] It is unnecessary to reach that issue, however, because the underlying offense to which Respondent pled guilty does not ''relate[ ] to the manufacture, distribution, or dispensing of controlled substances,'' the standard embraced in § 823(f). *See Super-Rite Drugs,* 56 FR 46,014, 46,015 (DEA 1991) (''Although [applicant] entered a guilty plea to a drug-related felony, his actions did not relate to the manufacture, distribution, or dispensing of controlled substances.'').

Accordingly, I find that Respondent has not been convicted of any laws relating to the manufacture, distribution or dispensing of controlled substances. I therefore find that Factor Three under Section 823(f), while not dispositive, does weigh in favor of a finding that Respondent's registration would be consistent with the public interest.

Factors 2, 4 and 5: Respondent's Experience in Dispensing Controlled Substances; Compliance With Applicable State, Federal or Local Laws Relating to Controlled Substances; and Such Other Conduct Which May Threaten the Public Health and Safety

The central issue in this case centers on Respondent's addiction to prescription pain medications, which began in or about 2006 while under medical care for chronic migraine headaches. (*See* Tr. 45–46.) Respondent's use of prescription pain medications eventually culminated in a course of conduct between June 2006 to December 2006, where she forged approximately nine prescriptions for Schedule II controlled substances for herself using a stolen prescription pad (*see, e.g.,* Tr. 24–26, 46), and wrongfully used and possessed Schedule II controlled substances (*e.g.,* Gov't Ex. 13 at 6). Other than the time period from June to December 2006, with a single exception noted below, there is no evidence that Respondent has failed to comply with all applicable laws and regulations relating to controlled substances during her professional career.

As to the single instance of Respondent's noncompliance with controlled substance laws following her sobriety date, there is evidence of record that Respondent was dismissed in February 2009 from a Nursing Diversion Program, during her employment as a nurse practitioner in a bone marrow transplant unit, on the grounds that a computer-generated admission order for a patient automatically included an order for oxycodone. (*E.g.,* Resp't Ex. 1 at 4.) Respondent was informed that she was being dismissed because this admission order, which included an order for oxycodone, was considered the equivalent to dispensing oxycodone. (Tr. 47.) Respondent credibly testified that she had ''not dispensed medications in over ten years, and the orders were part of a standardized set for all cancer patients.'' (Tr. 47.) Additionally, the evidence reflects that as of February 2009, Respondent had successfully participated in the Nursing Diversion Program for approximately twenty-two months and had been in full compliance with other strict requirements to include random drug tests, all of which were negative. (Resp't Ex. 1 at 4.)

As an initial matter, the issue of Respondent's dismissal from the Nursing Diversion Program due to improper dispensing of oxycodone was not specifically noticed by the Government in the OSC or prehearing statement, nor was it referenced in any Government exhibits prior to hearing. The issue was introduced by Respondent at hearing during her direct testimony as well as in documentary evidence. (Tr. 47; Resp't Ex. 1 at 4.)

To comport with due process requirements, the DEA must ''provide a Respondent with notice of those acts which the Agency intends to rely on in seeking the revocation of [her] registration so as to provide a full and fair opportunity to challenge the factual and legal basis for the Agency's action.'' *CBS Wholesale Distribs.,* 74 FR 36,746, 36,749 (DEA 2009) (citing *NLRB* v. *I.W.G., Inc.,* 144 F.3d 685, 688–89 (10th Cir. 1998) and *Pergament United Sales, Inc.,* v. *NLRB,* 920 F.2d 130, 134 (2d Cir. 1990)). An issue cannot be the basis for a sanction when the Government has failed to ''disclose 'in its prehearing statements or indicate at any time prior to the hearing' that an issue will be litigated.'' *Id.* at 36,750 (citing *Darrell Risner, D.M.D.,* 61 FR 728, 730 (DEA 1996)). The DEA has also previously found, however, that a respondent may waive objection to the admission of evidence not noticed by the Government prior to the hearing when the respondent does not timely object and when the respondent also raises the issue. *Gregory D. Owens, D.D.S.,* 74 FR 36,751, 36,755 (DEA 2009).

In accordance with agency precedent, I find in this case that the issue of Respondent's February 2009 dispensing of oxycodone may properly be considered in evaluating Respondent's application, as well as on the issue of sanction. I also find that Respondent's conduct culminating in the single instance of dispensing oxycodone in February 2009 was inadvertent. The record reveals that

> [w]hen patients were admitted to the unit, respondent, using a preprogrammed computer check sheet, admitted the patients by checking the appropriate admission box that appeared on the computer screen. By checking the box, the computer program automatically issued a standard set of admission orders. In some instances, the set orders included an order for the patient to receive [o]xycodone.

(Resp't Ex. 1 at 4.) The circumstances of this single incident and Respondent's early termination from the Nursing Diversion Program after approximately twenty-two fully successful months does not weigh against Respondent's application for DEA registration. I also note that as with all other aspects of Respondent's testimony, Respondent was fully credible and candid in her explanation of this incident.

The Government maintains that Factors Four and Five are relevant to the public interest inquiry, relying in part on the undisputed evidence of Respondent's history of self-abuse of controlled substances, and citing *Gary E. Stanford, M.D.,* 58 FR 14,430 (DEA 1993) and *William L. Pigg, M.D.,* 55 FR 3120 (DEA 1990), cases finding a registrant's abuse of controlled substances and alcohol relevant to the public interest inquiry.

In *Stanford,* the evidence of abuse included ''a history of abuse of alcohol, recreational use of cocaine, and other controlled substances for other than a legitimate medical purpose over several years'' and concerned a registrant in the ''early months of recovery.'' *Stanford,* 58 FR at 14,432. Of note, the ALJ's recommended decision in *Stanford,* which the Agency adopted in its entirety, ''recommended that if after the passage of one year from the final disposition of the case, [r]espondent files a new application for registration,

[23] Agency precedent as embodied in *Baum* and other cases, carried to its logical conclusion, could arguably deem a plea that was later withdrawn, and a defendant found not guilty after trial, to be a conviction, on the claim preclusion grounds discussed in *United States* v. *Cook,* 10 M.J. 138, 139 (U.S. Ct. Mil. App. 1981), a case cited favorably in *Baum. Cf. Baum,* 53 FR at 47,274.

and if his rehabilitation efforts have continued successfully, investigation of that application should be expedited, and favorable consideration should be given to the application.'' *Id.* In *Pigg,* a case in which the respondent waived hearing and the Agency issued a final decision on grounds of lack of state authority, as well as drug abuse, the facts relating to substance abuse included abuse of cocaine and alcohol over at least a two-year period, along with a subsequent abuse of alcohol and controlled substances following entry to an Impaired Physicians Program. *Pigg,* 55 FR at 3120.

Other cases reflect long-held ''precedent that a practitioner's self-abuse of controlled substances constitutes 'conduct which may threaten public health and safety.''' *Steven B. Brown, M.D.,* 75 FR 65,660, 65,662 (DEA2010) (citing *Tony T. Bui, M.D.,* 75 FR 49,979, 49,990 (DEA 2010); *Kenneth Wayne Green, Jr., M.D.,* 59 FR 51,453 (DEA 1994); *David E. Trawick, D.D.S,* 53 FR 5326 (DEA 1988). In *Brown,* the evidence of self-abuse spanned approximately a two year period during which the registrant prescribed 160–180 tablets of oxycodone 30 mg monthly to a patient in exchange for return of half of the controlled substances. *Brown,* 75 FR at 65,661. Additional evidence included a finding that the registrant was a drug abuser and a threat to public health and safety, when he offered the patient ''a hit of liquid oxycodone.'' *Id.* at 65,662.

In the instant case, the evidence is undisputed that Respondent's conduct between approximately June and December 2006 violated federal and state law and reflected a serious drug addiction by Respondent during that time period of approximately six months.[24] The evidence includes approximately nine instances of Respondent forging prescriptions using a stolen prescription pad, resulting in the acquisition of approximately 115 tablets of fentanyl and 120 tablets of oxycontin. (Gov't Exs. 2 & 3.) The evidence further reflects that Respondent's addiction had progressed to the point where she would dissolve ''the Actiq [fentanyl] in a saline solution and inject herself with it.'' (Gov't Ex. 13 at 6.)

Additionally, the evidence regarding Respondent's acknowledgement of her addiction includes a December 18, 2006 interview at the San Diego Bureau of Narcotics Enforcement office, where Respondent initially denied forging any prescriptions, but eventually admitted that she had stolen the prescription pad and forged prescriptions for OxyContin and Actiq.[25] (Gov't Ex. 4; Gov't Ex. 13 at 6.) There is other evidence suggesting Respondent was already attempting to seek help on her own, including Respondent's testimony that not long after forging prescriptions ''I called a therapist I had recently been seeing, and told him what I had done, and asked for help.'' (Tr. 46.)

To summarize, Respondent's admitted misconduct and substance abuse between June and December 2006, if viewed standing alone, does weigh against a finding that Respondent's unconditional registration would be consistent with the public interest under Factors Four and Five.

Conclusion and Recommendation

After balancing the foregoing public interest factors, I find the Government has established by substantial evidence a *prima facie* case in support of denial of Respondent's application for registration, based on Respondent's unlawful possession, use and fraudulent acquisition of controlled substances between June and December 2006. Once DEA has made its *prima facie* case for revocation, the burden then shifts to the respondent to show that, given the totality of the facts and circumstances in the record, denial of the application would not be appropriate. *See Morall* v. *DEA,* 412 F.3d 165, 174 (DC Cir. 2005); *Humphreys* v. *DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz* v. *United States Dep't of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 FR 72, 311 (DEA 1980).

Additionally, where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for his or her actions and demonstrate that he or she will not engage in future misconduct. *Patrick W. Stodola, M.D.,* 74 FR 20,727 (DEA 2009). Also, ''[c]onsideration of the deterrent effect of a potential sanction is supported by the CSA's purpose of protecting the public interest.'' *Joseph Gaudio, M.D.,* 74 FR 10,083, 10,094 (DEA 2009).

In the instant case, Respondent's testimony at hearing with regard to her past misconduct, and demonstrated efforts to avoid a repeat of those mistakes, was fully credible. Respondent's testimony was consistent and candid throughout her direct and cross examination. With regard to the facts surrounding her misconduct, Respondent credibly assumed full responsibility for her actions, stating at the outset of her testimony that ''I was guilty of egregious behavior when I made unprofessional choices that led to my chemical dependence.'' (Tr. 44.) The Government argues that Respondent ''appeared to accept responsibility,'' but that ''her father attempted to shift the blame for Respondent's addiction to her physician and two drug manufacturers.'' (Gov't Br. at 5.) The relevant inquiry, however, is Respondent's own acceptance of responsibility, not that of a third party.[26]

The evidence and testimony demonstrating Respondent's efforts to ensure that she will not engage in future misconduct relating to drug addiction is substantial and compelling. The Government ''contends that Respondent needs additional time to demonstrate she can remain free from drug abuse and to solidify her recovery.''[27] The facts reflect that Respondent has been free from drug abuse for over four years (*compare* Gov't Exs. 6 & 7, *with* Tr. 44–46, Tr. 80, *and* Resp't Ex. 1 at 4) and the time period of her abuse covered a relatively short time of approximately six months.[28] The passage of time and significant efforts at rehabilitation are relevant and weighty considerations. *See Sokoloff* v. *Saxbe,* 501 F.2d 571 (2d Cir. 1974) (passage of time requires careful consideration of new application); *see also Azen* v. *DEA,* 1996 WL 56114 at *2 (9th Cir. Feb. 9, 1996) (impressive evidence of rehabilitation and continued abstinence important consideration). The evidence also reflects that Respondent admitted her addiction to a therapist in late 2006 (Tr. 46) and timely cooperated with authorities in December 2006 when

[24] *Compare* Tr. 46, *with* Tr. 27, *and* Gov't Ex. 2 at 9, 14, 16, 18, 20, 22, 24, 26, & 28 (forged prescriptions ranging between August 9, 2006, and December 6, 2006).

[25] This evidence is somewhat consistent with testimony of DI Bartolomeo with regard to Respondent's confession on December 18, 2006, although DI Bartolomeo did not reference Respondent's initial denial. (*See, e.g.*, Tr. 29.) For instance, the record was unclear whether Respondent made two separate admissions on December 18, 2006. Notwithstanding the ambiguity and intial denial, I find that Respondent's admission of misconduct and cooperation with law enforcement authorities was timely and is to her credit.

[26] Even assuming the testimony of a third party might be relevant in some circumstances to whether a respondent has accepted responsibility, such as, for example, to impeach a respondent's credibility, I find Respondent's father's testimony in this case to be fully consistent with Respondent's acceptance of responsibility. In explaining the circumstances and context of Respondent's addiction, Respondent's father concluded by stating ''I believe * * * that forging prescriptions is a serious offense, especially by someone who has been granted a DEA certificate. But the circumstances which caused * * * this are far behind her,'' credibly enumerating the specific positive changes in his daughter's life. (Tr. 77.)

[27] Gov't Br. at 6.

[28] *Supra* note 24.

confronted with allegations of misconduct (Gov't Ex. 13 at 6), behavior which weighs in Respondent's favor. *See Karen A. Kruger, M.D.,* 69 FR 7016, 7017–18 (DEA 2004) (timely cooperation with investigators when questioned on past misconduct held a significant consideration in granting subsequent application for registration).

Respondent's abstinence from drug abuse since 2006, and her efforts at rehabilitation have been consistent, substantial, and successful. The uncontroverted evidence of rehabilitation shows that Respondent: successfully completed a seven-week outpatient alcohol and drug treatment program (Gov't Ex. 6); successfully completed a one-year dependency aftercare program (Gov't Ex. 7); successfully participated in a Nursing Diversion Program for twenty-two months (Resp't Ex. 1 at 4); regularly attended AA and NA meetings (Resp't Ex. 7 at 5–6; Resp't Ex. 8 at 2); regularly attended nurse-to-nurse meetings (Resp't Ex. 1 at 4); and has had sustained sobriety since December 2006, as evidenced by repeated negative random drug tests (*see* Resp't Ex. 1 at 4), *inter alia.* Credible and unrebutted testimony even reveals that Respondent went as far as avoiding medically indicated pain medication in 2010, just to avoid any potential for relapse. (Tr. 79.) In addition to the foregoing, the record is replete with credible evidence from family, friends, colleagues, students, treating sources and mentors, all consistently attesting to Respondent's sustained recovery and abstinence from prescription drug abuse. In light of the significant evidence of rehabilitation and ongoing monitoring by the California BRN, I find Respondent has sustained her burden in accepting responsibility and demonstrated that she has taken the necessary steps to avoid a repeat of her mistakes. Granting Respondent's application for a COR, subject to conditions, is fully consistent with the public interest.

Accordingly, I recommend that Respondent's application for DEA COR be granted, subject to the following conditions: (1) Respondent shall comply with all of the terms and conditions specified in the December 28, 2010 Order of the California BRN (*see* Gov't Br. at Gov't Ex. 17); and (2) for one (1) year following the issuance of a final order in this proceeding, Respondent shall upon request, submit to the nearest Field Division Office of DEA, copies of the results of any random or directed drug screening tests involving Respondent.

Dated: February 4, 2011.

Timothy D. Wing,

Administrative Law Judege.

[FR Doc. 2011–25238 Filed 9–29–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Mass Layoff Statistics Program.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before November 29, 2011.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 309(2)(15)(a)(1)(A)(iii) of the Workforce Investment Act (WIA) states that the Secretary of Labor shall oversee development, maintenance, and continuous improvements of the program to measure the incidence of, industrial and geographical location of, and number of workers displaced by, permanent layoffs and plant closings. Prior to the WIA, Section 462(e) of Public Law 97–300, the Job Training Partnership Act (JTPA), provided that the Secretary of Labor develop and maintain statistical data relating to permanent mass layoffs and plant closings and issue an annual report. The report includes, at a minimum, the number of plant closings and mass layoffs, and the number of workers affected. The data are summarized by geographic area and industry.

The Mass Layoff Statistics (MLS) program uses a standardized, automated approach to identify, describe, and track the impact of major job cutbacks. The program utilizes, to the greatest degree possible, existing Unemployment Insurance (UI) records and computerized data files, supplemented by direct employer contact. Its major features include:

- The identification of major layoffs and closings through initial UI claims filed against the identified employer;
- The use of existing files on claimants to obtain basic demographic and economic characteristics on the individual;
- The telephone contact of those employers meeting mass layoff criteria to obtain specific information on the nature of the layoff and characteristics of the establishment;
- The identification of the continuing impact of the mass layoff on individuals by matching affected initial claimants with persons in claims status;
- The measurement of the incidence of the exhaustion of regular state UI benefits by affected workers;
- The identification and quantifying the effects that extended mass layoffs have on the movement of work; and,
- The identification of business functions within establishments which are affected by mass layoffs.

In the program, State Workforce Agencies (SWAs) submit one report each quarter and a preliminary, summary report each month. These computerized reports contain information from State administrative files and information obtained from those employers meeting the program criteria of a mass layoff.

Congress provided for the implementation of the MLS program by the Bureau of Labor Statistics (BLS) through the Fiscal Years 1984–1992 appropriations for the Departments of Labor, Health and Human Services, Education, and related agencies. The program was not operational in Fiscal Years 1993 and 1994. Program operation

resumed in Fiscal Year 1995 with funds provided by the Employment and Training Administration (ETA). Beginning in fiscal year 2004, funding for the MLS program became part of the Bureau of Labor Statistics permanent budget. Also in 2004, the scope of the MLS program was redefined to cover only the private nonfarm economy for extended mass layoffs due to budget constraints.

At the present time, all states, the District of Columbia, Puerto Rico, and the Virgin Islands are participating in the program.

II. Current Action

Office of Management and Budget clearance is being sought for the Mass Layoff Statistics (MLS) Program.

In addition to the BLS uses of MLS data, such data are used by Congress, the Executive Branch, the business, labor, and academic communities, SWAs, and the U.S. Department of Labor for both macro- and microeconomic analysis, including specific labor market studies geared towards manpower assistance and development. Congress used these data in conjunction with the findings from a supplemental study of layoff actions in the development of the Worker Adjustment and Retraining Notification (WARN) Act, which was enacted in August 1988.

A Congressionally mandated use of mass layoff data includes the WIA, which replaces Title III of the JTPA. Section 133 of the WIA encourages the use of MLS data in substate allocations relating to dislocated worker employment and training activities.

State agencies use the MLS data in various ways, including the identification of geographic areas in need of special manpower services; ailing or troubled industries; specific employers needing assistance; outreach activities for the unemployed; and workers in need of temporary health care services.

There is no other comprehensive source of statistics on either establishments or workers affected by mass layoffs and plant closings; therefore, none of the aforementioned data requirements could be fulfilled if this data collection did not occur.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Mass Layoff Statistics Program.

OMB Number: 1220–0090.

Affected Public: Private Sector; State, Local, or Tribal Governments.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
Employers	21,000	On Occasion	21,000	10 minutes	3,500
States	53	Monthly; Quarterly	848	84.76 hours	71,880
Totals			21,848		75,380

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 26th day of September 2011.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–25166 Filed 9–29–11; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 31, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who

desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Records Management Services (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food Safety and Inspection Service, Agency-wide (N1–584–11–1, 4 items, 1 temporary item). Records related to food safety and educational outreach campaigns, including working papers. Proposed for permanent retention are press releases, fact sheets, slogans, posters, publications, videos, and public service announcements.

2. Department of the Army, Agency-wide (N1–AU–10–18, 1 item, 1 temporary item). Master files of an electronic information system containing military intelligence reports and related data.

3. Department of the Army, Agency-wide (N1–AU–10–28, 1 item, 1 temporary item). Master files of an electronic information system that contains information used to develop installation master plans, including personnel and equipment allowances, space requirements, and facility analysis data.

4. Department of the Army, Agency-wide (N1–AU–10–30, 1 item, 1 temporary item). Master files of an electronic information system that tracks personnel access authorizations to secure buildings and facilities.

5. Department of the Army, Agency-wide (N1–AU–10–37, 1 item, 1 temporary item). Master files of an electronic information system containing facility ratings, housing data, and cost and work management data used in the management of installations.

6. Department of the Army, Agency-wide (N1–AU–10–55, 1 item, 1 temporary item). Master files of an electronic information system containing supply and project status information related to the support of maintenance, renovation, repair, and demilitarization of returned munitions.

7. Department of the Army, Agency-wide (N1–AU–10–59, 1 item, 1 temporary item). Master files of an electronic information system containing individual academic records.

8. Department of Defense, National Security Agency (N1–457–11–2, 1 item, 1 temporary item). Records of the Policy and Records Division related to the review of employee resumes and other biographic information for release outside the agency.

9. Department of Homeland Security, Transportation Security Administration (N1–560–11–1, 2 items, 2 temporary items). Records of workplace violence case files at the national and local level, consisting of reference materials, drafts, photographs, reports, statements, and after action activities documentation.

10. Department of Homeland Security, U.S. Secret Service (N1–87–11–5, 2 items, 1 temporary item). Records containing reference copies and background materials for the creation of statistical publications and reports. Proposed for permanent retention are calendar and fiscal year statistical publications and reports of agency activities.

11. Department of State, United States Mission to the United Nations (N1–84–09–01, 8 items, 6 temporary items). Records of the Research Unit, including lists of delegates and employees of the mission, requests for election support of candidates, and copies of telegrams maintained in other recordkeeping systems. Proposed for permanent retention are research memorandums and daily schedules of the Permanent Representative and acting Permanent Representative to the United Nations.

12. Department of Transportation, Federal Highway Administration (N1–406–09–3, 48 items, 34 temporary items). Records of the Office of Administration, including administrative files, directives files, requisition files, project files, reference files, contracts, invoices, and correspondence. Proposed for permanent retention are record copies of publications, directives, technical advisories, photographs, posters, motion pictures, video, and sound recordings.

13. Securities and Exchange Commission, Office of Administrative Services (N1–266–11–3, 2 items, 2 temporary items). Master files of an electronic information system used for physical access and monitoring.

14. Securities and Exchange Commission, Office of Administrative Services (N1–266–11–4, 1 item, 1 temporary item). Master files of an electronic information system used for security visual monitoring.

Dated: September 22, 2011.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2011–25241 Filed 9–29–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Antarctic Conservation Act Permit Applications

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for a flight by a Beechcraft Queen Air 65 ''Excaliber'' to depart Punta Arenas, Chile, fly over the South Pole, land at Teniente Marsh Base (Frei Base) where it will overnight, and return to Punta Arenas, Chile. The application is submitted by World Flyers of Buena Vista, CO and submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within October 31, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for conduct of a flight from South America, over the South Pole, landing at Teniente Marsh Base (Frei) on Deception Island, and returning to Punta Arenas, Chile. Air emissions will be released from the engine, and any liquid or solid waste will be stored on the aircraft and disposed of in South America.

The permit: Mickey Bob Russell, World Flyers, Buena Vista, CO; Permit application No. 2012 WM–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–25168 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for a flight by a Beechcraft Queen Air 65 ''Excaliber'' to depart Punta Arenas, Chile, fly over the South Pole, land at Teniente Marsh Base (Frei Base) where it will overnight, and return to Punta Arenas, Chile. The application is submitted by World Flyers of Buena Vista, CO and submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within October 31, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for conduct of a flight from South America, over the South Pole, landing at Teniente Marsh Base (Frei) on Deception Island, and returning to Punta Arenas, Chile. Air emissions will be released from the engine, and any liquid or solid waste will be stored on the aircraft and disposed of in South America.

The permit: Mickey Bob Russell, World Flyers, Buena Vista, CO. Permit application No. 2012 WM–005.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–25226 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; 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: Engineering Advisory Committee Meeting, #1170.

Date/Time: October 26, 2011: 12 p.m. to 6 p.m., October 27, 2011: 8 a.m. to 2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Deborah Young, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: The principal focus of the meeting on both days will be to discuss emerging issues and opportunities for the Directorate for Engineering and its divisions and review Committee of Visitors Reports.

Dated: September 27, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–25207 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: ADVANCE Institutional Transformation Site Visit, Proposal Review Panel Human Resource Development (#1199).

Date/Time: October 17, 2011; 5 p.m. to 10 p.m.
October 18–19, 2011; 8:30 a.m. to 6 p.m.

Place: North Dakota State University, Fargo, ND 58102.

Type of Meeting: Part-Open.

Contact Person: Kelly Mack, Division of Human Resource Development, Room 815, National Science Foundation, Arlington, VA (703) 292–8575.

Purpose of Meeting: NSF site visit to conduct a renewal review during year 3 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, October 17

5 p.m.–10 p.m. Closed—Executive Session.

Tuesday, October 18

8:30 a.m.–12 Noon Open—Program Presentation.
1 p.m.–6 p.m. Closed—Interviews with Selected Institutional Staff.

Wednesday, October 19

8:30 a.m.–12 Noon Closed—Interviews with Selected Institutional Staff.
1 p.m.–6 p.m. Closed—Executive Session, review and drafting site visit report.

Reason for Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: September 17, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–25208 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: ADVANCE Institutional Transformation Site Visit; Proposal Review Panel Human Resource Development (#1199).

Date/Time:

November 1, 2011; 5 p.m. to 10 p.m.

November 2–3, 2011; 8:30 a.m. to 6 p.m.

Place: Purdue University, West Lafayette, IN 47907.

Type of Meeting: Part-Open.

Contact Person: Kelly Mack, Division of Human Resource Development, Room 815, National Science Foundation, Arlington, VA (703) 292–8575.

Purpose of Meeting: NSF site visit to conduct a renewal review during year 3 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Tuesday, November 1

5 p.m.–10 p.m. Closed—Executive Session.

Wednesday, November 2

8:30 a.m.—12 Noon Open—Program Presentation.

1 p.m.—6 p.m. Closed—Interviews with Selected Institutional Staff.

Thursday, November 3

8:30 a.m.—12 Noon Closed—Interviews with Selected Institutional Staff.

1 p.m.—6 p.m. Closed—Executive Session, review and drafting site visit report.

Reason For Closing: Topics to be discussed and evaluated during the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: September 27, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–25209 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for Quark Expeditions' cruise ships to conduct a number of activities, including: shore excursions via zodiac or helicopter, camping ashore or extended stays, mountaineering, kayaking, helicopter flight seeing/emergency landings, and skiing. The application is submitted by Quark Expeditions of Waterbury, Vermont and submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within October 31, 2011. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for conduct of activities such as shore excursions, helicopter landings, camping, where emergency provisions will be taken ashore that would include cook stoves, fuel, radios, batteries, etc. and may include the generation of waste. In addition, mountaineering activities that would include use of emergency provisions, crampons, ice axes, climbing harnesses, carabiners, and prusik slings.

Designated pollutants that would be associated with the various excursions are typically air emissions and waste water (urine, grey-water, and human solid waste). All wastes would be packaged and removed to the ship(s) for proper disposal in Chile or the U.S. under approved guidelines prior to the end of each season.

The permit: Eric Stangeland, Executive VP Operations, Quark Expeditions, Inc., Waterbury, VT Permit application No. 2012 WM–004.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011–25147 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

U.S. Global Change Research Program Strategic Plan Public Comment Period

AGENCY: National Science Foundation.

ACTION: Announcement of strategic plan outline and public comment period.

SUMMARY: This Notice advises the public that the public comment period for the U.S. Global Change Research Program (USGCRP) Strategic Plan is now open. Every ten years, in accordance with the Global Change Research Act of 1990 (Sec 104, Pub. L. 101–606), the USGCRP must produce a 10 year National Global Change Research Plan (*i.e.* a Strategic Plan for the USGCRP). The public comment period invites the public to provide comments and feedback on the U.S. Global Change Research Program Strategic Plan.

DATES: Public Comments are due by November 29, 2011.

ADDRESSES: To download the draft Strategic Plan, visit: *http://strategicplancomments.globalchange.gov*. Respondents are encouraged to submit comments through the same Web site. Comments may also be sent to *strategicplancomments@usgcrp.gov*. Detailed instructions for electronic mail submissions are also available at *http://strategicplancomments.globalchange.gov/email_guidelines.*

FOR FURTHER INFORMATION CONTACT: Any questions about the content of this request should be sent to Dr. Julie Morris, Technical Coordinator for the Strategic Plan, U.S. Global Change Research Program Office, 1717 Pennsylvania Ave., NW., Suite 250, Washington, DC 20006, Telephone (202) 223–6262, Fax (202) 223–3065, e-mail *strategicplancomments@usgcrp.gov*.

SUPPLEMENTARY INFORMATION: Strategic Plan Goals: The following goals frame the U.S. Global Change Research Program Strategic Plan:

Goal 1: Advance Science: Advance scientific knowledge of the integrated natural and human components of the Earth system.

Goal 2: Inform Decisions: Provide the scientific basis to inform and enable timely decisions on adaptation and mitigation.

Goal 3: Sustained Assessments: Build sustained assessment capacity that improves the nation's ability to understand, anticipate, and respond to global change impacts and vulnerabilities.

Goal 4: Communicate and Educate: Advance communications and education to broaden public understanding of global change, and empower the workforce of the future.

Dated: September 27, 2011.

Suzanne Plimpton,

Records Clearance Officer, National Science Foundation.

[FR Doc. 2011–25211 Filed 9–29–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8102, NRC–2011–0231]

Notice of Application from ExxonMobil Corporation, Highland Uranium Mine and Millsite, To Amend Existing Alternate Concentration Limits and Extend the NRC Long-Term Surveillance Boundary With Respect to Materials License SUA–1139

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment and opportunity to provide comments, to request a hearing, and to petition for leave to intervene.

DATES: Submit comments by November 29, 2011. Requests for a hearing or leave to intervene must be filed by November 29, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0231 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0231. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The license amendment application is available electronically under ADAMS Accession Number ML111360415.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0231.

FOR FURTHER INFORMATION CONTACT: Thomas McLaughlin, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–5869; *fax number:* 301–415–5369; e-mail: *Thomas.McLaughlin@nrc.gov.*

I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated May 12, 2011, a license amendment application from ExxonMobil Corporation (ExxonMobil or Licensee), requesting to amend their existing alternate concentration limits and to extend the NRC Long-Term Surveillance Boundary at its Highland Uranium Mine and Mill site located in Converse County, Wyoming. License No. SUA–1139 authorizes the Licensee to possess byproduct material resulting from past operations of its Highland facility until site reclamation is adequate. The amendment provides a supplemental groundwater point of compliance (POC) well and new point of exposure monitoring locations and updates alternate concentration limits for uranium at some existing POC wells and at the proposed POC well. The amendment also proposes to expand the Long-Term Surveillance Boundary to include the Highland Pit Lake and the Southeast Drainage.

An NRC administrative review, documented in a letter to ExxonMobil dated July 30, 2011, found the application acceptable to begin a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC License No. SUA–1139. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or

call the PDR at 800–397–4209 or 301–415–4737). NRC regulations are also accessible electronically from the NRC's Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/.*

III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at the hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 31, 2011. The petition must be filed in accordance with the filing instructions in section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by November 29, 2011.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from September 30, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

Dated at Rockville, Maryland, this 22nd day of September, 2011.

For the Nuclear Regulatory Commission.

Paul Michalak,

Acting Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–25244 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0228]

Draft License Renewal Interim Staff Guidance LR–ISG–2011–02; Aging Management Program for Steam Generators

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing the Draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2011–02, ''Aging Management Program for Steam Generators,'' for public comment. This Draft LR–ISG provides the staff's evaluation of the suitability of using Revision 3 of NEI 97–06 to manage steam generator aging. The Draft LR–ISG revises the NRC staff's aging management recommendations currently described in Chapter XI.M19 of NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report,'' Revision 2, dated December 2010, which is available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML103490041 and NUREG–1800, Revision 2, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR), available under Accession No. ML103490036. The Draft LR–ISG–2011–02 is available under Accession No. ML11220A136.

DATES: Comments may be submitted by October 20, 2011. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0228 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments by any one of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0228. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The draft LR–ISG–2011–02 is available electronically under ADAMS Accession Number ML11220A136.

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0228.

• *NRC's Interim Staff Guidance Web site:* LR–ISG documents are also available online under the ''License Renewal'' heading at *http://www.nrc.gov/reading-rm/doc-collections/#int*.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Gettys, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–4029; or *e-mail: Evelyn.Gettys@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of September 2011.

For the Nuclear Regulatory Commission.

David L. Pelton,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–25239 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 18, 2011, to discuss the ACMUI Permanent Implant Brachytherapy Subcommittee Report. A copy of the agenda for the meeting will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ms. Ashley Cockerham using the information below.

DATES: The teleconference meeting will be held on Tuesday, October 18, 2011, 12:00 PM to 2:00 PM Eastern Standard Time (EST).

Public Participation: Any member of the public who wishes to participate in the teleconference discussions should contact Ms. Cockerham using the contact information below.

CONTACT INFORMATION: Ashley M. Cockerham, e-mail: *ashley.cockerham@nrc.gov,* telephone: (240) 888–7129.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Cockerham at the contact information listed above. All submittals must be received by October 14, 2011, two business days prior to the meeting, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meetings, at the discretion of the Chairman.

3. The transcripts will be available on the ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/*) approximately 30 calendar days following the meeting, on November 18, 2011. Meeting summaries will be available approximately 30 business days following the meeting, on November 29, 2011.

The meetings will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: September 26, 2011.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2011–25250 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on October 5, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, October 5, 2011–8:30 a.m. Until 5 p.m.

The Subcommittee will review the Safety Evaluation Report (SER) associated with the Nine Mile Point extended power uprate application. The

Subcommittee will hear presentations by and hold discussions with the NRC staff, the licensee, Nine Mile Point Nuclear Station, LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Peter Wen (Telephone 301–415–2832 or *E-mail: Peter.Wen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: *9/26/11.*

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards

[FR Doc. 2011–25240 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0229]

Metal Fatigue Analysis Performed by Computer Software

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to remind its addressees of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code) requirements in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 50.55a, ''Codes and Standards,'' and of the quality assurance (QA) requirements for design control in accordance with Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR Part 50. Specifically, this RIS informs addressees of the NRC's findings from license renewal and new reactor audits on applicants' analyses and methodologies using the computer software package, WESTEMS™, to demonstrate compliance with Section III, ''Rules for Construction of Nuclear Facility Components,'' of the ASME Code.

DATES: Submit comments by October 31, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0229 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0229. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The draft RIS is available electronically under ADAMS Accession Number ML11252A520.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by

searching on Docket ID NRC–2011–0229.

FOR FURTHER INFORMATION CONTACT: On Yee, Office of Nuclear Reactor Regulation, Division of License Renewal, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1905, e-mail: *On.Yee@nrc.gov.*

Draft NRC Regulatory Issue Summary 2011–Xxxx; Metal Fatigue Analysis Performed by Computer Software

Addressees

All holders of, and applicants for, a power reactor operating license or construction permit under Title 10 of the Code of Federal Regulations (10 CFR) Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of, and applicants for, a power reactor early site permit, combined license, standard design certification, standard design approval, or manufacturing license under 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to remind addressees of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code) requirements in accordance with 10 CFR 50.55a, ''Codes and Standards,'' and of the quality assurance (QA) requirements for design control in accordance with Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR part 50. Specifically, this RIS informs addressees of the NRC's findings from license renewal and new reactor audits on applicants' analyses and methodologies using the computer software package, WESTEMS™, to demonstrate compliance with Section III, ''Rules for Construction of Nuclear Facility Components,'' of the ASME Code. The NRC expects addressees to review this RIS for applicability to their facilities and to consider actions as appropriate. This RIS requires no action or written response from addressees.

Background Information

Section 54.21 of 10 CFR, ''Contents of Application—Technical Information,'' requires applicants for license renewal to perform an evaluation of time-limited aging analyses relevant to structures, systems, and components within the scope of license renewal. In most cases, fatigue analyses of the reactor coolant pressure boundary components involve time-limited assumptions. In addition, the staff has provided guidance in NUREG–1800, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants,'' Revision 2, issued December 2010, which recommends that the effects of the reactor water environment on fatigue life be evaluated for a sample of components to provide assurance that cracking due to fatigue will not occur during the period of extended operation. Because the reactor water environment has a significant impact on the fatigue life of components, many license renewal applicants have performed supplemental detailed analyses to demonstrate acceptable fatigue life for these components.

Regulatory Guide 1.28, ''Quality Assurance Program Criteria (Design and Construction),'' describes methods that the NRC considers acceptable for complying with the requirements in Appendix B to 10 CFR part 50 for establishing and implementing a QA program for the design and construction of nuclear power plants and fuel reprocessing plants.

The regulations at 10 CFR 50.55a specify the ASME Code requirements. In particular, 10 CFR 50.55a(c) requires, in part, that components of the reactor coolant pressure boundary must meet the requirements for Class 1 components in Section III of the ASME Code, with limited exceptions specified in 10 CFR 50.55a(c)(2)(4). Some operating facilities may have performed a supplemental detailed fatigue analysis of components because of new operating conditions identified after the plant began operation.

Summary of Issue

The staff has identified concerns about the computer software package, WESTEMS™, that is used to demonstrate the ability of nuclear power plant components to withstand the cyclic loads associated with plant transient operations. This particular computer software package involves the use of computer code developed to calculate fatigue usage during plant transient operations such as startups and shutdowns, as discussed in ASME Code, Section III, Subsection NB, Subarticles NB–3200, ''Design By Analysis,'' and NB–3600, ''Piping Design.''

The staff identified these concerns with the computer software package during the review of the AP1000 design certification application, and they are described in the staff's safety evaluation report (Agencywide Documents Access and Management System (ADAMS) Accession No. ML103430502) and its related audit report (ADAMS Accession No. ML110250634). One such concern was that the methodology used by this computer software package to determine the peak stress intensity range time history in fatigue calculations uses the algebraic summation of three orthogonal moment vectors. This algebraic summation methodology is not consistent with ASME Code, Section III, Subsection NB, Subarticle NB–3650, ''Analysis of Piping Products,'' which states that resultant moments from different load sets shall not be used in calculating the moment range (i.e., this algebraic summation methodology is not an accurate representation of the moment range). Therefore, the use of this practice could provide results that are not accurate. The staff also identified a concern in which, under certain circumstances, the use of this computer software package requires the user to manually modify peak and valley times/stresses during intermediate calculations in the software. Although this method of analyst intervention could provide acceptable results in some cases, reliance on the user's engineering judgment and ability to modify peak and valley times/stresses, without control and documentation, could produce results that are not predictable, repeatable, or conservative. Because of these concerns, the applicant for the AP1000 design certification elected to remove the use of this computer software package from its design certification document, such that it is not used in the design for the AP1000, as documented in ADAMS Accession No. ML102770329.

License renewal applicants have attempted to use this computer software package to demonstrate acceptable fatigue calculations for plant operation during the period of extended operation. As a result of the concerns described above, the staff asked a license renewal applicant that has used this computer software package to perform an evaluation to demonstrate that the package provides acceptable results and to assess the impact of these identified concerns on the license renewal applicant's fatigue calculations (ADAMS Accession No. ML102810194). The staff conducted an audit to (1) review this evaluation, (2) address the user's ability to manually modify peak and valley times/stresses, and (3) address the aforementioned concern

with the algebraic summation of three orthogonal moment vectors.

At the conclusion of the audit, the staff determined, as described in its audit report (ADAMS Accession No. ML110871243), that the license renewal applicant's use of this computer software package demonstrated (1) that it produced calculations of stresses and cumulative usage factors that are consistent with the methodology in ASME Code, Section III, Subsection NB, Subarticle NB–3200, (2) that the analyst's judgment in manually modifying peak and valley times/stresses in these calculations was reasonable and can be appropriately justified and documented, though justification of any user intervention should be documented, (3) that this applicant did not use this software to perform fatigue calculations as described in ASME Code, Section III, Subsection NB, Subarticle NB–3600, and (4) future use of this software should be accompanied by an acceptable demonstration that it performs fatigue calculations in accordance with ASME Code, Section III, Subsection NB, Subarticle NB–3600.

This license renewal applicant performed evaluations on two of its components: A pressurized water reactor (PWR) pressurizer surge nozzle and a PWR safety injection boron injection tank nozzle. When considering the effects of the reactor water environment on fatigue life, these evaluations indicated a cumulative usage factor that was less than the ASME Code design limit of 1.0, provided that there was sufficient and clear records of justification for analyst intervention.

The staff acknowledges that addressees may have used, or will make use of, other computer software packages in performing ASME Code fatigue calculations. Thus, the NRC encourages addressees to review the documents discussed above and to consider actions, as appropriate, to ensure compliance with the requirements for ASME Code fatigue calculations and QA programs, as described in 10 CFR 50.55a and Appendix B to 10 CFR part 50, respectively.

Backfit Discussion

This RIS informs addressees of potential concerns with the use of computer software packages to perform ASME Code fatigue calculations and reminds them that they should perform these calculations in accordance with ASME Code requirements. The regulations at 10 CFR 50.55a specify the ASME Code requirements. Regulatory Guide 1.28 describes methods for establishing and implementing a QA program for the design and construction of nuclear power plants. For license renewal, metal fatigue is evaluated as a time-limited aging analysis in accordance with 10 CFR 54.21(c). Section 4.3, ''Metal Fatigue,'' of NUREG–1800 provides the associated staff review guidance. This RIS does not impose a new or different regulatory staff position. It requires no action or written response and, therefore, is not a backfit under 10 CFR 50.109, ''Backfitting.'' Consequently, the NRC staff did not perform a backfit analysis.

Federal Register Notification

To be done after the public comment period.

Congressional Review Act

The NRC has determined that this RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. 801–808) and, therefore, is not subject to the Act.

Paperwork Reduction Act Statement

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collection requirements under 10 CFR Part 54 were approved by the Office of Management and Budget, control number 3150–0155.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

Contact

Please direct any questions about this matter to the technical contact listed below:

Timothy J. McGinty, Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

Laura A. Dudes, Director, Division of Construction Inspection and Operational Programs, Office of New Reactors.

Technical Contact: On Yee, NRR, 301–415–1905. *E-mail: on.yee@nrc.gov.*

Note: NRC generic communications may be found on the NRC public Web site, *http://www.nrc.gov,* under NRC Library/Document Collections.

END OF DRAFT REGULATORY ISSUE SUMMARY

Dated at Rockville, Maryland this 22nd day of September 2011.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–25242 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0217]

Policy Regarding Submittal of Amendments for Processing of Equivalent Feed at Licensed Uranium Recovery Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to inform addressees of the NRC's policy regarding receipt and processing, without a license amendment, of equivalent feed at an NRC and Agreement State-licensed uranium recovery site, either conventional, heap leach, or in situ recovery.

DATES: Submit comments by October 31, 2011. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0217 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0217. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Carter, Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–5543 or *e-mail: Ted.Carter@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* This **Federal Register** notice is available through ADAMS under Accession Number ML112290011.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0217.

The NRC's generic communications may be found on the NRC public Web site at *http://www.nrc.gov/reading-rm/doc-collections/gen-comm/.*

Draft NRC Regulatory Issue Summary 2011–xxxx: NRC Policy Regarding Submittal of Amendments for Processing of Equivalent Feed at Licensed Uranium Recovery Facilities

Addressees

U.S. Nuclear Regulatory Commission (NRC) licensed uranium recovery facilities; all holders of NRC operating licenses for water treatment; all companies that have submitted applications to construct all types of new uranium recovery facilities (conventional mills, heap leach facilities, and in situ recovery (ISR) facilities); and all Radiation Control Program Directors and State Liaison Officers.

Intent

In 2000, the NRC developed RIS 00–23, ''Recent Changes to Uranium Recovery Policy,'' (ADAMS Accession No. MLXXXXXXXX) to address licensing issues related to processing of alternate feed at uranium recovery sites. The NRC is issuing this RIS to clarify the agency's policy that receipt and processing, of ''equivalent feed'' [1] (resin media) at an NRC-licensed uranium recovery facility, whether conventional, heap leach, or ISR does not require a license amendment when the resin being used is chemically and physically essentially the same and would be processed using existing equipment at the facility. It is not the intent of this RIS to change the policy expressed in RIS 00–23 or redefine the definition of alternate feed. Rather, it clarifies that inclusion of resin media into the alternate feed category is inconsistent with the original intent of RIS 00–23 and with technology now in existence in the uranium recovery industry.

Background

As stated above, the NRC is issuing this RIS to clarify the NRC's policy regarding alternate feed. In SECY–99–01, ''Use of Uranium Mill Tailings Impoundments for the Disposal of Other Than 11e.(2) Byproduct Materials, and Reviews of Applications to Process Material Other Than Natural Uranium Ores,'' (ADAMS Accession No. MLXXXXXXXX) the staff defines alternate feed as material other than natural uranium ores. Alternate feed can, therefore, be certain wastes, including sludges or soils, from other sites that contains recoverable amounts of uranium. The RIS 00–23 provided guidance on evaluating requests for a license amendment for a uranium recovery facility (*i.e.,* conventional mill) to accept this material, recover the uranium, and dispose of the tailings (*i.e.,* waste material) as byproduct material in the mill tailings impoundment. However, the NRC staff finds the resin from certain source material operations, such as community water treatment facilities and mine dewatering operations, are equivalent to the resin being used at uranium recovery facilities (*e.g.* ISRs or conventional mills/heap leach facilities using ion exchange circuits). In the ISR method, ore is not extracted from the ground for processing at a mill. Rather, the ore is processed in-situ with the resulting uranium-bearing fluids being passed through IX resins to extract the uranium. The NRC staff based this finding on the fact that the resins are chemically and physically essentially the same, and would be processed in the same way, as resins used in normal uranium recovery operations.

In December 2003, the U.S. Environmental Protection Agency (EPA) enacted a drinking water limit of 30 μg/L of uranium in drinking water. This limit applied to Community Water Systems (CWSs), which the EPA defines as public water systems that supply water to the same population year-round. For small CWSs that are required to remove uranium from drinking water to meet EPA standards, the transport, treatment, and disposal of treatment residuals (*e.g.,* uranium loaded treatment resin) can be a significant cost. It has been noted by the EPA that for small-scale CWSs, handling of treatment residuals such as uranium-loaded resin may account for 50 percent of their total operating budget.[2] This financial burden has led some stake holders to urge the EPA to reconsider its regulations related to uranium in drinking water, including the waste disposal requirements for such materials.

Related to the issue above, the NRC staff has been queried by representatives of the uranium recovery industry and

[1] For the purposes of this RIS, equivalent feed is: ion exchange (IX) resin that is loaded with uranium at a facility other than a licensed uranium recovery facility, such as water treatment plants or mine dewatering operations.

[2] The EPA currently defines uranium-loaded resin generated by drinking water treatment to remove the uranium as a Technically-Enhanced Naturally-Occurring Radioactive Material (TENORM) that requires disposal at a facility permitted under Subtitle C or D of the Resource Conservation & Recovery Act (RCRA).

uranium water treatment suppliers/operators about the potential for uranium recovery facilities to accept and process uranium-loaded resin (ULR) generated by drinking water treatment because the ULR can be processed in an ISR operator's ion exchange recovery circuit. However, in the absence of this clarification provided by this RIS, the ISR uranium recovery facility would be required to submit, and have the NRC approve, an amendment to its NRC license prior to receiving and processing such resins. An amendment would be required because without this clarification these resins would be considered an alternate feed, despite the fact that such resins are essentially the same as those resins currently used at ISR facilities during uranium recovery operations.

Summary of Issue

Currently, the only options for the disposition of resins generated from operations other than uranium recovery operations (*i.e.,* treating drinking water sources and mine dewatering) are processing as alternate feed at a mill or disposal in landfills permitted under the RCRA or licensed by the NRC or an Agreement State. Under past interpretations of RIS 00–23, a license amendment would be required for an NRC-licensed uranium recovery facility to accept uranium-bearing resins resulting from treatment of community water supplies. The staff has determined that this interpretation does not reflect present day operating practices in the uranium recovery industry and is not consistent with the Commission's intent in issuing RIS 00–23. In particular, the NRC staff has determined that NRC and Agreement State-licensed uranium recovery facilities should be permitted to accept these resins as equivalent feed without the need for a license amendment so long as the receiving facility can demonstrate that processing the equivalent feed stays within the facilities' existing safety and environmental review envelope.

The basis for the staff's position relates to the original intent of RIS 00–23. The RIS 00–23, and the underlying Commission decision, was intended to address a concern that without restrictions on the processing of material other than natural ore, a conventional uranium recovery mill could process any material containing uranium and dispose the waste in the ''tailings pile'' (*see* Page A2 of SECY–99–011, [INSERT TITLE AND ADAMS ML]) resulting in what was then-termed ''sham-disposal'' (*see* SECY–09–012, [INSERT TITLE AND ADAMS ML]) (*i.e.* waste material that would otherwise have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose that material in the tailings pile as 11e.(2) byproduct material). Thus, material very dissimilar to the material normally processed at a conventional mill, would be processed largely to allow disposal as 11e.(2) byproduct material. In the case of ULR, the concern addressed in RIS 00–23 is not at issue. The ULRs are essentially the same as resins used to extract uranium at an in-situ recovery facility and the resulting processing and waste products would be the same as those associated with normal in-situ uranium recovery operations. Also similar to ISR resin, ULR is designed to only capture uranium and not other hazardous constituents.

Consequently, in this guidance, the staff is defining the term ''equivalent feed'' to apply to those circumstances where the feed material is essentially the same in physical form and radiological content as the source material that is normally processed at a uranium recovery facility. For the purpose of this RIS, equivalent feed is IX resin that is loaded with uranium at a facility other than a licensed uranium recovery facility, such as water treatment plants or mine dewatering operations. However, it should be noted that processing of these resins for source material would need to occur before any waste would be considered as 11e.(2) byproduct material.

To constitute equivalent feed, resin must be chemically and physically essentially the same to that which is currently used at licensed uranium recovery facilities and must not result in additional waste streams or risks not assessed during the process of licensing the receiving uranium recovery facility. For example, a typical uranium treatment resin for drinking water (Z–92®) is produced by Lanxess (also known as Sybron Chemicals). The Z–92® resin is essentially the same in composition and function to the Dow 21K resin, the typical ion exchange resin used at most uranium recovery facilities. A comparison of the product information of Z–92® resin to that of Dow 21K resin indicates the following:

—Both are a strong-base, Type I anion exchange resin;

—The composition of both is divynylbenzene (dvb) styrene;

—The functional group of both is a quarternary amine;

—The physical form of both is resin beads with essentially the same bulk weight, color, and amine odor;

—The Z–92® resin is available in a similar bead-size range to that of Dow 21K;

—Water Remediation Technologies, Inc. identifies the Z–92® resin as selective for uranium; the Dow 21K resin is also selective for uranium.

The primary difference between the Z–92® and the typical uranium recovery IX resin is that the water treatment resin is marked and packaged specifically for use in potable water systems and, therefore, undergoes an additional step of the Water Quality Association testing for certification to ANSI/NSF Standard 61.

Given that ULRs are essentially the same as those resins processed at an in-situ recovery central processing plant; the staff sees no basis for requiring that an in-situ mill operator obtain a license amendment to process this essentially same material. The same process is also used for eluting or recovering uranium from water treatment and ISR resins. Therefore, the NRC staff believes that water treatment resins should be defined as equivalent feed. Thus, the processing of equivalent feed at a licensed in-situ recovery facility will not require an amendment to an existing license so long as the existing limits on production of uranium in the license are not exceeded and that the processing is within the existing safety and environmental review envelope.

Mine dewatering operations involve the extraction of water from surface or underground mines and, when necessary, the treatment of extracted water to remove pollutants prior to discharge. Mine dewatering is often necessary to allow miners to safely extract ore. In the case of uranium mine dewatering, extracted water is often treated by ion exchange to remove uranium prior to discharge. These ion exchange resins must either be disposed in a landfill or could be eluted at a uranium recovery facility. It should be noted that in the past, mine dewatering resins have been treated as alternate feed at conventional mills (57 FR 20532). These license amendments were required because at that time, the staff considered the mine dewatering resins to be processed or refined ore distinct from natural ore normally processed at a conventional mill. However, if a conventional mill has an existing IX processing circuit, either as part of its conventional milling process or a separate process line, it may accept equivalent feed without a license amendment.

For example, upon staff inquiry, Kennecott Uranium Company stated that its mine dewatering resin is the

Dow 21K resin that is discussed above, which is the same resin used at ISR facilities. Therefore, the staff determined that mine dewatering resins, like loaded resins from CWSs, can be more appropriately classified as equivalent feed when they are sent for processing at a uranium recovery facility.

After processing the equivalent feed, the spent resin can be disposed as byproduct material in the same manner as the resin used in the primary uranium recovery activity. Disposal sites could either be existing mill tailings impoundments or other disposal facilities licensed by the NRC or Agreement States. No additional disposal requirements are necessary. This approach benefits our national interest by recovering a valuable resource and the environment by providing additional options instead of disposal for this material. Alternately, the unloaded resin may be returned to the water treatment facility, a mine dewatering facility, or a licensed uranium recovery facility for reuse. This is an economic benefit to the treatment facility (particularly CWSs) since operating costs are reduced and also results in less overall disposal of resin.

Enclosure 1 to this RIS offers additional information, which addressees may find useful, about uranium recovery processing of equivalent feed. Enclosure 2 contains procedures which the NRC finds satisfactory for accepting equivalent feed.

Voluntary Response

All addresses and the public may voluntarily submit comments on the policy regarding submittal of amendments for processing of equivalent feed at licensed uranium recovery facilities presented in this RIS. To be of use to the NRC, responses should be submitted by October 31, 2011.

Backfit Discussion

This RIS requires no action or written response. Any action that addressees take to implement changes or procedures in accordance with the information contained in this RIS ensures compliance with current regulations, is strictly voluntary, and, therefore, is not a backfit under any of the backfitting provisions contained in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109, 70.76, 72.62, 76.76, or the issue finality provision of 10 CFR part 52. Consequently, the staff did not perform a backfit analysis.

Federal Register Notice

To be done after the public comment period.

Congressional Review Act

This RIS is a rule as designated in the Congressional Review Act (5 U.S.C. 801–886) and, therefore, is subject to the Act.

Related Generic Communications

RIS 00–23, ''Recent Changes to Uranium Recovery Policy.''

Paperwork Reduction Act Statement

This RIS references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collection requirements were approved by the Office of Management and Budget, approval numbers 3150–0020.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Enclosures

1. *Uranium Recovery Processing of Equivalent Feed:* Additional Information.
2. Procedure for Accepting Equivalent Feed.

Uranium Recovery Processing of Equivalent Feed: Additional Information

Processing of equivalent feed from water treatment plants and mine dewatering operations at uranium recovery facilities (*e.g.* in-situ recovery (ISR) or conventional mills/heap leach facilities with ion exchange circuits) results in a lower overall environmental impact and is the preferred option when compared to disposal of these resins in a Resource Conservation & Recovery Act (RCRA)-permitted landfill or NRC and Agreement State licensed landfill. Transportation impacts are similar since in either option, the resin is trucked to an isolated location away from population centers (RCRA-permitted or NRC/Agreement State licensed landfill or a uranium recovery facility). Although disposal of equivalent feed in a lined RCRA-permitted landfill or NRC/Agreement State licensed landfill provides short term isolation, the long term environmental and financial liability associated with potential landfill failure coupled with the societal benefit of putting the uranium into the nuclear fuel cycle results in uranium recovery facility processing of equivalent feed, such as uranium-loaded water treatment and mine dewatering resin, as the preferred environmental option.

Processing water treatment resins as equivalent feed provides a significant cost benefit to small Community Water Systems. For these small water treatment operators, disposal at RCRA-permitted or NRC/Agreement State licensed landfills is cost prohibitive. Although, at this time, it is not possible to know the exact financial arrangements between the water treatment and uranium recovery facilities with respect to the processing of equivalent feed, it is reasonable to assume that the financial arrangements would be significantly more beneficial to the small water treatment operators than landfill disposal.

Procedures for Accepting Equivalent Feed

In situ recovery facilities (ISRs) or conventional mills with ion exchange circuits may accept equivalent feed, as defined in this regulatory issue summary, without a license amendment. The licensee should document that the received resins meet the equivalent feed criteria by being: (1) Chemically and physically essentially the same as the resins processed at the facility; (2) processed the same way as resins processed at the facility; and (3) processing the equivalent feed material stays within the existing safety and environmental review envelope for the facility. The NRC inspectors will review this documentation during the inspection process to verify that the received resins meet the equivalent feed criteria such that the licensee's processing of the material can be considered consistent with their license.

Following elution of the uranium-loaded equivalent feed (*i.e.,* removal of the uranium from the treatment resin), the resulting unloaded resin can take two paths. Since the NRC is allowing equivalent feed to be processed at uranium recovery facilities, the wastes associated with processing equivalent feed (*i.e.,* unloaded resin) are considered byproduct material, as defined in Title 10 of the Code of Federal Regulations part 40. Therefore, these wastes may be disposed of at an NRC-licensed facility without further documentation. Alternately, the unloaded resin may be returned to a water treatment facility, a mine dewatering facility or a licensed uranium recovery facility for reuse.

Contact

If you have any questions about this summary, please contact Mr. Ted Carter, Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–5543 or *e-mail: Ted.Carter@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of September 2011.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–25243 Filed 9–29–11; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Submit comments on or before November 29, 2011.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or e-mail at *pcfr@peacecorps.gov.* E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: It has been the Peace Corps' longstanding policy to exclude from Peace Corps Volunteer service and Peace Corps employment any persons who have engaged in intelligence activity or related work or who have been employed by or connected with an intelligence Agency. It is crucial to the Peace Corps in carrying out its mission that there is a complete and total separation of Peace Corps from the intelligence activities of the United States government, both in reality and appearance. Any semblance of a connection between Peace Corps and the intelligence community would seriously compromise the ability of the Peace Corps to develop and maintain the trust and confidence of the people of the host countries. It could also put Volunteers at risk in the countries in which they serve.

Method: E-mailing the Intelligence Background Questionnaire to applicants or their relatives with an intelligence connection. The respondent returns the Intelligence Background Questionnaire by E-mail or fax.

Title: Intelligence Background Questionnaire.

OMB Control Number: 0420-pending.

Type of information collection: New information collection.

Affected public: Individuals or households.

Respondents' obligation to reply: Required to obtain or retain benefits.

Burden to the public:

(a) *Estimated number of respondents:* 100.

(b) *Frequency of response:* One time.

(c) *Estimated average burden per response:* 10 minutes.

(d) *Estimated total reporting burden:* 16.67 hours.

(e) *Estimated annual cost to respondents:* $0.00.

General description of collection: Peace Corps' Office of the General Counsel uses the form to determine what kind of intelligence connection an applicant or an applicant's relative might have and how close an applicant and a relative with an intelligence connection are. The Office of the General Counsel uses the information to determine whether the intelligence connection is substantial enough to prevent the person from being employed at the Peace Corps or being a Volunteer for the Peace Corps permanently or for a set period of time from the last intelligence connection. If an applicant disagrees with the General Counsel's determination, he or she may appeal the determination to the Director of the Peace Corps.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps Response, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on September 23, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–25200 Filed 9–29–11; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–82; Order No. 872]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Belk, Alabama post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 7, 2011; *deadline for notices to intervene:* October 21, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 22, 2011, the Commission received a petition for review of the Postal Service's determination to close the Belk post office in Belk, Alabama. The petition was filed by Ronald Waldrop, Mayor on behalf of the Town of Belk (Petitioner) and is postmarked September 13, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–82 to

consider Petitioner's appeal. If Petitioner would like to further explain its position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 27, 2011.

Category of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 7, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 21, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 22, 2011	Filing of Appeal.
October 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 7, 2011	Deadline for the Postal Service to file any responsive pleading.
October 21, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 27, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 16, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 1, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 8, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 11, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25246 Filed 9–29–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–85; Order No. 875]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the North Canton, Connecticut post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 7, 2011; *deadline for notices to intervene:* October 21, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 22, 2011, the Commission received a petition for review of the Postal Service's determination to close the North Canton post office in North Canton, Connecticut. The petition was filed by Ray and Dru McNeil (Petitioners). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–85 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 27, 2011.

Category of issues apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 7, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 21, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 22, 2011	Filing of Appeal.
October 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 7, 2011	Deadline for the Postal Service to file any responsive pleading.
October 21, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 27, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 16, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 1, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 8, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25278 Filed 9–29–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–84; Order No. 874]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Jordanville, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service,

petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 7, 2011; *deadline for notices to intervene:* October 21, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 22, 2011, the Commission received a petition for review of the Postal Service's determination to close the Jordanville post office in Jordanville, New York. The petition was filed by Linda Roberts (Petitioner) and is postmarked September 13, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–84 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 27, 2011.

Category of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 7, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 21, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 22, 2011	Filing of Appeal.
October 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 7, 2011	Deadline for the Postal Service to file any responsive pleading.
October 21, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 27, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 16, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 1, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 8, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 11, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25265 Filed 9–29–11; 8:45 am]
BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–83; Order No. 873]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Climax, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service*): October 7, 2011; *deadline for notices to intervene:* October 21, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 22, 2011, the Commission received a petition for review of the Postal Service's determination to close the Climax post office in Climax, New York. The petition was filed by Sue Keeler (Petitioner) and is postmarked September 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–83 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 27, 2011.

Category of issues apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 7, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 7, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before October 21, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 7, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 7, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, James Waclawski is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

September 22, 2011	Filing of Appeal.
October 7, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 7, 2011	Deadline for the Postal Service to file any responsive pleading.
October 21, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
October 27, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 16, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).

PROCEDURAL SCHEDULE—Continued

December 1, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 8, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 6, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–25263 Filed 9–29–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65401; File No. SR–NSCC–2011–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Rules Relating to the Settlement Timing of Partial Transfers Which Include Mutual Fund Assets Through NSCC's Automated Customer Account Transfer Service

September 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on September 12, 2011, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared primarily by NSCC.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend NSCC's rules regarding an adjustment to the settlement timing of partial transfers of mutual fund assets[4] through NSCC's Automated Customer Account Transfer Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since its inception in 1985, NSCC's Automated Account Transfer System (''ACATS'')[6] has provided NSCC members with an efficient automated means for the prompt transfer of customer accounts between members. NSCC, in consultation with the industry,[7] is proposing to adjust the processing schedule related to ACATS in order to reduce the risk associated with a partial transfer that includes mutual fund assets processed through NSCC's Fund/SERV service[8] and ACATS. Specifically, the proposed rule change would revise NSCC rules so that the last day a ''Fund Member'' or ''Mutual Fund Processor,'' as applicable,[9] would be permitted to respond to a mutual fund reregistration request submitted through Fund/SERV is aligned with the ACATS settlement date for the transfer. As more fully described below, the proposed rule change should reduce the likelihood that a transaction could be responded to by the applicable Fund Member or Mutual Fund Processor after settlement occurs, which might otherwise create risk and complicate the reversal of incentive charges in the event of the default of a party to the transaction.

(1) Current Non-CNS ACATS Process

For non-CNS eligible securities transferred through ACATS (on broker-to-broker transfers only), on ACATS settlement date NSCC automatically debits the Delivering Member with the market value of the assets being transferred through ACATS and credits the Receiving Member with the same amount.[10] The actual transfer of the assets occurs for value, so that the original debits and credits associated with the transfer are offset. This process provides incentive to the Delivering Member to complete delivery in a timely manner and also allows the Receiving Member to record the customer position on its records regardless of whether the security is actually delivered on settlement date. For non-CNS eligible securities transferred through ACATS, NSCC does

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change is attached as Exhibit 5 to NSCC's filing, which is available at *http://www.dtcc.com/downloads/legal/rule_filings/2011/nscc/2011-07.pdf*.

[4] For purposes of this rule filing, the term ''mutual fund assets'' means Fund/Serv Eligible Assets, as that term is defined under Rule 1 of NSCC's Rules and Procedures. Pursuant to Rule 3, Section 1(c) of NSCC's Rules, a Fund/Serv Eligible Fund must be assigned a CUSIP number, and may only be: (i) An investment company regulated under the Investment Company Act of 1940; (ii) a fund or other pooled investment entity that is subject to regulation under applicable federal and state banking and/or insurance law; or (iii) a fund or other pooled investment entity subject to regulation under other applicable law which meets criteria established by NSCC from time to time.

[5] The Commission has modified the text of the summaries prepared by NSCC.

[6] Through ACATS, an NSCC member to whom a customer's securities account is to be transferred (''Receiving Member'') initiates the account transfer process by submitting a Transfer Initiation Request (''TIF'') to NSCC. When an NSCC member currently holding the customer account accepts a customer account transfer (''Delivering Member'') and all other preconditions to the processing of an ACATS transfer pursuant to NSCC's Rules have been met, NSCC will enter CNS-eligible securities in that account into NSCC's CNS Accounting Operation (''CNS'') prior to the settlement cycle on the day before settlement date. ''Non-CNS ACATS'' transactions will be settled either through or away from NSCC depending on the asset type. *See* Rule 50 (Automated Customer Account Transfer Service).

[7] NSCC has engaged in extensive consultations with the Securities Industry and Financial Markets Association's (''SIFMA'') Customer Account Division and Securities Operations Division regarding this proposed rule change.

[8] NSCC processes and settles mutual fund transactions through Fund/SERV. NSCC members can utilize the automated, standardized formats and centralized platform of Fund/SERV to complete order entry (purchases, exchanges and redemptions) as well as confirmations, registrations and money settlement. NSCC's Rule 52 (Mutual Fund Services).

[9] A ''Fund Member'' is an NSCC limited membership type defined in NSCC Rule 2 that participates in NSCC's mutual fund services acting as: (A) A mutual fund's: (1) Principal underwriter, (2) co-distributor, (3) sub-distributor; or (B) an entity that is otherwise authorized to process transactions on behalf of a mutual fund. A ''Mutual Fund Processor'' is a member authorized to act on behalf of a mutual fund in accordance with NSCC Rule 52.

[10] CNS-eligible securities or non-CNS eligible securities refers to securities that are eligible or not eligible, respectively, for processing through NSCC's Continuous Net Settlement system (''CNS''). CNS system is an automated book-entry accounting system for securities transactions that allows each security in CNS to be netted to one position per participant, with NSCC as its central counterparty. See Rule 11 of NSCC Rules and Procedures.

not guarantee the transfer debits and credits so if a member fails to meet its settlement obligation, reversals of the money incentive debits and credits in ACATS may be required as part of NSCC's close-out process.

(2) ACATS and Fund/SERV Interface and Settlement Timing

The combined use of ACATS and Fund/SERV for the transfer of customer mutual fund assets between brokers (referred to as the ''ACATS-Fund/SERV Interface'') is a non-CNS, ACATS process where both the reregistration of mutual fund securities and associated money settlement of ACATS-Fund/SERV transactions are processed through NSCC's systems. Through this process, after both parties to the transfer have agreed to the transaction details ACATS creates a Fund/SERV record containing reregistration instructions and detailed information provided by the Delivering Member regarding how the asset is currently held. This record is sent to the applicable Fund Member or Mutual Fund Processor. On ACATS settlement date, the Delivering Member of the mutual fund asset is debited the market value of the asset and the Receiving Member is credited the market value of the asset. Any acceptance or rejection by the receiving Fund Member/Mutual Fund Processor is delivered through NSCC's Fund/SERV and is relayed to ACATS. In the case of an acceptance, NSCC offsets any incentive debits and credits with reverse entries. However, in the case of a rejection or a failure to respond to the transfer request, the incentive charges are carried into money settlement.[11]

Currently in ACATS, full account transfers and partial account transfers have different settlement dates. A full account transfer has a two-day settlement cycle. A partial account transfer has a one-day settlement cycle; however, Fund/SERV always provides the receiving Fund Member/Mutual Fund Processor with a two-day response period to acknowledge or reject a transfer.[12] Thus, for a full transfer, the last day for a Fund Member/Mutual Fund Processor to acknowledge or reject a fund reregistration is always on ACATS settlement date. However, for a partial transfer, the last day for a Fund Member/Mutual Fund Processor to acknowledge or reject a fund reregistration is on the business day after ACATS settlement date (unless the transfer contains option securities because options securities always require an additional day for settlement). In the case of a partial transfer where the reregistration occurs through the ACATS-Fund/SERV interface, the one-day delay presents a risk that the Delivering Member will not recover the incentive debit money that it would actually have paid through money settlement on settlement date in the event that the receiving Fund Member/Mutual Fund Processor provides no response (*i.e.,* the transaction is pending) on settlement date, accepts the transfer on Settlement Date + 1, and member subsequently defaults on the same date (*i.e.,* Settlement Date + 1).[13] The proposed rule change would align the settlement date and Fund Member/Mutual Fund Processor response date thereby eliminating this risk and providing NSCC with greater transparency to track mutual fund transactions so that it can identify and reverse only the incomplete transactions (rejected transactions or transactions that were not responded to by the Fund Member/Mutual Fund Processor) on settlement date to avoid the need to reverse the payment of money in the event a member defaults.

(3) Proposed Rule Change

Pursuant to the rule change, NSCC proposes to modify: (A) Section 12 of Rule 50 (Automated Customer Account Transfer Service) to provide one additional business day for the transfer of any member to member partial transfer that contains any Fund/SERV-eligible asset before it reaches settlement date, and (B) Section 13 of Rule 50 to make conforming changes that provide that the settlement date for transfers where Delivering Member submits detailed account asset data and the transfer is not rejected by the Receiving Member would be one business day after the Delivering Member has submitted the asset account data unless the transfer contains options assets or Fund/SERV eligible assets. In such a situation, the settlement date for all assets would be two business days. The text of Rule 52 (Mutual Fund Services) is unaffected by this proposal. The effective date of the proposed rule change will be announced by Important Notice.

(4) Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC because it provides enhanced customer protection and greater transparency with respect to the settlement status of transactions processed through the ACATS-Fund/SERV interface and reduces associated risks in the event of a party's default. As such, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions. Furthermore, the proposed rule change is consistent with the CPSS/IOSCO Recommendations for Central Counterparties.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited NSCC.

III. 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2011–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[11] In the case of a rejection or no response by the receiving Fund Member/Mutual Fund Processor, it is the direct responsibility of the Receiving Member and Delivering Member to effect the reregistration of the asset outside of the ACATS-Fund/SERV interface and to reconcile any incentive charges that were applied.

[12] Please note that a previous rule filing (File No. SR–NSCC–2007–13, SEC Release No. 56678 [October 19, 2007], 72 FR 60701 [October 25, 2007]) made reference to adjusting the response period for the Fund Member/Mutual Fund Processor to one business day. The actual response period effected by that rule change was a two-day period as a result of cut-off times associated with internal processing. As described in this filing, the proposed rule change will ensure that the actual timing of the ACATS settlement cycle and the response period accorded to a Fund Member/Mutual Fund Processor with respect to this process will be aligned. The time frames proposed herein supersede any time frames previously in effect.

[13] In this instance, the Delivering Member would have been charged the market value of the asset but would not have retained possession of the asset. If the Receiving Member defaults, the Delivering Member would lack recourse to recover the amount debited from its account on settlement date other than through a claim against the insolvent Receiving Member's estate.

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2011–07. This file number should be included on the subject line if e-mail 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 Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule filings/2011/nscc/2011-07.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2011–07 and should be submitted on or before October 21, 2011.

IV. Commission's Finding and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons stated below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.[14] Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds of NSCC's participants which are in the custody or control of the clearing agency or for which it is responsible.[15]

As described in this filing, NSCC's proposal to move the settlement of partial transfers of mutual fund assets in ACATS from one day to two days should help mitigate the risk that in the event of a member defaulting between the time funds have been exchanged but delivery has not been made and should provide greater transparency with respect to the settlement status of transactions processed through the ACATS-Fund/SERV interface. Accordingly, the Commission finds that the rule change is consistent with Section 17A(b)(3)(F) of the Act because it should allow NSCC to reduce risks associated with the transfer of mutual fund assets in ACATS, which should in turn better enable NSCC to assure the safeguarding of funds and securities in its possession or control or for which it is responsible.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, approval of the proposal will allow NSCC to immediately implement a procedure that should reduce risk for NSCC and its members, and other financial intermediaries associated with the transfer of mutual fund assets in ACATS. As such, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice filing in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NSCC–2011–07) is approved on an accelerated basis. For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25195 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78q–1(b)(3)(F).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65394; File No. SR–MSRB–2011–10]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed Rule Change Consisting of Amendments to MSRB Rule G–20 (Gifts and Gratuities) and Related Amendments to MSRB Rule G–8 (Books and Records) and MSRB Rule G–9 (Preservation of Records), and To Clarify That Certain Interpretations by the Financial Industry Regulatory Authority and the National Association of Securities Dealers Would Be Applicable to Municipal Advisors

September 26, 2011.

On August 16, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of proposed amendments to MSRB Rule G–20 (on gifts and gratuities), which would apply the rule to municipal advisors, along with related proposed amendments to Rule G–8 (on books and records) and Rule G–9 (on preservation of records), and to clarify that certain interpretations by the Financial Industry Regulatory Authority (''FINRA'') of its gifts rule (FINRA Rule 3220) and its predecessor, the National Association of Securities Dealers (''NASD''), of its gift rule (NASD Rule 3060), would be applicable to municipal advisors. Notice of the proposed rule change was published in the **Federal Register** on September 7, 2011.[3] The Commission received one comment letter on the proposed rule change.[4] On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–10).[5]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25188 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65234 (August 31, 2011), 76 FR 55449.

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Joseph J. Connolly, Counsel, The PFM Group, dated August 23, 2011.

[5] *See* MSRB Notice 2011–51 (September 12, 2011).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65393; File No. SR–MSRB–2011–17]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Regarding Professional Qualifications and Information Concerning Associated Persons

September 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2011, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of proposed amendments to Rule G–3, on professional qualifications, and Rule G–7, on information concerning associated persons (the ''proposed rule change''). The MSRB requests that the proposed rule change be made effective on November 7, 2011, to coincide with proposed changes to the Series 7 examination filed by the Financial Industry Regulatory Authority (''FINRA'').[3]

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx*, at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board 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

MSRB Rule G–3(a)(i) defines a municipal securities representative as a natural person associated with a broker, dealer or municipal securities dealer (''dealer''), other than a person whose functions are solely clerical or ministerial, whose activities include one or more of the following:

1. Underwriting, trading or sales of municipal securities;

2. financial advisory or consultant services for issuers in connection with the issuance of municipal securities;

3. research or investment advice with respect to municipal securities; or

4. any other activities that involve communication, directly or indirectly, with public investors in municipal securities provided, however, that the activities enumerated in 3 and 4 above are limited to such activities as they relate to the activities enumerated in 1 and 2 above.

An individual seeking to become qualified as a municipal securities representative must pass either of two qualification examinations—the Municipal Securities Representative Qualification Examination (Series 52) or the General Securities Registered Representative Examination (Series 7).

On September 7, 2011, FINRA filed with the Commission a proposed rule change to restructure the Series 7 examination to focus on a broader range of securities products available for sale by registered representatives. The effect of these changes would be a de-emphasis on non-sales aspects of the activities of securities professionals. In focusing on general principles applicable to the buying and selling of a broad range of securities, rather than specific products, the restructured Series 7 examination would reduce the number of questions that test for specific knowledge of municipal securities and the rules of the MSRB. Given the shift in emphasis of the Series 7 examination and the reduced number of municipal questions, in the view of the MSRB, passage of the Series 7 examination would no longer represent a useful gauge of whether a securities professional was qualified to perform municipal securities activities other than sales to, and purchases from, customers [4] of municipal securities (''sales activities'').

As a result of this restructured Series 7 examination, the MSRB determined to file the proposed rule change consisting of amendments to MSRB Rule G–3, on professional qualifications. The proposed rule change would provide that the Series 7 examination would no longer qualify individuals as ''municipal securities representatives,'' unless they were engaged solely in sales activities or they passed the Series 7 examination prior to the effective date of the proposed rule change. Instead, passage of the Series 52 examination would be required for any municipal securities activities other than sales activities.

The proposed rule change would create a sub-category of municipal securities representative referred to as a ''municipal securities sales limited representative'' and would apply to individuals whose activities with respect to municipal securities are limited exclusively to sales activities. The proposed rule change would provide that an individual could qualify as a municipal securities sales limited representative by passage of the Series 7 examination. Other individuals would be required to pass the Series 52 examination in order to qualify as full municipal securities representatives, unless they had passed the Series 7 examination prior to the effective date of the proposed rule change and had maintained this registration.

The proposed rule change would also require a municipal securities limited representative who wished to become a municipal securities principal to pass the Series 52 examination prior to taking the Series 53 municipal securities principal examination. Otherwise, the proposed amendments to Rule G–3 would not distinguish between ''municipal securities sales limited representatives'' and other ''municipal securities representatives.''

The MSRB is also filing proposed amendments to MSRB Rule G–7, on information concerning associated persons. Rule G–7 requires brokers, dealers and municipal securities dealers (''dealers'') to keep records concerning their associated persons, including the category of function they perform ''whether municipal securities principal, municipal securities sales principal, municipal securities representative or financial and operations principal.'' The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File Number SR–FINRA–2011–45.

[4] ''Customer'' is defined in MSRB Rule D–9 as ''any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.''

rule change would add ''municipal securities sales limited representative'' to that list.[5] Additionally, the proposed rule change would streamline Rule G–7(b) by simply requiring that dealers obtain either Form U4 (in the case of non-bank dealers) or Form MSD–4 (in the case of bank dealers), rather than repeating the categories of information required by those forms.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Exchange Act, which authorizes the MSRB to prescribe ''standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.'' Section 15B(b)(2)(A) of the Exchange Act also provides that the Board may appropriately classify municipal securities brokers, municipal securities dealers, and municipal advisors and persons associated with municipal securities brokers, municipal securities dealers, and municipal advisors and require persons in any such class to pass tests prescribed by the Board.

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(A) of the Exchange Act in that the proposed rule change will ensure that individuals seeking to engage in more than sales activities will be tested on their qualification and competency to engage in such other municipal securities activities. These individuals will be required to pass an examination that includes questions both on municipal securities and the municipal markets and on U.S. government, federal agency and other financial instruments, economic activity, government policy, factors affecting interest rates, and applicable federal securities laws and regulations. The proposed rule change will also more closely align the information dealers are required to obtain pursuant to Rule G–7 with the information already required by FINRA and the bank regulators, thereby reducing the administrative burden on such dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov.*
- Please include File Number SR–MSRB–2011–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–17. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2011–17 and should be submitted on or before October 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25288 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[5] The proposed rule change would also add ''municipal fund securities limited principal'' to this list to reflect the previous creation of this separate category.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65395; File No. SR–MSRB–2011–12]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed New Rule G–42, on Political Contributions and Prohibitions on Municipal Advisory Activities; Proposed Amendments to Rules G–8, on Books and Records, G–9, on Preservation of Records, and G–37, on Political Contributions and Prohibitions on Municipal Securities Business; Proposed Form G–37/G–42 and Form G–37x/G–42x; and a Proposed Restatement of a Rule G–37 Interpretive Notice

September 26, 2011.

On August 19, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of (i) proposed MSRB Rule G–42 (on political

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G–8 (on books and records), G–9 (on preservation of records), and G–37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G–37/G–42 and Form G–37x/G–42x; and (iv) a proposed restatement of a Rule G–37 interpretive notice issued by the MSRB in 1997. Notice of the proposed rule change was published in the **Federal Register** on September 9, 2011.[3] The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–12).[4]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25189 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[3] *See* Securities Exchange Act Release No. 65255 (September 2, 2011), 76 FR 55976.

[4] *See* MSRB Notice 2011–51 (September 12, 2011).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65397; File No. SR–MSRB–2011–14]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed Rule G–36, on Fiduciary Duty of Municipal Advisors, and a Proposed Interpretive Notice Concerning the Application of Proposed Rule G–36 to Municipal Advisors

September 26, 2011.

On August 23, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of proposed Rule G–36 (on fiduciary duty of municipal advisors) and a proposed interpretive notice concerning the application of proposed Rule G–36 to municipal advisors. Notice of the proposed rule change was published in the **Federal Register** on September 12, 2011.[3] The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–14).[4]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25191 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 65282 (September 7, 2011), 76 FR 56254.

[4] *See* MSRB Notice 2011–51 (September 12, 2011).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65399; File No. SR–Phlx–2011–111]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change Requesting Permanent Approval of the Pilot Program Permitting NASDAQ OMX PHLX to Receive Inbound Routes by NOS

September 26, 2011.

I. Introduction

On August 8, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program to permit the Exchange to accept certain inbound orders that Nasdaq Options Services, LLC (''NOS'') routes from Nasdaq Options Market (''NOM''). The proposed rule change was published for comment in the **Federal Register** on August 19, 2011.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Exchange Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Exchange Act.[4] NOS is a broker-dealer that is a member of the Exchange, and currently provides to members of The NASDAQ Stock Market LLC (''Nasdaq'') that are NOM participants optional routing services to other market centers.[5] NOS is owned by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—Nasdaq, the Exchange, and NASDAQ OMX BX, Inc.[6] Thus, NOS is an affiliate of each of these exchanges. Absent an effective filing, Exchange Rule 985(b) would prohibit NOS from being a member of the Exchange.

On July 17, 2008, in connection with the acquisition of the Exchange by NASDAQ OMX, the Commission approved an affiliation between the Exchange and NOS for the limited purpose of permitting NOS to provide routing services for Nasdaq for orders that first attempt to access liquidity on Nasdaq's system before routing to the Exchange, subject to certain other limitations and conditions.[7] On February 26, 2010, the Exchange filed an immediately effective proposed rule change to modify the conditions for the affiliation between NOS and the Exchange, to permit the Exchange to receive certain orders routed by NOS from NOM without first checking the NOM book for liquidity on a one-year pilot basis.[8] Specifically, the Exchange proposed to permit NOS to route from NOM Exchange Direct Orders and orders in NOM Non-System Securities (including Exchange Direct Orders).[9]

[1] 15 U.S.C. 78s(b).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65135 (August 15, 2011), 76 FR 52030 (''Notice'').

[4] 15 U.S.C. 78s(b).

[5] NOS operates as a facility of Nasdaq that provides outbound routing from NOM to other market centers, subject to certain conditions. *See* NOM Rules Chapter VI, Section 11(e).

[6] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (''Phlx Approval Order''). *See also* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01).

[7] *See* Phlx Approval Order, 73 FR at 42887.

[8] *See* Securities Exchange Act Release No. 61667 (March 5, 2010), 75 FR 11964 (March 12, 2010) (SR–Phlx–2010–36) (''Phlx Routing Pilot Release''). The inbound routing pilot was subsequently extended and is set to expire on November 25, 2011. *See* Securities Exchange Act Release Nos. 63873 (February 9, 2011), 76 FR 8798 (February 15, 2011) (SR–Phlx–2011–16); and 65140 (August 16, 2011) 76 FR 52374 (August 22, 2011) (SR–Phlx–2011–116).

[9] NOS provides to NOM participants routing services to other market centers. Pursuant to Nasdaq's rules, NOS: (1) Routes orders in options currently trading on NOM, referred to as ''System Securities;'' and (2) routes orders in options that are not currently trading on NOM (''Non-System Securities''). *See* NOM Rules, Chapter VI, Section 1(b) and 11. When routing Non-System Securities, NOS is not regulated as a facility of Nasdaq, but as a broker-dealer regulated by its designated

Continued

The Exchange now seeks permanent approval of this inbound routing pilot.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with the Exchange.[14] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to Phlx by NOS from NOM that do not first attempt to access liquidity on the NOM book.[15] The Exchange states it has met these conditions:[16]

- First, the Exchange and FINRA have entered into a regulatory services agreement (''Regulatory Contract'') pursuant to which FINRA has been allocated regulatory responsibilities to review NOS's compliance with the Exchange's rules through FINRA's examination program.[17] The Exchange, however, retained ultimate responsibility for enforcing its rules with respect to NOS except to the extent that they are covered by an agreement with FINRA pursuant to Rule 17d–2 under the Act,[18] in which case FINRA is allocated regulatory responsibility.
- Second, FINRA and the Exchange will monitor NOS for compliance with Phlx's trading rules, and collect and maintain certain related information;[19]
- Third, FINRA will provide a report to the Exchange's Chief Regulatory Officer (''CRO''), on at least a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange and FINRA become aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules and (ii) quantifies the number of investigations that identify NOS as a participant that has potentially violated Exchange or Commission Rules;[20]
- Fourth, the Exchange adopted Rule 985(c), which requires NASDAQ OMX, as the holding company owning NOS and the Exchange, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system on the basis of non-public information regarding planned changes to the Exchange's systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members in connection with the provision of inbound routing to the Exchange;[21] and
- Fifth, the Exchange proposed that NOS be authorized to route (1) Exchange Direct Orders without checking the NOM book and (2) orders in NOM non-system securities inbound to the Exchange from NOM for a pilot period of twelve months, as further extended to November 25, 2011.[22]

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[23]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[24] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.[25]

examining authority. *See also* Phlx Routing Pilot Release, 75 FR at 11964. ''Exchange Direct Orders'' are orders that are directed to an exchange other than NOM as directed by the entering party without checking the NOM book. *See* NOM Rules Chapter VI, Section 1(e)(7).

[10] *See* Notice.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Phlx Approval Order, 73 FR at 42886–42887.

[15] *See* Phlx Routing Pilot Release.

[16] *See* Notice, 76 FR at 52031.

[17] The Exchange also states that NOS is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. *See* Notice, 76 FR at 52031, n.9.

[18] 17 CFR 240.17d–2.

[19] Pursuant to the Regulatory Contract, both the Exchange and FINRA will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 76 FR at 52031, n.11.

[20] *See id.*

[21] *See* Phlx Rule 985(c)(1). *See also* Notice, 76 FR at 52031.

[22] *See* Notice, 76 FR at 52031. *See also* supra note 8.

[23] *See* Notice, 76 FR at 52031–52032.

[24] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR–Amex–2008–62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[25] The Commission notes that it recently issued an order granting permanent approval of NASDAQ

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,[26] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to Phlx's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–Phlx–2011–111) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25193 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

OMX BX, Inc.'s pilot program permitting Boston Options Exchange to accept inbound routes by NOS of (1) NOM Exchange Direct Orders without checking the NOM book prior to routing, and (2) NOM non-system securities orders, including Exchange Direct Orders that NOS routes from NOM. *See* Securities Exchange Act Release No. 65199 (August 25, 2011), 76 FR 54277 (August 31, 2011) (SR–BX–2011–045).

[26] This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA, and, as applicable, a 17d–2 Agreement.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65400; File No. SR–NYSEArca–2011–53]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To Reflect a Change to the Benchmark Index Applicable to the Russell Equity ETF

September 26, 2011.

I. Introduction

On August 3, 2011, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to reflect a change to the benchmark index applicable to the Russell Equity ETF (''Fund,'' formerly known as the ''One Fund''). The proposed rule change was published for comment in the **Federal Register** on August 24, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Commission previously approved the listing and trading on the Exchange of shares (''Shares'') of ''One Fund,'' a series of U.S. One Trust, under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[4] On February 23, 2011, Frank Russell Company (''Russell'') acquired U.S. One, Inc., the previous investment adviser for the Fund, and the Fund's investment adviser became Russell Investment Management Company (''Adviser'').[5] In addition, as of April 15, 2011, the name of ''One Fund'' was changed to Russell Equity ETF, and the name of U.S. One Trust was changed to Russell Exchange Traded Funds Trust (''Trust''). Further, on or about May 2, 2011, the custodian, transfer agent, and administrator for the Fund changed from The Bank of New York to State Street Bank and Trust Company. These administrative changes were implemented as a result of the acquisition by Russell of U.S. One, Inc. The Exchange states that the shareholders of the Fund were notified of the changes to the Fund's name, the Trust's name, the Fund's investment adviser, and the custodian, transfer agent, and administrator in the updated Fund prospectus, dated April 29, 2011, included in the Fund's annual prospectus mailing to shareholders.[6] In this proposed rule change, the Exchange proposes to reflect a change to the benchmark index applicable to the Fund.[7]

As a result of the acquisition of U.S. One, Inc. by Russell, the Fund seeks to change its underlying benchmark to the Russell Developed Large Cap Index (''Index'') from the Fund's current benchmark, the S&P 500 Index.[8] The Index offers investors access to the large-cap segment of the developed equity universe representing approximately 75.4% of the global equity market. The Index includes the largest securities in the Russell Developed Index. As of May 31, 2010, the Index included 2,372 securities in 25 developed countries, with a market capitalization ranging from $238 billion to $1.3 billion; the weighted average market capitalization of Index components was $54.7 billion; and the largest three Index securities and associated Index weights were Exxon Mobil (1.58%); Apple Inc. (1.17%); and Chevron Corp. (0.79%). The current benchmark, the S&P 500 Index, includes 500 leading companies in leading industries of the U.S. economy, capturing 75% coverage of U.S. equities. It focuses on large capitalization securities and represents approximately 75% of the U.S. market capitalization. A committee determines the securities included based on a set of published guidelines. The Index includes the Russell 1000®, which represents 90% of U.S. market capitalization. It also includes an additional 1,372 securities which, as of May 31, 2010, were listed in other developed countries. The Adviser represents that the investment objective of the Fund has not changed, the Index more accurately represents the investment strategy of the Fund, and the change to the Fund's benchmark will not impact the investment objective or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65161 (August 18, 2011), 76 FR 53004 (''Notice'').

[4] *See* Securities Exchange Act Release No. 61843 (April 5, 2010), 75 FR 18558 (April 12, 2010) (SR–NYSEArca–2010–12) (''One Fund Order''). *See also* Securities Exchange Act Release No. 61689 (March 11, 2010), 75 FR 13181 (March 18, 2010) (SR–NYSEArca–2010–12) (''One Fund Notice,'' and together with the One Fund Order, collectively, the ''One Fund Release'').

[5] The Exchange represents that the Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio, and will continue to be in compliance with Commentary .06 to NYSE Arca Equities Rule 8.600. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] *See* Post-Effective Amendment No. 5 to Form N–1A for the Trust, dated April 29, 2011 (File Nos. 333–160877; 811–22320) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 29164 (March 1, 2010) (File No. 812–13815 and 812–13658–01) (''Exemptive Order'').

[7] The Adviser represents that, for one year following implementation of the change to the benchmark index, materials issued by the Fund relating to Fund performance, including materials posted on the Fund's Web site (*http://www.russelletfs.com*), will reference both the current benchmark and the new benchmark index, in accordance with Item 27(b)(7) of Form N–1A under the 1940 Act. The Adviser represents that the benchmark index change will be referenced on Russell's Web site, and that the quarterly fact sheet for the Fund, available on the Fund's Web site, will reference the current benchmark and the new benchmark index for one year.

[8] The change to the Fund's benchmark Index will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement.

the principal investment strategies for the Fund.

The Adviser has represented that it believes the Index is an appropriate broad-based benchmark index for the Fund and the Fund's investment objective. As represented in the One Fund Release, the Fund's investment objective is to seek long-term capital appreciation by investing at least 80% of its total assets in exchange-traded funds (''Underlying ETFs'') that track various securities indices comprised of large, mid, and small capitalization companies in the United States, Europe, and Asia, as well as other developed and emerging markets. As stated in the One Fund Release, the Adviser intends to hold Underlying ETFs that hold equity securities of large, mid, and small capitalization companies in the United States, as well as other developed countries and developing countries, and that give the Fund exposure to most major developed and developing markets around the world.[9] Thus, whereas the S&P 500 Index mostly reflects U.S.-based companies, the Index includes a broader range of issuers from both the domestic and international markets, and such range is consistent with, and should better reflect, the Fund's investment objective. The Exchange further states that, except for the changes noted above, all other representations made in the One Fund Release remain unchanged.

[9] The Adviser employs an asset allocation strategy focused on increasing shareholder return and reducing risk through exposure to a variety of domestic and foreign market segments. The Adviser's asset allocation strategy pre-determines a target mix of investment types for the Fund to achieve its investment objective and then implements the strategy by selecting securities that best represent each of the desired investment types. The strategy also calls for periodic review of the Fund's holdings as markets rise and fall to ensure that the portfolio adheres to the target mix and indicates purchases and sales necessary to return to the target mix. The Adviser selects Underlying ETFs based on their ability to accurately represent the underlying stock market to which the Adviser seeks exposure for the Fund, and seeks to construct a portfolio that will outperform its benchmark. Additionally, the Adviser seeks to maintain a low after-tax cost structure for the Fund and, therefore, also evaluates ETFs based on their underlying costs. The Adviser employs a buy and hold strategy, meaning that it buys and holds securities for a long period of time, with minimal portfolio turnover. The Fund, using a buy and hold strategy, seeks to achieve its investment objective through investment in Underlying ETFs that track certain securities indices. While the Fund intends to primarily invest in Underlying ETFs that hold equity securities, the Adviser may also invest in Underlying ETFs that may hold U.S. and foreign government debt and investment grade corporate bonds. According to the Registration Statement, the Fund does not invest in derivatives. *See* One Fund Release, *supra* note 4.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the Fund's benchmark Index will continue to be a broad-based index of large capitalization companies. The Index represents approximately 75.4% of the global equity market and includes the largest securities in the Russell Developed Large Cap Index. The Fund's investment objective continues to seek long-term capital appreciation by investing at least 80% of its total assets in Underlying ETFs that are listed and traded on a national securities exchange and that track various securities indices comprised of large, mid, and small capitalization companies in the United States, Europe, and Asia, as well as other developed and emerging markets. The Index includes a broad range of issuers from both the domestic and international markets, and the Commission believes that such range is consistent with the Fund's existing investment objective. In addition, the Adviser represents that the investment objective of the Fund has not changed, and the change to the Fund's benchmark will not impact the investment objective or the principal investment strategies for the Fund. Further, the Adviser has represented that the change to the Fund's benchmark will not impact shareholders of the Fund. Importantly, the Exchange states that, except for the changes noted above, all other representations made in the One Fund Release remain unchanged and that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Commission notes that the value of the new benchmark Index will continue to be calculated and disseminated in a manner consistent with the representations in the One Fund Release relating to the previous benchmark index.

[10] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEArca–2010–53) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25194 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65398; File No. SR–MSRB–2011–15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed Interpretive Notice Concerning the Application of Rule G–17 to Municipal Advisors

September 26, 2011.

On August 24, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of a proposed interpretive notice concerning the application of MSRB Rule G–17 to municipal advisors. Notice of the proposed rule change was published in the **Federal Register** on September 14, 2011.[3] The Commission received no comments on the proposed rule change. On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–15).[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65292 (September 8, 2011), 76 FR 56826.

[4] *See* MSRB Notice 2011–51 (September 12, 2011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25192 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65396; File No. SR–MSRB–2011–08]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Withdrawal of Proposed New Rule A–11, on Municipal Advisor Assessments, and New Form A–11–Interim

September 26, 2011.

On July 26, 2011, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] consisting of (i) proposed new Rule A–11, on municipal advisor assessments, and (ii) new Form A–11–Interim. Notice of the proposed rule change was published in the **Federal Register** on August 8, 2011.[3] The Commission received four comment letters on the proposed rule change.[4]

On September 9, 2011, the MSRB withdrew the proposed rule change (SR–MSRB–2011–08).[5]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25190 Filed 9–29–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65015 (August 2, 2011), 76 FR 48197.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Colette J. Irwin-Knott, CIPFA, President, National Association of Independent Public Finance Advisors, dated September 6, 2011; Michael Nicholas, CEO, Bond Dealers of America, dated August 29, 2011; and Michael Decker, Managing Director and Co-Head of Municipal Securities, Securities Industry and Financial Markets Association, dated August 29, 2011; and letter from Joy A. Howard, Principal, WM Financial Strategies, dated August 26, 2011.

[5] *See* MSRB Notice 2011–51 (September 12, 2011).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12839 and #12840]

Oklahoma Disaster #OK–00055

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Oklahoma dated 09/21/2011.

Incident: Pawnee County Wildfire.

Incident Period: 08/07/2011 through 08/14/2011.

Effective Date: 09/21/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Pawnee.

Contiguous Counties:

Oklahoma: Creek, Noble, Osage, Payne, Tulsa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128395 and for economic injury is 128400.

The State which received an EIDL Declaration # is Oklahoma.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 21, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–25180 Filed 9–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12848 and # 12849]

Texas Disaster # TX–00382

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4029–DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/21/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/21/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bastrop.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000

	Percent
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128485 and for economic injury is 128495.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–25183 Filed 9–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12653 and #12654]

North Dakota Disaster Number ND–00024

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA—1981—DR), dated 06/24/2011.

Incident: Flooding.

Incident Period: 02/14/2011 through 07/20/2011.

Effective Date: 09/22/2011.

Physical Loan Application Deadline Date: 11/21/2011.

EIDL LOAN Application Deadline Date: 03/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Dakota, dated 06/24/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/21/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–25185 Filed 9–29–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Gulf Opportunity Pilot Loan Program (GO Loan Pilot)

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of extension of waiver of regulatory provisions.

SUMMARY: This notice announces the extension of SBA's GO Loan Pilot, with modifications, until December 31, 2013. Due to the scope and magnitude of the devastation to Presidentially-declared disaster areas resulting from Hurricanes Katrina and Rita, as well as the further devastation by the April 2011 severe storms, tornadoes and flooding along the Mississippi River and its tributaries, and most recently Tropical Storm Lee, which together have had a long-term negative impact on the recovery of small businesses in the region, the Agency is extending its full guaranty and streamlined and centralized loan processing available through the GO Loan Pilot to small businesses in the eligible parishes/counties through December 31, 2013.

DATES: The waiver of regulatory provisions published in the **Federal Register** on November 17, 2005, is extended with modifications until December 31, 2013.

FOR FURTHER INFORMATION CONTACT: W. Sloan Coleman, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–7737; *w.coleman@sba.gov.*

SUPPLEMENTARY INFORMATION: On November 8, 2005, SBA initiated the GO Loan Pilot program, which was designed to provide expedited small business financial assistance to businesses located in those communities severely impacted by Hurricanes Katrina and Rita. Under this unique initiative, SBA provides its full (85%) guaranty and streamlined and centralized loan processing to all eligible lenders that agree to make expedited SBA 7(a) loans available to small businesses located in, locating to or re-locating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina and Rita, plus any contiguous parishes/counties.

To maximize the effectiveness of the GO Loan Pilot, on November 17, 2005, SBA published a notice in the **Federal Register** waiving for the GO Loan Pilot certain Agency regulations for the 7(a) Business Loan Program. (70 FR 69645). The pilot, including the waiver of regulations, was designed as a temporary program and was originally scheduled to expire on September 30, 2006, but was extended to September 30, 2011. The Agency believes, however, that there is a continuing, substantial need for the specific SBA assistance provided by this pilot in the affected areas. SBA, therefore, is extending the GO Loan Pilot, but with a modification to the previous regulatory waiver published in the **Federal Register** on November 17, 2005, as described more fully below.

Under SBA's regulations at 13 CFR120.102, an applicant for an SBA-guaranteed loan through the 7(a) program must show that the desired funds are not available from the personal resources of any owner of 20 percent or more of the equity of the applicant. If such personal resources are readily available, SBA requires that those resources above a certain amount, which varies with the size of the loan, must be injected into the applicant firm's financing package to reduce the amount of SBA's funding. As stated in the **Federal Register** notice published on November 17, 2005, this regulation was waived ''in recognition of the scope and magnitude of the destruction suffered by these communities as a result of Hurricanes Katrina and Rita and the need for immediate reconstruction. SBA believes that, due to other disaster-related exigencies, prospective borrowers under the GO Loan Pilot will be unable to expediently meet SBA's requirement that personal resources above a certain amount must be injected into the firm's capitalization.'' Because the devastation caused by Hurricanes Katrina and Rita occurred more than six years ago, SBA no longer believes it is necessary to waive this regulation for loans under the GO Loan Pilot and, therefore, is not extending the waiver of 13 CFR 120.102.

SBA is extending the waiver of all other regulatory provisions published in the **Federal Register** on November 17, 2005 as part of the GO Loan Pilot program. Specifically, SBA is continuing to waive 13 CFR 120.213(a), 120.214(a) through (e), and 120.215 in order to allow GO Loan Pilot Lenders to charge the interest rates applicable to the SBA Express Program as set forth in SOP 50 10 5, Subpart B, Chapter 3. (SOP 50 10 5 may be found on SBA's Web site at *http://www.sba.gov/for-lenders,* then click on Standard Operating Procedures for a listing of SOPs.) SBA is also continuing to waive 13 CFR § 120.222 in order to permit GO Loan Pilot lenders to charge the same fees on GO Loans as they charge on their similarly sized non-SBA guaranteed commercial loans.

When compared to other similarly-sized Section 7(a) loans, the GO Loan

Pilot portfolio is performing very well, at about one-half the rate of liquidation and one-quarter the rate of loan purchase compared to all other 7(a) loans of $150,000 or less. In addition, the demand for GO Loans has continued during FY2011 in response to the ongoing need to rebuild the Gulf Coast areas devastated by Hurricanes Katrina and Rita and the setback in these efforts caused by the several natural disasters that affected the region this year. The approximate number of GO Loans is only slightly less than the number of loans approved in FY 2010 at approximately 520 loans.

Thus, the Agency believes it is appropriate to extend this unique and vital program through December 31, 2013, with no further extensions after that. In the interim, the Agency will determine whether a program should be developed that provides for disaster recovery financial assistance under SBA's 7(a) Business Loan Program that could be applied to any region that meets a predetermined set of criteria. Accordingly, the SBA is also extending its waiver of the Agency regulations identified in the **Federal Register** notice at 70 FR 69645 with the exception noted above through December 31, 2013 only.

SBA's waiver of these regulations is authorized by 13 CFR 120.3. These waivers apply only to those loans approved under the GO Loan Pilot, which expires December 31, 2013. As part of the GO Loan Pilot, these waivers apply only to those small businesses located in, locating to, or relocating in the parishes/counties that have been Presidentially-declared as disaster areas resulting from Hurricanes Katrina or Rita, plus any contiguous parishes/counties. A list of all eligible parishes/counties will be included in an SBA procedural notice that will announce the extension of the GO Loan Pilot.

Authority: 15 U.S.C. 636(a)(24); 13 CFR 120.3.

Dated: September 26, 2011.

Steven J. Smits,

Associate Administrator, Office of Capital Access.

[FR Doc. 2011–25186 Filed 9–29–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Kissimmee Gateway Airport, Kissimmee, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program Update (NCP) submitted by the City of Kissimmee under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 11, 2009, the FAA determined that the Noise Exposure Maps submitted by the City of Kissimmee under Part 150 were in compliance with applicable requirements. On September 23, 2011, the FAA approved the Kissimmee Gateway Airport Noise Compatibility Program Update. Some of the recommendations of the Program were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Kissimmee Gateway Airport Noise Compatibility Program Update is September 23, 2011.

FOR FURTHER INFORMATION CONTACT: Allan M. Nagy, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, *phone number:* 407–812–6331. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program Update for Kissimmee Gateway Airport, effective September 23, 2011.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Title 14 Code of Federal Regulations (CFR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FAA's approval or disapproval of 14 CFR part 150 program recommendations is measured according to the standards expressed in 14 CFR part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of 14 CFR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in 14 CFR part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the appropriate FAA Airports District Office.

The City of Kissimmee submitted to the FAA on November 16, 2009, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 19, 2008, through September 23, 2011. The Kissimmee Gateway Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on December 11, 2009. Notice of this determination

was published in the **Federal Register** on December 29, 2009.

The Kissimmee Gateway Airport study contains a proposed Noise Compatibility Program Update comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from Sepember 23, 2011 to the year 2014. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 47504 of the Act. The FAA began its review of the Program on April 1, 2011, and was required by a provision of the Act to approve or disapprove the Program within 180-days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such Program within the 180-day period shall be deemed to be an approval of such Program.

The submitted Program contained a total of nineteen (19) elements, four (4) of which were FAA and/or airport operator actionable measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and 14 CFR part 150 have been satisfied. The overall Program, therefore, was approved by the FAA effective September 23, 2011.

Outright approval was granted for two (2) of the specific program elements. In addition, two (2) of the program elements were disapproved by the FAA. Operational Measure #2 was disapproved for purposes of part 150 because it did not provide any quantifiable reduction in noise impacts to non-compatible land uses. Land Use Measure #16 was disapproved for purposes of part 150 because the local municipal jurisdictions have not yet adopted a lower local standard which defines incompatible land uses below DNL 65 dBA. The other fifteen (15) program elements were elements from the original Noise Compatibility Program completed by the City of Kissimmee and approved by the FAA in 1994, which were requested to be rescinded by the airport operator in the current Program. At the airport operators request, the FAA has withdrawn its 1994 approval of these 15 elements in accordance with 14 CFR part 150.35(d)(5).

These determinations are set forth in detail in a Record of Approval signed by the FAA on September 23, 2011. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the City of Kissimmee. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/.*

Issued in Orlando, Florida on September 23, 2011.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 2011–25155 Filed 9–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Update for Buffalo Niagara International Airport, Buffalo, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by the Niagara Frontier Transportation Authority (NFTA), for Buffalo Niagara International Airport, under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Suki Gill, Environmental Protection Specialist, Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone (516) 227–3815.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Buffalo Niagara International Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''part 150''), effective September 20, 2011. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the NFTA. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of part 150 includes: Figure 6 ''2008 Noise Exposure Map with Land Use'' and Figure 9 ''2013 Noise Exposure Map & Affected Land Uses.'' The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on September 20, 2011.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with

those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530. Monday–Friday—9 a.m.–4 p.m. Niagara Frontier Transportation Authority, Buffalo Niagara International Airport, 4200 Genesee Street, Buffalo, NY 14225, (716) 630–6000, Available upon request *http://www.nfta.com*.	BNIA Noise Demonstration Home, 68 Cayuga Road, Buffalo, NY 14225. Monday–Friday—9 a.m.–4 p.m. (716) 632–3506.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, New York, on September 21, 2011.

Tom Felix,

Manager, Planning & Programming, AEA–610, Eastern Region.

[FR Doc. 2011–25154 Filed 9–29–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for the following projects: (1) Middletown Train Station Relocation, Pennsylvania Department of Transportation, Middletown Borough and Lower Swatara Township, PA; (2) Union Station to Oak Cliff Dallas Streetcar, North Central Texas Council of Governments, Dallas, TX; (3) Wilshire Bus Rapid Transit Project, Los Angeles County Metropolitan Transportation Authority, Los Angeles, CA; (4) Cedar Avenue Bus Rapid Transit Station-to-Station Service, Minnesota Valley Transit Authority and Metropolitan Council, Cities of Lakeville, Apple Valley, Eagan, and Bloomington, MN; and (5) Albany Multimodal Transit Center, City of Albany and Georgia Department of Transportation, City of Albany, Dougherty County, GA. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before March 28, 2012.

FOR FURTHER INFORMATION CONTACT: Carl Bausch, Director, Office of Human and Natural Environment, (202) 366–1626, or Christopher Van Wyk, Attorney-Advisor, Office of Chief Counsel, (202) 366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* Middletown Train Station Relocation, Middletown Borough and Lower Swatara Township, PA. *Project sponsor:* Pennsylvania Department of Transportation. *Project description:* The project will relocate the Middletown Train Station in from Mill Street to Ann Street/Airport Drive (State Road 441). The project would require acquisition of land from Abbco Real Properties at the proposed Westporte Retail Center (on the AP Green site) for the proposed parking lot at 350 West Main Street (Route 230). The proposed Train Station platforms would be located just west of 350 West Main Street in Middletown. *Final agency actions:* Section 4(f) determination; Section 106 finding of no adverse effect; regional and project-level air quality conformity; and a Finding of No Significant Impact (FONSI), dated August 2011. *Supporting documentation:* Environmental Assessment, dated June 2011.

2. *Project name and location:* Union Station to Oak Cliff Dallas Streetcar, Dallas, TX. *Project sponsor:* North Central Texas Council of Governments. *Project description:* The project consists of an approximately 1.6-mile streetcar alignment operating on an at-grade track in a dedicated, bi-directional streetcar lane. The project includes four proposed stops, all located within the roadway right-of-way. To maintain and store the streetcar vehicles, the project will rely on the Dallas Area Rapid Transit's Central Rail Operating Facility. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; regional and project-level air quality conformity; and a Finding of No Significant Impact (FONSI), dated July 2011. *Supporting documentation:* Environmental Assessment, dated May 2011.

3. *Project name and location:* Wilshire Bus Rapid Transit Project, Los Angeles, CA. *Project sponsor:* Los Angeles County Metropolitan Transportation Authority. *Project description:* The project involves construction of 9.7 miles of dedicated bus lanes from Valencia Street to San Vicente Boulevard (6.1 miles), the western

border of the City of Beverly Hills to Sepulveda Boulevard (2.3 miles), and Bonsall Avenue to Centinela Avenue (1.3 miles). It also includes 3.0 miles of curb lane reconstruction/resurfacing between Western Avenue and Fairfax Avenue and removal of jut-outs and realignment of curbs for dedicated bus lanes between Comstock Avenue and Malcolm Avenue (1.0 mile). Wilshire Boulevard would be widened between Bonsall Avenue and Barrington Avenue to accommodate dedicated bus lanes (0.7 mile). It would also lengthen the eastbound left-turn pocket at Sepulveda Boulevard by approximately 470 feet. *Final agency action:* no use of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated August 2011. *Supporting documentation:* Revised Final Environmental Assessment, dated April 2011.

4. *Project name and location:* Cedar Avenue Bus Rapid Transit (BRT) Station-to-Station Service, Cities of Lakeville, Apple Valley, Eagan, and Bloomington, MN. *Project sponsor:* Minnesota Valley Transit Authority, in cooperation with the Metropolitan Council. *Project description:* The project consists of the procurement of branded BRT vehicles for new station-to-station service along the Cedar Avenue Corridor between the 28th Avenue Transit Center in Bloomington, Hennepin County and 215th Street in Lakeville, Dakota County. This project also includes the construction of walk-up transit stations at 140th and 147th Street, and the use of five existing transit stations located at the 28th Avenue Transit Center in Bloomington, Mall of America Transit Center in Bloomington, Cedar Avenue Transit Center in Eagan, Cedar Avenue Transit Center in Apple Valley, and the Lakeville Cedar Park-and-Ride Transit Center in Lakeville. *Final agency action:* no use of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated August 2011. *Supporting documentation:* Environmental Assessment, dated August 2011.

5. *Project name and location:* Albany Multimodal Transit Center, City of Albany, Dougherty County, GA. *Project sponsor:* City of Albany and Georgia Department of Transportation. *Project description:* The project involves the site preparation and construction of a multimodal transportation center, relocating the existing Albany Transit System (ATS) bus transfer operations from the existing interim transfer facility at the Greyhound Terminal approximately 1,500 feet to the northeast to the proposed multimodal transportation center located between Flint Avenue and Roosevelt Avenue. In addition to its functionality as the central transfer station for the ATS buses, the facility would also house and support dispatch facilities and would accommodate other potential uses, such as intercity bus, rural transit, future intercity rail support services, taxis, private auto services, and typical transit oriented and transit-related commercial uses. *Final agency action:* no use of Section 4(f) resources; a Section 106 Memorandum of Agreement; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated September 2011. *Supporting documentation:* Environmental Assessment, dated January 2011.

Issued on: September 27, 2011.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–25266 Filed 9–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice and Request for Comments

AGENCY: Surface Transportation Board.

ACTION: 60-day notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to request from the Office of Management and Budget (OMB) approval for revision of a currently approved information collection. The revision is due solely to the reduced number of estimated yearly respondents. This information collection is described in detail below. Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, where appropriate; and (4) whether this collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Application to Open a Billing Account.

OMB Control Number: 2140–0006.

STB Form Number: STB Form 1032.

Type of Review: Revision of a currently approved collection.

Respondents: Rail carriers, shippers, and others doing business before the STB.

Number of Respondents: 5.

Estimated Time Per Response: Less than .08 hours, based on actual survey of respondents.

Frequency: One time per respondent.

Total Burden Hours (annually including all respondents): Less than 0.4 hours.

Total ''Non-hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: The Board is, by statute, responsible for the economic regulation of freight rail carriers and certain other carriers operating in interstate commerce. The form for which this approval is sought is submitted by persons doing business before the Board who wish to open an account with the Board to facilitate their payment of filing fees; fees for the search, review, copying, and certification of records; and fees for other services rendered by the Board. An account holder is billed on a monthly basis for payment of accumulated fees. Data provided is also used for debt collection activities. The application form requests information as required by OMB and U.S. Department of the Treasury regulations for the collection of fees. This information is not duplicated by any other agency. In accordance with the Privacy Act, 5 U.S.C. 552a, all taxpayer identification and social security numbers are secured and used only for credit management and debt collection activities.

Retention Period: The STB retains this information for 6 years, 3 months after the respondent asks to close account and outstanding debts, if any, are paid in full.

DATES: Written comments are due on November 29, 2011.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, Suite 1260, 395 E Street, SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Application to Open an Account for Billing Purposes, OMB Number 2140–0006.''

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THE STB FORM, CONTACT: Anthony Jacobik, Jr., (202) 245–0346. [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required, prior to submitting a collection to OMB for approval, to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: September 27, 2011.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–25217 Filed 9–29–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35506]

Western Coal Traffic League—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Notice of declaratory order proceeding; request for comments.

SUMMARY: The Board is initiating a declaratory order proceeding to address the effect of the price that Berkshire Hathaway, Inc., paid to acquire BNSF Railway Company (BNSF) in 2010 on the Board's annual BNSF Uniform Railroad Costing System (URCS) and revenue adequacy determinations.

DATES: Notices of Intent to Participate Due October 13, 2011; Opening Evidence and Argument Due from All Parties of Record (PORs) October 28, 2011; Reply Evidence and Argument Due from All PORs November 28, 2011; Rebuttal Evidence and Argument Due from All PORs December 12, 2011.

ADDRESSES: Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's website, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* Docket No. FD 35506, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at 202–245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site at *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: September 26, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–25285 Filed 9–29–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Transitional and Permanent Housing Facility in Canandaigua, NY

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The Secretary of VA intends to enter into an EUL on a 1.9-acre parcel of land at the Canandaigua VA Medical Center (VAMC) in Canandaigua, New York. The selected lessees will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessees will be required to construct, renovate, operate, and maintain a transitional and permanent housing facility; provide preference and priority placement for homeless Veterans and Veterans at risk of homelessness and their families; and provide a supportive services program that guides resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease for the provision of medical care and services would result in a demonstrable improvement of services to eligible Veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: September 26, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–25319 Filed 9–29–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will hold a meeting on October 13–14, 2011, at the Wyndham Portland Airport Hotel, 363 Maine Mall Road, Portland, ME. The sessions will begin at 8 a.m. each day and adjourn at 4 p.m. on October 13 and at 11:30 a.m. on October 14. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas, and discusses ways to improve and enhance VA services for these Veterans.

In the morning of October 13, the Committee will hear from its Chairman and the Togus VA Medical Center Director. The Committee will receive briefings on Project Arch; MyHealthyVet; and Office of Rural Health. In the afternoon, the Committee

will receive a briefing on the Mobile Unit Services and hear from the Eastern Resource Center. Public comments will be received at 3:15 p.m.

On October 14, the Committee will hear opening remarks from the Chairman. The Committee will break into a workgroup session to work on the Committee's annual report. Public comments will be received at 11 a.m.

Individuals who speak are invited to submit a 1–2 page summaries 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 Ms. Judy Bowie, Designated Federal Officer, Office of Rural Health (10P1R), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or at *rural.health.inquiry@va.gov*. Any member of the public seeking additional information should contact Ms. Bowie at (202) 461–1929.

Dated: September 26, 2011.

By direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–25187 Filed 9–29–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 76 Friday,

No. 190 September 30, 2011

Part II

Department of Housing and Urban Development

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2012; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5567–N–02]

Final Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2012

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Final Fiscal Year (FY) 2012 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA) requires the Secretary to publish FMRs periodically, but not less than annually, adjusted to be effective on October 1 of each year. The primary uses of FMRs are to determine payment standards for the Housing Choice Voucher (HCV) program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings in the HOME program. Today's notice provides final FY 2012 FMRs for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2012. The FY 2012 FMRs are re-benchmarked using five-year, 2005–2009 data collected by the American Community Survey (ACS). These data are updated using one-year ACS data in areas where statistically valid one-year ACS data are available. The Consumer Price Index (CPI) rent and utility indexes are used to further update data from 2009 to the end of 2010.

The final FY 2012 FMR areas are based on current Office of Management and Budget (OMB) metropolitan area definitions and include HUD modifications that were first used in the determination of FY 2006 FMR areas, with changes incorporated through December 2009. The bedroom ratios developed using 2000 Census data continue to be used and state minimums, calculated each year from the estimated FMRs, continue to be applied.

DATES: *Effective Date:* The FMRs published in this notice are effective on October 1, 2011.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site *http://www.huduser.org/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. An asterisk before the FMR area name identifies a 50th percentile area. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2012 FMR documentation system at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.org/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. (Other than the HUD USER information line and TDD numbers, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the HCV program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit it to establish 50th percentile FMRs for certain areas.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD User page at *http://www.huduser.org/datasets/fmr.html.* **Federal Register** notices also are available electronically from *http://www.gpoaccess.gov/fr/index.html,* the U.S. Government Printing Office Web site. Complete documentation of the methodology and data used to compute each area's final FY 2012 FMRs is available at *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.* FY 2012 FMRs are available in a variety of electronic formats at *http://www.huduser.org/portal/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on FY 2012 Metropolitan Area Rents are available in Microsoft Excel format at the same Web address. Please note that these Small Area FMRs are for reference only, and will only be used by PHAs participating in the Small Area FMR demonstration.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. Section 8(c)(1) states, in part, as follows:

> Proposed fair market rentals for an area shall be published in the **Federal Register** with reasonable time for public comment and shall become effective upon the date of publication in final form in the **Federal Register**. Each fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area * * *

HUD's regulations at 24 CFR part 888 provide that HUD will develop proposed FMRs, publish them for public comment, provide a public comment period of at least 30 days, consider public comments that contain statistically valid rental housing survey data that justify the requested change, and publish final FMRs. (See 24 CFR 888.115.) For FY 2012 FMRs, HUD has considered all comments submitted in response to its August 19, 2011 (76 FR 52058) proposed FY 2012 FMRs and has posted the comments and its responses at *http://www.huduser.org/portal/datasets/fmr.html.* HUD will, however, continue to analyze data provided by these public comments to determine whether changes are justified. HUD will publish any changes in the **Federal Register**.

In addition, HUD's regulations at 24 CFR 888.113 set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year

[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census tract where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent. This is evaluated with 2000 Census tract data,

unless not qualified to be reviewed. Areas that currently have 50th percentile FMRs are evaluated for progress in voucher tenant deconcentration after three years in the program. Continued eligibility is determined using HUD administrative data that show levels of voucher tenant concentration. The levels of voucher holder concentration must be above 25 percent and show a decrease in concentration since the last evaluation. At least 85 percent of the voucher units in the area must be used to make this determination. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to de-concentrate within the last three years.

In FY 2011 there were 18 areas using 50th-percentile FMRs. Of these 18 areas, 11 areas were allowed to continue as 50th percentile FMR areas, as listed below:

FY 2012 CONTINUING 50TH-PERCENTILE FMR AREAS

Baltimore-Towson, MD MSA	Bergen-Passaic, NJ HMFA [2].
Fort Lauderdale, FL HMFA	Grand Rapids-Wyoming, MI HMFA.
Hartford-West Hartford-East Hartford, CT HMFA	Houston-Baytown-Sugar Land, TX HMFA.
New Haven-Meriden, CT HMFA	North Port-Bradenton-Sarasota, FL MSA.
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Washington-Arlington-Alexandria, DC-VA-MD HMFA.
West Palm Beach-Boca Raton, FL HMFA	

There are 10 additional 50th-percentile FMR areas, one that is new to the program, Sacramento—Arden-Arcade—Roseville, CA HMFA. The other 9 areas failed to deconcentrate when evaluated for the FY 2009 FMRs, but are reinstated as 50th-percentile FMRs:

NEW FY 2012 50TH-PERCENTILE FMR AREAS

Austin-Round Rock-San Marcos, TX MSA	Fort Worth-Arlington, TX HMFA.
Honolulu, HI MSA	Las Vegas-Paradise, NV MSA.
Orange County, CA HMFA	Phoenix-Mesa-Glendale, AZ MSA.
Riverside-San Bernardino-Ontario, CA HMFA	Sacramento—Arden-Arcade—Roseville, CA HMFA Tucson, AZ MSA.
Tucson, AZ MSA	Virginia Beach-Norfolk-Newport News, VA-NC MSA.

In summary, there are 21 50th-percentile FMR areas in FY 2012. These areas are indicated by an asterisk in Schedule B, where all FMRs are listed by state.

III. Proposed FY 2012 FMRs

On August 19, 2011 (76 FR 52058), HUD published proposed FY 2012 FMRs with a comment period that ended September 19, 2011. Among the comments HUD received were several that questioned the FY 2012 FMRs for their respective market areas. HUD has considered all public comments received and has posted its response to these comments on its Web site at *http://www.huduser.org/portal/datasets/fmr.html.* HUD will continue to review data provided by the comments and will publish any revisions to the FY 2012 FMRs resulting from data submissions in a forthcoming **Federal Register** notice.

IV. FMR Methodology

This section provides a brief overview of how the FY 2012 FMRs are computed. For complete information on how FMR areas are determined, and on how each area's FMRs are derived, see the online documentation at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

The FY 2012 FMRs are based on current OMB metropolitan area definitions and standards that were first used in the FY 2006 FMRs. OMB changes to the metropolitan area definitions through December 2009 are incorporated. There have been no area definition changes published by OMB since the publication of the FY 2011 FMRs; therefore, the FY 2012 area definitions are the same as those used in FY 2011.

A. Base Year Rents

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2005 through 2009 in December of 2010. This is the first time that updated data are available for all FMR areas and their component geographies since the release of the 2000 Decennial Census data (previous ACS releases only covered areas with 20,000 or more in population). Because of this new data availability, HUD has the ability to estimate new base rents using the 5-year ACS data.

FMRs are typically based on gross rents for recent movers (those who have moved into their current residence in the last 15 to 24 months). FMRs prior to FY 2012 were calculated from recent-mover gross rent estimates from the 2000 Census or from more current HUD-commissioned or PHA-commissioned rent surveys. However, due to the way the 5-year data are constructed, recent-mover survey responses are not well defined. The 5-year data are an aggregation of all survey data collected between January 2005 and December 2009 in a given area. Dollar values such as gross rents are transformed from the time period in which they were collected to an overall 2009 value using the national CPI. Attempting to limit the 5-year data to those who have moved in the last 24 months severely limits the usefulness of the 5-year data because this limitation automatically disqualifies at least 40 percent of the survey observations used in the 5-year estimates. Consequently, all areas are assigned as a base rent the estimated two-bedroom standard-quality 5-year gross rent from the ACS.[3] Because HUD's regulations mandate that FMRs must be published as recent-mover gross rents, HUD has created a recent-mover adjustment factor to apply to the

while we are awaiting 2010 ACS data to be aggregated using 2010 Census tract definitions.

[2] HMFA is an acronym representing HUD Metropolitan FMR Area.

[3] For areas with a two-bedroom standard quality gross rent from the ACS that have a margin of error greater than the estimate or no estimate due to inadequate sample in the 2009 5-year ACS, HUD uses the two-bedroom state non-metro rent for non-metro areas.

standard-quality base rents assigned from the 5-year ACS data.

Local area rent surveys conducted in 2010 by HUD or PHAs are used as base rents when the survey results are statistically different from the ACS-based rents. The surveys for Williamsport, PA, MSA and Pike County, HMFA were evaluated and are being used in place of the 2009 ACS data. A survey conducted in 2010 for the county group, Bradford-Sullivan-Tioga, PA, was also evaluated, but there was no statistical difference from the 2009 ACS data, updated to 2010.

B. Recent Mover Adjustment Factor

Following the assignment of the standard-quality two-bedroom rent described above, HUD applies a recent mover adjustment factor to these rents. The following describes the process for determining the appropriate recent-mover adjustment factor.

For non-metropolitan areas, HUD calculated the percentage change between the 5-year standard-quality rent for the non-metropolitan portion of the state and the 1-year recent-mover rent for the same area.[4] HUD then computes a z-score to determine if the 5-year standard-quality rent and the 1-year recent-mover rent are statistically different.[5] If the two rents have a statistically significant difference, the recent-mover adjustment factor is set at the difference between the state non-metropolitan 1-year recent-mover rent and the state non-metropolitan 5-year standard-quality rent expressed as a percentage of the state non-metropolitan 5-year standard-quality rent. If the two rents are not statistically different, the recent-mover adjustment factor is set to 1.0.

For metropolitan areas, the recent-mover adjustment factor is calculated in a similar fashion. HUD selects the smallest geographic area which encompasses the metropolitan area in question that has at least 100 recent mover observations to use in the calculation of the recent-mover adjustment factor. For HUD-defined subareas of OMB defined metropolitan areas, this means that the recent-mover adjustment factor may be based on the recent-mover data for the subarea, the entire metropolitan area, the metropolitan portions of the state, or finally the entire state depending on which geographic level has 100 or more recent mover observations.[6] Once the area with 100 or more recent mover cases has been determined, HUD calculates a z-score comparing the 1-year recent-mover two-bedroom gross rent with the 5-year standard-quality two-bedroom gross rent for the recent-mover area. If the two rents are statistically different, HUD sets the recent-mover adjustment factor for the FMR area as the percentage change between the two rents for the recent-mover area. If the difference in rents is not statistically different, the recent-mover adjustment factor for the FMR area is set to 1.

For FMR areas without 100 recent-mover rents, a recent-mover adjustment factor is calculated at the smallest area level that does have 100 recent movers. For metropolitan areas, this order is subarea, metropolitan area, state metropolitan area, and state. For nonmetropolitan areas, the smallest area level is the state nonmetropolitan area, followed by the entire state. For an example of how the recent-mover adjustment factor is calculated for these areas, please review this methodology for Abilene, TX MSA and Baldwin County, AL, in the FY 2012 documentation system: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

This process produces an ''as of'' 2009 recent mover two-bedroom base gross rent for the FMR area.[7]

C. Updates From 2009 to 2010

The ACS data are updated through 2009 using the one-half of the change in annual CPI measured between 2008 and 2009. This data are further updated through the end of 2010 using the annual change in CPI from 2009 to 2010. As in previous years, HUD uses Local CPI data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors.

D. Trend From 2010 to 2012

The national 1990 to 2000 average annual rent increase trend of 3 percent is applied to end-of-2010 rents for 15 months, to derive the proposed FY 2012 FMRs with a date of April 2012.

On March 9, 2011 (76 FR 12985), HUD published a notice requesting public comment regarding the manner in which it calculates the trend factor used in determining FMR estimates to meet the statutory requirement that FMRs be ''trended so the rentals will be current for the year to which they apply.'' HUD's notice provided several proposed alternatives to the current trend factor and requested comments on the alternatives as well as suggestions of other ideas. These comments are discussed in further detail in the proposed FY 2012 FMR notice (76 FR 52058), but, in short, the commenters did not arrive at a consensus over how to change the trending methodology. Therefore, HUD will continue to consider the suggestions provided in the comments and make plans to implement a new methodology with the publication of FY 2013 Proposed FMRs.

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common size of rental units and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit sizes and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other bedroom sizes than it is to develop independent FMR estimates for each bedroom size. HUD did the last update of bedroom-rent relationships using 2000 Census data. A publicly releasable version of the data used for the derivations of rent ratios is

[4] HUD ensures that the recent mover estimate for each non-metropolitan portion of the state has at least 100 ACS sample observations. If any state non-metropolitan recent mover rent is based on fewer than 100 observations, the recent mover factor would be calculated based on the 1-year recent mover data and 5-year standard quality data for the entire state.

[5] 'The change is considered statistically significant if Z is greater than 1.645 where Z is equal to the change between the estimate for the 1-year data and the 5-year estimate, over the square root of the sum of the squared standard error for the 1-year estimate and the squared standard error of the 5-year estimate.

[6] For metropolitan areas that cross state boundaries, and where there are not 100 2-bedroom recent mover observations, HUD uses the weighted average update factors for the encompassing state metropolitan areas. HUD performs the Z-score test for statistical difference between the 1-year recent-mover rent and 5-year standard-quality rent separately for each state metropolitan part prior to computing the weighted average update factor.

[7] The Pacific Islands (Guam, Northern Marianas and American Samoa) as well as the U.S. Virgin Islands are not covered by ACS data. As part of the 2010 Decennial Census, these areas were covered by a long-form survey. The results gathered by this long form survey will not be available until 2012. Therefore, HUD uses the national change in gross rents, measured between 2008 and 2009 to update last year's FMR for these areas. Puerto Rico is covered by the Puerto Rico Community Survey within the American Community Survey; however, the gross rent data produced by the 2005–2009 ACS are not sufficient to adequately house voucher holders in Puerto Rico. This is due to the limited ability to eliminate units that do not pass the voucher program's housing quality standards. Consequently, HUD is updating last year's FMRs for Puerto Rico using the change in rents measured from all of Puerto Rico measured between the 2008 and 2009. For details behind these calculations, please see HUD's FY 2012 FMR documentation system available at: *http://www.huduser.org/portal/datasets/fmr/fmrs/docsys.html&data=fmr12.*

available at *http://www.huduser.org/portal/datasets/fmr/CensusRentData/index.html.*

HUD made adjustments using 2000 Census data to establish rent ratios for areas with local bedroom-size intervals above or below what are considered reasonable ranges, or where sample sizes are inadequate to accurately measure bedroom rent differentials. Experience has shown that highly unusual bedroom ratios typically reflect inadequate sample sizes or peculiar local circumstances that HUD would not want to utilize in setting FMRs (*e.g.,* luxury efficiency apartments that rent for more than typical one-bedroom units). HUD established bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. These ranges are: efficiency FMRs are constrained to fall between 0.65 and 0.83 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.90 of the two-bedroom FMR; three-bedroom FMRs must be between 1.10 and 1.34 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.14 and 1.63 of the two-bedroom FMR. HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (*i.e.,* efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents).

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units than would result from using unadjusted market rents. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds bonuses of 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.

For low-population, nonmetropolitan counties with small 2000 Census samples of recent-mover rents, HUD uses Census-defined county group data to determine rents for each bedroom size. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes. The areas covered by this estimation method had less than the HUD standard of 200 two-bedroom, Census-tabulated observations.

The 2010 Decennial Census did not collect the information necessary to update unit bedroom rent relationships. HUD intends to use the 2006–2010 5-year ACS data to update these relationships for the FY 2013 FMRs. HUD is choosing to wait until next year to ensure something closer to a consistent 10 year time period, but more importantly, because the 2010 ACS data will be published based on the 2010 Decennial Census geographic definitions.

V. Manufactured Home Space Surveys

The FMR used to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit. HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2011 were updated to FY 2012 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

VI. Public Comments

As previously stated, HUD is unable to respond to all comments received on the proposed FY 2012 FMRs in this notice because of the timing of the comment end date; however, these responses will be available by the publication date of this notice on HUD's Web site at *http://www.huduser.org/portal/datasets/fmr.html.* HUD was able, however, to make a minor methodological change, in response to a comment received, that eliminates a negative recent mover adjustment for the only area with one, Cape Coral-Fort Myers, FL MSA. HUD will continue to review data provided by the comments and publish any revisions to the FY 2012 FMRs resulting from data submissions in a forthcoming **Federal Register** notice.

VII. Formalize a Publication Date for Income Limits

The FY 2012 Income Limits will be published on December 1, 2011. While the FY 2012 Income Limits do not benefit from any additional ACS data over what was included in the FY 2011 publication, they are updated with the FY 2012 FMRs for the purposes of evaluating areas of relatively high-or low-income to housing cost relationships and further updated with CPI to the end of 2010, trended to the mid-point of FY 2012 in a manner similar to what was done with the FY 2011 Median Family Income estimates and Income Limits. The FY 2013 Median Family Income estimates and Income Limits, published December 1, 2012, would be the first set of median family income estimates and income limits updated with ACS data collected from 2006–2010.

VIII. HUD Rental Housing Survey Guides

For the supporting data, HUD recommends the use of professionally conducted random digit dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $35,000. Areas with 2,000 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual rents for two-bedroom units are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed. Each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties where FMRs are based on the combined rents in the cluster of FMR areas will not have their FMRs revised unless the grouped survey results show a revised FMR above the combined rent level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide

entitled ''Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain the guide entitled ''Rental Housing Surveys: A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments.'' These guides, in Microsoft Word format, are available from HUD USER at HUD's Web site at the following address: *http://www.huduser.org/datasets/fmr.html.*

Other survey methodologies are acceptable in providing data to support comments, if the survey methodology can provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial census or 5-year ACS should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

Most surveys of FMR areas cover only one- and two-bedroom units. If the survey is statistically acceptable, HUD will estimate FMRs for other bedroom sizes using ratios based on the decennial census. A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

IX. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are amended as shown in the Appendix to this notice:

Dated: September 22, 2011.

Erika C. Poethig,

Deputy Assistant Secretary for Policy Development.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan core-based statistical areas (CBSAs), which are made up of one or more counties, as defined by OMB, with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. *Modifications to OMB Definitions*—Following OMB guidance, the estimation procedure for the FY 2012 final FMRs incorporates the current OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data, but makes adjustments to the definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly if the new area definitions were used without modification. In CBSAs where subareas are established, it is HUD's view for programmatic purposes that the geographic extent of the housing markets are not yet the same as the geographic extent of the CBSAs, but may become so in the future as the social and economic integration of the CBSA component areas increases. Modifications to metropolitan CBSA definitions are made according to a formula as described below.

Metropolitan area CBSAs (referred to as MSAs) may be modified to allow for subarea FMRs within MSAs based on the boundaries of old FMR areas (OFAs) within the boundaries of new MSAs. (OFAs are the FMR areas defined for the FY 2005 FMRs. Collectively they include 1999-definition MSAs/Primary Metropolitan Statistical Areas (PMSAs), metro counties deleted from 1999-definition MSAs/PMSAs by HUD for FMR purposes, and counties and county parts outside of 1999-definition MSAs/PMSAs referred to as nonmetropolitan counties.) Subareas of MSAs are assigned their own FMRs when the subarea 2000 Census Base Rent differs by at least 5 percent from (*i.e.,* is at most 95 percent or at least 105 percent of) the MSA 2000 Census Base Rent, or when the 2000 Census Median Family Income for the subarea differs by at least 5 percent from the MSA 2000 Census Median Family Income. MSA subareas, and the remaining portions of MSAs after subareas have been determined, are referred to as HMFAs to distinguish these areas from OMB's official definition of MSAs.

The specific counties and New England towns and cities within each state in MSAs and HMFAs are listed in Schedule B.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for PHAs operating using Small Area FMRs within the Dallas, TX HMFA. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

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SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston-Oxford, AL MSA	461	509	632	835	981	Calhoun
Auburn-Opelika, AL MSA	454	541	697	917	942	Lee
Birmingham-Hoover, AL HMFA	605	673	750	952	980	Bibb, Blount, Jefferson, St. Clair, Shelby
Chilton County, AL HMFA	360	498	554	696	797	Chilton
Columbus, GA-AL MSA	558	588	673	895	1059	Russell
Decatur, AL MSA	451	507	583	763	791	Lawrence, Morgan
Dothan, AL HMFA	434	510	578	739	844	Geneva, Houston
Florence-Muscle Shoals, AL MSA	481	484	587	748	928	Colbert, Lauderdale
Gadsden, AL MSA	398	504	612	784	810	Etowah
Henry County, AL HMFA	326	449	499	596	615	Henry
Huntsville, AL MSA	514	560	661	905	993	Limestone, Madison
Mobile, AL MSA	591	633	714	935	1104	Mobile
Montgomery, AL MSA	543	642	723	959	1266	Autauga, Elmore, Lowndes, Montgomery
Tuscaloosa, AL MSA	504	582	754	969	999	Greene, Hale, Tuscaloosa
Walker County, AL HMFA	461	462	554	692	756	Walker

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baldwin	483	581	691	916	1049	Barbour	415	416	499	618	636
Bullock	360	407	499	598	644	Butler	360	407	499	598	644
Chambers	432	469	521	707	729	Cherokee	414	415	499	594	613
Choctaw	531	560	640	812	1084	Clarke	324	448	499	597	877
Clay	415	417	499	617	768	Cleburne	416	418	501	614	764
Coffee	405	463	524	717	920	Conecuh	486	513	586	743	993
Coosa	425	471	524	710	797	Covington	415	416	499	681	702
Crenshaw	374	424	519	622	670	Cullman	425	438	513	690	709
Dale	386	445	499	721	874	Dallas	331	460	510	643	690
DeKalb	372	396	499	664	683	Escambia	414	420	499	622	765
Fayette	327	379	499	728	878	Franklin	325	421	499	673	876
Jackson	415	449	499	636	876	Lamar	334	415	499	666	875
Macon	420	452	582	776	802	Marengo	414	440	499	646	664
Marion	324	379	499	634	877	Marshall	415	445	502	678	746
Monroe	414	450	499	691	763	Perry	414	440	499	646	664
Pickens	346	429	516	689	905	Pike	398	428	499	641	661
Randolph	415	417	499	617	768	Sumter	334	427	499	666	875
Talladega	435	436	522	704	920	Tallapoosa	398	407	499	704	817
Washington	414	437	499	633	845	Wilcox	414	437	499	633	845
Winston	333	379	499	597	615						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK HMFA	706	803	1007	1450	1766	Anchorage
Fairbanks, AK MSA	653	785	1004	1454	1535	Fairbanks North Star
Matanuska-Susitna Borough, AK HMFA	611	712	908	1291	1568	Matanuska-Susitna

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	405	461	584	722	744	Aleutians West	992	1127	1429	1766	1821
Bethel	892	1117	1356	1622	2381	Bristol Bay	672	765	969	1198	1235
Denali	683	843	1053	1478	1665	Dillingham	661	752	953	1178	1214
Haines	461	570	711	998	1124	Hoonah-Angoon	644	732	928	1147	1182
Juneau	744	912	1147	1550	1932	Kenai Peninsula	560	640	779	1067	1368
Ketchikan Gateway	586	748	899	1310	1579	Kodiak Island	630	738	971	1395	1477
Lake and Peninsula	473	538	682	843	869	Nome	831	1068	1226	1480	1524
North Slope	652	762	1001	1197	1232	Northwest Arctic	712	810	1026	1268	1307
Petersburg	734	834	1057	1306	1347	Prince of Wales-Hyder	552	627	795	983	1013
Sitka	733	845	1008	1469	1769	Skagway	702	798	1011	1250	1288
Southeast Fairbanks	564	696	869	1220	1374	Valdez-Cordova	503	621	775	1088	1225
Wade Hampton	476	541	686	848	874	Wrangell	520	591	749	926	954
Yakutat	640	727	922	1140	1175	Yukon-Koyukuk	487	554	702	868	894

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ MSA	660	785	887	1141	1439	Coconino
Lake Havasu City-Kingman, AZ MSA	599	659	768	1062	1185	Mohave
*Phoenix-Mesa-Glendale, AZ MSA	619	721	870	1267	1483	Maricopa, Pinal
Prescott, AZ MSA	612	632	798	1163	1198	Yavapai
*Tucson, AZ MSA	570	670	860	1238	1309	Pima
Yuma, AZ MSA	519	613	732	1038	1272	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	424	519	614	852	1079	Cochise	484	561	704	972	1195
Gila	487	570	750	1030	1061	Graham	508	547	613	847	975
Greenlee	586	651	817	1123	1270	La Paz	564	565	678	959	988
Navajo	490	524	691	931	1103	Santa Cruz	525	525	666	971	1000

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR HMFA	482	508	635	925	951	Benton, Madison, Washington
Fort Smith, AR-OK HMFA	393	446	556	741	807	Crawford, Sebastian
Franklin County, AR HMFA	340	445	523	663	809	Franklin
Grant County, AR HMFA	410	423	516	747	770	Grant
Hot Springs, AR MSA	394	489	608	759	782	Garland
Jonesboro, AR HMFA	465	485	559	787	811	Craighead
Little Rock-North Little Rock-Conway, AR HMFA	526	598	667	893	922	Faulkner, Lonoke, Perry, Pulaski, Saline
Memphis, TN-MS-AR HMFA	594	645	717	955	985	Crittenden
Pine Bluff, AR MSA	375	444	557	668	793	Cleveland, Jefferson, Lincoln
Poinsett County, AR HMFA	335	434	516	687	822	Poinsett
Texarkana, TX-Texarkana, AR MSA	500	505	622	759	825	Miller

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ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	429	452	562	816	839
Baxter	392	455	550	739	932
Bradley	384	390	516	640	678
Carroll	457	458	550	694	966
Clark	437	444	571	736	758
Cleburne	447	448	537	736	945
Conway	441	455	531	731	795
Dallas	334	463	516	657	836
Drew	334	429	516	649	905
Greene	349	486	538	787	810
Hot Spring	430	431	516	676	698
Independence	382	455	550	711	772
Jackson	347	456	516	728	751
Lafayette	393	449	516	617	738
Lee	366	414	516	688	799
Logan	335	433	516	738	826
Mississippi	353	394	516	681	821
Montgomery	440	511	644	810	834
Newton	428	429	516	666	748
Phillips	428	431	516	672	693
Polk	429	465	516	671	816
Prairie	429	430	516	647	667
St. Francis	463	480	560	790	981
Searcy	428	429	516	666	748
Sharp	429	430	516	657	679
Union	453	477	545	706	917
White	445	446	536	728	749
Yell	426	449	516	707	730

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashley	380	393	516	618	680
Boone	442	443	533	683	766
Calhoun	334	463	516	657	836
Chicot	384	390	516	640	678
Clay	415	418	516	661	704
Columbia	341	438	525	644	738
Cross	442	444	533	777	849
Desha	384	390	516	656	678
Fulton	411	412	516	678	756
Hempstead	394	441	516	618	710
Howard	394	458	516	665	686
Izard	411	412	516	678	756
Johnson	345	474	533	710	849
Lawrence	336	412	516	635	839
Little River	393	449	516	630	738
Marion	435	436	524	690	759
Monroe	429	430	516	647	667
Nevada	393	449	516	617	738
Ouachita	334	464	516	710	832
Pike	393	449	516	617	738
Pope	402	432	559	788	810
Randolph	335	420	516	617	905
Scott	429	430	516	714	905
Sevier	430	445	516	713	826
Stone	411	412	516	678	756
Van Buren	335	392	516	639	825
Woodruff	429	430	516	647	667

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield-Delano, CA MSA	617	665	793	1146	1373	Kern
Chico, CA MSA	625	743	896	1263	1508	Butte
El Centro, CA MSA	538	609	751	1033	1317	Imperial
Fresno, CA MSA	638	702	829	1206	1299	Fresno
Hanford-Corcoran, CA MSA	659	702	815	1188	1432	Kings
Los Angeles-Long Beach, CA HMFA	961	1159	1447	1943	2338	Los Angeles
Madera-Chowchilla, CA MSA	599	629	802	1166	1202	Madera
Merced, CA MSA	570	649	789	1125	1314	Merced
Modesto, CA MSA	732	808	952	1365	1577	Stanislaus
Napa, CA MSA	898	1006	1307	1808	2053	Napa
Oakland-Fremont, CA HMFA	980	1183	1402	1901	2354	Alameda, Contra Costa
*Orange County, CA HMFA	1226	1384	1652	2338	2691	Orange

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CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Oxnard-Thousand Oaks-Ventura, CA MSA	1022	1129	1436	2058	2354	Ventura
Redding, CA MSA	595	693	843	1230	1482	Shasta
*Riverside-San Bernardino-Ontario, CA MSA	886	974	1149	1617	1886	Riverside, San Bernardino
*Sacramento--Arden-Arcade--Roseville, CA HMFA	736	837	1021	1473	1689	El Dorado, Placer, Sacramento
Salinas, CA MSA	919	1034	1187	1677	1757	Monterey
San Benito County, CA HMFA	799	1082	1204	1706	2112	San Benito
San Diego-Carlsbad-San Marcos, CA MSA	984	1126	1378	1960	2421	San Diego
San Francisco, CA HMFA	1238	1522	1905	2543	2688	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA HMFA	1165	1350	1623	2334	2569	Santa Clara
San Luis Obispo-Paso Robles, CA MSA	806	954	1162	1693	1742	San Luis Obispo
Santa Barbara-Santa Maria-Goleta, CA MSA	1073	1198	1344	1770	2020	Santa Barbara
Santa Cruz-Watsonville, CA MSA	978	1154	1504	2164	2230	Santa Cruz
Santa Rosa-Petaluma, CA MSA	767	933	1178	1672	1954	Sonoma
Stockton, CA MSA	643	733	904	1241	1563	San Joaquin
Vallejo-Fairfield, CA MSA	995	1072	1229	1723	2122	Solano
Visalia-Porterville, CA MSA	558	624	725	1037	1065	Tulare
Yolo, CA HMFA	767	811	992	1445	1538	Yolo
Yuba City, CA MSA	618	697	857	1247	1334	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	605	679	866	1235	1271	Amador	707	829	1088	1581	1629
Calaveras	707	708	851	1241	1368	Colusa	579	581	756	976	1327
Del Norte	585	593	767	1117	1151	Glenn	548	562	739	961	987
Humboldt	572	670	882	1265	1401	Inyo	578	606	788	1148	1354
Lake	586	687	895	1297	1444	Lassen	576	675	887	1290	1329
Mariposa	581	652	831	1185	1220	Mendocino	648	799	971	1325	1703
Modoc	404	446	584	832	864	Mono	796	959	1225	1678	2152
Nevada	709	828	1091	1575	1917	Plumas	613	718	946	1380	1661
Sierra	520	606	800	1134	1403	Siskiyou	469	563	720	1025	1056
Tehama	524	595	777	1129	1356	Trinity	512	537	705	967	1073
Tuolumne	605	719	929	1284	1323						

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder, CO MSA	679	787	987	1439	1725	Boulder
Colorado Springs, CO HMFA	534	599	756	1079	1276	El Paso
Denver-Aurora-Broomfield, CO MSA	619	705	893	1268	1478	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park
Fort Collins-Loveland, CO MSA	513	615	746	1086	1266	Larimer
Grand Junction, CO MSA	569	571	685	997	1206	Mesa
Greeley, CO MSA	530	561	687	1002	1182	Weld
Pueblo, CO MSA	460	484	636	833	943	Pueblo
Teller County, CO HMFA	483	565	743	1082	1303	Teller

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COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	432	534	593	806	1042
Baca	447	524	584	832	898
Chaffee	442	557	679	989	1019
Conejos	475	558	621	884	954
Crowley	465	480	584	766	941
Delta	581	593	699	959	988
Eagle	797	931	1225	1541	2105
Garfield	767	873	968	1195	1230
Gunnison	567	623	810	1121	1422
Huerfano	447	524	584	832	898
Kiowa	465	480	584	766	941
Lake	577	727	878	1093	1541
Las Animas	459	609	675	870	898
Logan	462	463	590	768	889
Moffat	477	522	655	859	1150
Montrose	466	611	708	940	1165
Otero	469	495	601	832	857
Phillips	479	495	602	789	970
Prowers	448	526	584	792	1027
Rio Grande	448	524	584	847	899
Saguache	457	537	598	852	919
San Miguel	521	626	799	1165	1200
Summit	773	908	1187	1690	2083
Yuma	465	480	584	766	941

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	535	630	792	963	1243
Bent	468	483	588	771	947
Cheyenne	465	480	584	766	941
Costilla	447	524	584	832	898
Custer	447	523	689	965	1110
Dolores	430	505	584	773	998
Fremont	404	482	619	888	1018
Grand	552	630	801	1165	1201
Hinsdale	472	595	718	894	1260
Jackson	537	621	689	888	1072
Kit Carson	465	480	584	766	941
La Plata	634	773	885	1242	1413
Lincoln	521	538	655	859	1055
Mineral	584	736	889	1107	1560
Montezuma	432	506	584	697	931
Morgan	568	615	686	914	1104
Ouray	648	817	987	1229	1732
Pitkin	809	945	1244	1728	2184
Rio Blanco	462	533	592	763	921
Routt	676	800	1040	1244	1826
San Juan	613	719	832	1102	1422
Sedgwick	465	480	584	766	941
Washington	466	482	586	768	944

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT HMFA	829	1071	1277	1526	1853	Fairfield County towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town
Colchester-Lebanon, CT HMFA	731	858	1126	1347	1389	New London County towns of Colchester town, Lebanon town
Danbury, CT HMFA	981	1191	1512	1810	2244	Fairfield County towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town
*Hartford-West Hartford-East Hartford, CT HMFA	709	849	1038	1247	1548	Hartford County towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Hartland town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, Southington town, South Windsor town, Suffield town, West Hartford town, Wethersfield town, Windsor town, Windsor Locks town

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CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Middlesex County towns of Chester town, Cromwell town, Durham town, East Haddam town, East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town Tolland County towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Union town, Vernon town, Willington town
Milford-Ansonia-Seymour, CT HMFA	1001	1160	1298	1652	1815	New Haven County towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
*New Haven-Meriden, CT HMFA	987	1119	1352	1618	1850	New Haven County towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
Norwich-New London, CT HMFA	834	989	1145	1401	1548	New London County towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Lyme town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Voluntown town, Waterford town
Southern Middlesex County, CT HMFA	806	849	1080	1386	1580	Middlesex County towns of Clinton town, Deep River town, Essex town, Killingworth town, Old Saybrook town, Westbrook town
Stamford-Norwalk, CT HMFA	1162	1415	1769	2305	2784	Fairfield County towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT HMFA	699	904	1075	1287	1339	New Haven County towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Litchfield County, CT	691	900	1063	1365	1535	Barkhamsted town, Bethlehem town, Bridgewater town, Canaan town, Colebrook town, Cornwall town, Goshen town, Harwinton town, Kent town, Litchfield town, Morris town, New Hartford town, New Milford town, Norfolk town, North Canaan town, Plymouth town, Roxbury town, Salisbury town, Sharon town, Thomaston town, Torrington town, Warren town, Washington town, Watertown town, Winchester town, Woodbury town
Windham County, CT	685	829	998	1255	1332	Ashford town, Brooklyn town, Canterbury town, Chaplin town, Eastford town, Hampton town, Killingly town, Plainfield town, Pomfret town, Putnam town, Scotland town, Sterling town, Thompson town, Windham town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	666	725	803	1050	1410	Kent

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

DELAWARE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA..	788	899	1075	1315	1586	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	615	670	744	1018	1048

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington-Arlington-Alexandria, DC-VA-MD HMFA...	1166	1328	1506	1943	2542	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baker County, FL HMFA	432	599	665	972	998	Baker
Cape Coral-Fort Myers, FL MSA	733	791	901	1224	1260	Lee
Crestview-Fort Walton Beach-Destin, FL MSA	641	750	844	1231	1352	Okaloosa
Deltona-Daytona Beach-Ormond Beach, FL MSA	596	696	866	1120	1153	Volusia
*Fort Lauderdale, FL HMFA	883	988	1187	1642	2084	Broward
Gainesville, FL MSA	648	715	814	1190	1227	Alachua, Gilchrist
Jacksonville, FL HMFA	630	716	834	1047	1199	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	604	666	767	973	1141	Polk
Miami-Miami Beach-Kendall, FL HMFA	819	927	1125	1439	1682	Miami-Dade
Naples-Marco Island, FL MSA	813	932	1049	1304	1357	Collier
*North Port-Bradenton-Sarasota, FL MSA	755	827	995	1271	1396	Manatee, Sarasota
Ocala, FL MSA	603	621	729	957	986	Marion
Orlando-Kissimmee-Sanford, FL MSA	753	819	936	1172	1380	Lake, Orange, Osceola, Seminole
Palm Bay-Melbourne-Titusville, FL MSA	583	713	840	1131	1262	Brevard
Palm Coast, FL MSA	601	693	872	1221	1302	Flagler
Panama City-Lynn Haven-Panama City Beach, FL MSA..	686	724	829	1145	1273	Bay
Pensacola-Ferry Pass-Brent, FL MSA	619	674	748	1084	1311	Escambia, Santa Rosa
Port St. Lucie, FL MSA	737	739	936	1237	1275	Martin, St. Lucie
Punta Gorda, FL MSA	638	668	867	1266	1523	Charlotte
Sebastian-Vero Beach, FL MSA	558	673	858	1068	1099	Indian River
Tallahassee, FL HMFA	596	662	817	1090	1122	Gadsden, Jefferson, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	690	766	926	1173	1417	Hernando, Hillsborough, Pasco, Pinellas
Wakulla County, FL HMFA	571	620	690	907	936	Wakulla
*West Palm Beach-Boca Raton, FL HMFA	823	964	1138	1609	1658	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	423	586	650	805	831	Calhoun	486	488	584	736	839
Citrus	653	710	786	1140	1372	Columbia	473	547	646	806	1133
DeSoto	655	671	788	950	978	Dixie	482	526	584	729	813
Franklin	549	550	660	831	946	Glades	717	764	868	1060	1132
Gulf	581	582	697	878	1002	Hamilton	495	541	600	749	835
Hardee	657	713	791	971	997	Hendry	616	736	821	987	1218

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FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Highlands	637	640	767	992	1186	Holmes	498	529	601	782	821
Jackson	409	524	584	723	844	Lafayette	550	601	667	833	928
Levy	521	559	629	803	827	Liberty	486	488	584	736	839
Madison	486	488	584	736	839	Monroe	946	1152	1419	2065	2211
Okeechobee	774	801	933	1257	1294	Putnam	543	589	654	785	808
Sumter	531	577	641	842	1126	Suwannee	414	564	625	788	863
Taylor	484	525	584	698	718	Union	479	551	619	819	844
Walton	631	650	761	941	969	Washington	429	488	644	923	949

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	463	494	580	778	803	Baker, Dougherty, Lee, Terrell, Worth
Athens-Clarke County, GA MSA	516	573	719	958	988	Clarke, Madison, Oconee, Oglethorpe
Atlanta-Sandy Springs-Marietta, GA HMFA	699	757	842	1025	1118	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Augusta-Richmond County, GA-SC MSA	568	616	692	927	974	Burke, Columbia, McDuffie, Richmond
Brunswick, GA MSA	588	639	709	1010	1245	Brantley, Glynn, McIntosh
Butts County, GA HMFA	469	626	723	1055	1256	Butts
Chattanooga, TN-GA MSA	504	533	628	773	909	Catoosa, Dade, Walker
Columbus, GA-AL MSA	558	588	673	895	1059	Chattahoochee, Harris, Marion, Muscogee
Dalton, GA HMFA	509	553	612	757	780	Whitfield
Gainesville, GA MSA	643	674	777	954	1106	Hall
Haralson County, GA HMFA	446	467	536	780	946	Haralson
Hinesville-Fort Stewart, GA HMFA	530	576	641	902	1026	Liberty
Lamar County, GA HMFA	445	447	536	706	941	Lamar
Long County, GA HMFA	444	482	536	734	757	Long
Macon, GA MSA	536	581	646	797	830	Bibb, Crawford, Jones, Twiggs
Meriwether County, GA HMFA	495	501	597	720	742	Meriwether
Monroe County, GA HMFA	483	526	583	698	722	Monroe
Murray County, GA HMFA	475	514	572	684	704	Murray
Rome, GA MSA	499	508	656	805	831	Floyd
Savannah, GA MSA	677	733	816	1083	1118	Bryan, Chatham, Effingham
Valdosta, GA MSA	534	535	644	873	900	Brooks, Echols, Lanier, Lowndes
Warner Robins, GA MSA	608	619	735	1066	1227	Houston

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	444	483	536	653	673	Atkinson	445	465	536	683	777
Bacon	445	465	536	683	777	Baldwin	423	510	633	756	779
Banks	446	483	536	651	925	Ben Hill	358	461	551	667	685
Berrien	440	441	536	664	684	Bleckley	376	440	536	664	760
Bulloch	450	466	552	662	680	Calhoun	445	482	536	688	845
Camden	541	542	653	950	1146	Candler	444	483	536	653	673
Charlton	473	494	569	725	825	Chattooga	349	427	536	643	935

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GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	469	509	565	725	890
Coffee	444	459	536	667	816
Cook	445	455	536	729	942
Decatur	350	407	536	641	712
Dooly	445	460	536	676	912
Elbert	445	465	536	673	694
Evans	444	483	536	653	673
Franklin	446	483	536	651	925
Glascock	389	412	543	650	763
Grady	349	482	537	744	770
Habersham	466	468	561	672	985
Hart	445	482	536	640	940
Jackson	525	570	634	770	1006
Jefferson	384	428	536	642	754
Johnson	392	481	536	693	723
Lincoln	445	465	536	673	694
Macon	445	460	536	676	912
Mitchell	385	488	590	707	982
Morgan	466	467	576	689	710
Pierce	445	465	536	683	777
Pulaski	406	475	536	780	818
Quitman	445	482	536	688	845
Randolph	445	482	536	688	845
Screven	384	407	536	642	754
Stephens	356	494	548	656	677
Sumter	413	465	571	683	1003
Taliaferro	445	465	536	673	694
Taylor	445	460	536	676	912
Thomas	518	562	624	801	1095
Toombs	348	482	536	747	827
Treutlen	406	475	536	717	820
Turner	445	472	536	680	829
Upson	348	471	536	641	660
Warren	445	465	536	673	694
Wayne	384	434	536	708	941
Wheeler	406	475	536	717	820
Wilcox	406	475	536	717	820
Wilkinson	392	481	536	693	723

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clinch	445	465	536	683	777
Colquitt	446	481	536	642	807
Crisp	445	449	536	677	698
Dodge	423	425	536	717	738
Early	445	482	536	688	845
Emanuel	350	406	536	653	835
Fannin	359	499	553	662	794
Gilmer	524	568	633	835	1008
Gordon	483	487	625	748	771
Greene	445	465	536	673	694
Hancock	565	590	680	854	881
Irwin	445	472	536	680	829
Jeff Davis	444	483	536	653	673
Jenkins	384	407	536	642	754
Laurens	445	484	536	720	873
Lumpkin	437	568	675	911	1010
Miller	413	481	536	671	800
Montgomery	406	475	536	717	820
Peach	490	492	593	849	892
Polk	457	508	620	764	789
Putnam	433	437	574	834	858
Rabun	528	548	636	820	989
Schley	460	475	553	697	941
Seminole	413	481	536	671	800
Stewart	445	482	536	688	845
Talbot	475	476	574	707	728
Tattnall	446	482	536	707	773
Telfair	406	475	536	717	820
Tift	470	509	564	720	832
Towns	513	532	618	794	961
Troup	496	502	629	796	821
Union	489	507	589	756	916
Ware	449	485	542	694	728
Washington	384	441	536	655	754
Webster	445	460	536	676	912
White	492	614	682	861	1036
Wilkes	445	465	536	673	694

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Honolulu, HI MSA	1235	1449	1767	2564	2870	Honolulu

HAWAII continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	860	1033	1159	1634	1791
Kauai	952	1072	1413	1773	1930
Kalawao	1003	1157	1359	1718	1956
Maui	1166	1293	1503	2011	2154

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City-Nampa, ID HMFA	522	619	730	1061	1129	Ada, Boise, Canyon, Owyhee
Coeur d'Alene, ID MSA	555	599	721	1048	1172	Kootenai
Gem County, ID HMFA	491	595	661	961	989	Gem
Idaho Falls, ID MSA	466	490	626	858	1077	Bonneville, Jefferson
Lewiston, ID-WA MSA	479	498	623	885	1078	Nez Perce
Logan, UT-ID MSA	461	498	622	834	1030	Franklin
Pocatello, ID MSA	382	445	573	828	971	Bannock, Power

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	437	455	573	776	924
Benewah	448	456	573	819	844
Blaine	736	800	888	1261	1557
Boundary	448	456	573	819	844
Camas	420	460	573	755	808
Cassia	420	460	573	755	808
Clearwater	448	462	573	827	954
Elmore	383	446	587	744	912
Gooding	420	460	573	755	808
Jerome	420	460	573	755	808
Lemhi	419	449	573	810	963
Lincoln	420	460	573	755	808
Minidoka	371	489	573	759	780
Payette	374	451	573	725	947
Teton	492	526	672	950	1129
Valley	488	508	640	867	1032
Bear Lake	389	448	573	814	961
Bingham	403	447	573	788	814
Bonner	468	491	602	852	877
Butte	419	449	573	810	963
Caribou	389	448	573	814	961
Clark	419	449	573	810	963
Custer	425	454	580	820	974
Fremont	456	488	623	881	1047
Idaho	406	435	573	685	810
Latah	485	507	612	892	1032
Lewis	448	462	573	827	954
Madison	447	448	575	835	909
Oneida	389	448	573	814	961
Shoshone	474	475	573	755	799
Twin Falls	393	477	605	780	923
Washington	437	455	573	776	924

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	527	582	735	983	1229	McLean
Bond County, IL HMFA	502	537	696	1012	1190	Bond
Cape Girardeau-Jackson, MO-IL MSA	400	457	596	771	947	Alexander
Champaign-Urbana, IL MSA	561	682	802	1007	1383	Champaign, Ford, Piatt
Chicago-Joliet-Naperville, IL HMFA	745	853	958	1171	1323	Cook, DuPage, Kane, Lake, McHenry, Will
Danville, IL MSA	407	486	626	749	795	Vermilion
Davenport-Moline-Rock Island, IA-IL MSA	467	521	656	836	872	Henry, Mercer, Rock Island
DeKalb County, IL HMFA	565	638	839	1088	1335	DeKalb
Decatur, IL MSA	424	504	640	853	880	Macon

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ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Grundy County, IL HMFA	574	672	881	1109	1493	Grundy
Kankakee-Bradley, IL MSA	519	565	745	966	1036	Kankakee
Kendall County, IL HMFA	819	820	985	1385	1500	Kendall
Macoupin County, IL HMFA	485	486	584	728	753	Macoupin
Peoria, IL MSA	468	553	689	887	1007	Marshall, Peoria, Stark, Tazewell, Woodford
Rockford, IL MSA	505	569	721	943	971	Boone, Winnebago
Springfield, IL MSA	453	533	689	899	1004	Menard, Sangamon
St. Louis, MO-IL HMFA	588	638	792	1020	1068	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	457	591	768	793	Brown	378	460	584	780	804
Bureau	394	458	605	745	817	Carroll	411	464	584	727	748
Cass	517	520	655	833	858	Christian	395	506	605	782	914
Clark	422	589	652	949	979	Clay	411	513	628	838	862
Coles	423	541	650	917	1141	Crawford	381	450	584	768	805
Cumberland	388	484	584	777	1024	De Witt	478	479	584	763	892
Douglas	400	502	617	878	905	Edgar	380	444	584	735	757
Edwards	476	485	584	769	847	Effingham	484	485	584	738	780
Fayette	484	498	584	808	833	Franklin	378	464	584	725	1024
Fulton	419	500	603	771	956	Gallatin	476	485	584	769	847
Greene	399	445	584	740	777	Hamilton	476	485	584	769	847
Hancock	487	488	584	702	726	Hardin	476	485	584	769	847
Henderson	403	471	584	738	881	Iroquois	474	526	637	801	940
Jackson	430	525	661	900	1120	Jasper	378	470	584	769	791
Jefferson	477	490	584	735	757	Jo Daviess	484	518	616	821	846
Johnson	477	486	585	770	849	Knox	380	444	584	776	799
La Salle	522	563	742	936	1204	Lawrence	379	444	584	777	801
Lee	416	511	614	820	954	Livingston	409	502	631	753	784
Logan	516	517	619	850	974	McDonough	492	580	730	936	1223
Marion	426	488	584	747	822	Mason	389	493	600	843	869
Massac	485	486	584	850	877	Montgomery	485	486	584	700	867
Morgan	396	460	606	752	816	Moultrie	380	449	584	736	894
Ogle	490	523	685	896	957	Perry	379	495	584	705	906
Pike	378	463	584	785	809	Pope	476	485	584	769	847
Pulaski	476	485	584	769	847	Putnam	399	467	614	776	849
Randolph	380	443	584	774	949	Richland	435	527	584	804	963
Saline	380	490	584	791	1024	Schuyler	378	463	584	785	809
Scott	399	445	584	740	777	Shelby	493	494	594	774	876
Stephenson	395	462	609	728	752	Union	486	487	584	716	889
Wabash	476	485	584	769	847	Warren	417	488	641	800	912
Washington	408	467	589	757	780	Wayne	378	460	584	743	765
White	476	485	584	769	847	Whiteside	461	543	669	828	851
Williamson	411	481	630	908	936						

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INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, IN MSA	532	532	640	823	857	Madison
Bloomington, IN HMFA	513	594	724	1029	1063	Monroe
Carroll County, IN HMFA	388	456	598	787	810	Carroll
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Dearborn, Franklin, Ohio
Columbus, IN MSA	603	605	726	890	953	Bartholomew
Elkhart-Goshen, IN MSA	513	572	707	889	931	Elkhart
Evansville, IN-KY HMFA	460	537	668	824	896	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	477	507	634	791	813	Allen, Wells, Whitley
Gary, IN HMFA	538	671	818	978	1009	Lake, Newton, Porter
Gibson County, IN HMFA	490	491	587	751	1033	Gibson
Greene County, IN HMFA	453	454	584	847	876	Greene
Indianapolis, IN HMFA	543	629	747	967	1023	Boone, Brown, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Shelby
Jasper County, IN HMFA	560	561	697	909	937	Jasper
Kokomo, IN MSA	506	511	649	827	851	Howard, Tipton
Lafayette, IN HMFA	501	592	727	947	1083	Benton, Tippecanoe
Louisville, KY-IN HMFA	509	588	698	975	1036	Clark, Floyd, Harrison
Michigan City-La Porte, IN MSA	458	529	671	891	917	LaPorte
Muncie, IN MSA	500	511	618	832	874	Delaware
Owen County, IN HMFA	490	493	590	747	1036	Owen
Putnam County, IN HMFA	554	555	668	798	900	Putnam
South Bend-Mishawaka, IN HMFA	534	594	715	917	945	St. Joseph
Sullivan County, IN HMFA	378	444	584	698	719	Sullivan
Terre Haute, IN HMFA	420	479	616	760	874	Clay, Vermillion, Vigo
Washington County, IN HMFA	444	497	584	718	957	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	485	526	584	764	901	Blackford	485	487	584	743	803
Cass	415	447	588	749	773	Clinton	497	527	644	804	844
Crawford	416	475	584	722	765	Daviess	485	488	584	760	931
Decatur	516	519	623	807	832	DeKalb	445	476	604	831	853
Dubois	380	456	584	797	821	Fayette	389	481	597	790	813
Fountain	429	516	584	781	817	Fulton	496	515	598	844	871
Grant	489	490	592	747	871	Henry	494	496	594	764	854
Huntington	442	527	623	778	941	Jackson	571	572	696	894	1085
Jay	379	465	584	791	816	Jefferson	438	469	618	740	915
Jennings	378	447	584	707	974	Knox	406	463	584	723	902
Kosciusko	424	495	650	827	963	LaGrange	572	573	687	828	919
Lawrence	395	466	608	727	748	Marshall	463	534	663	874	901
Martin	416	459	584	719	841	Miami	379	446	584	850	917
Montgomery	414	487	620	844	889	Noble	512	513	617	737	758
Orange	377	443	584	735	802	Parke	486	488	584	736	926
Perry	380	444	584	758	783	Pike	379	448	584	756	780
Pulaski	484	485	584	775	800	Randolph	485	486	584	833	859
Ripley	579	580	699	842	963	Rush	486	488	586	702	769
Scott	469	525	665	859	995	Spencer	383	453	590	763	788

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INDIANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starke	484	510	584	772	812
Switzerland	409	444	584	731	815
Wabash	381	444	584	798	909
Wayne	412	485	608	825	851
Steuben	442	504	662	798	822
Union	379	463	584	727	751
Warren	380	466	584	718	834
White	394	545	605	723	1021

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ames, IA MSA	557	587	726	1039	1229	Story
Benton County, IA HMFA	350	413	539	671	899	Benton
Bremer County, IA HMFA	392	483	601	719	972	Bremer
Cedar Rapids, IA HMFA	418	487	641	908	1032	Linn
Davenport-Moline-Rock Island, IA-IL MSA	467	521	656	836	872	Scott
Des Moines-West Des Moines, IA MSA	502	599	731	936	1043	Dallas, Guthrie, Madison, Polk, Warren
Dubuque, IA MSA	417	449	590	793	864	Dubuque
Iowa City, IA HMFA	491	585	738	1075	1258	Johnson
Jones County, IA HMFA	452	453	543	761	785	Jones
Omaha-Council Bluffs, NE-IA HMFA	529	602	751	1003	1031	Harrison, Mills, Pottawattamie
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Woodbury
Washington County, IA HMFA	370	446	567	723	869	Washington
Waterloo-Cedar Falls, IA HMFA	424	522	624	766	938	Black Hawk, Grundy

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	382	426	560	683	764
Allamakee	379	417	534	692	736
Audubon	399	410	534	702	735
Buchanan	443	444	534	689	708
Butler	379	417	534	692	736
Carroll	347	405	534	637	657
Cedar	406	448	591	764	827
Cherokee	399	410	534	702	735
Clarke	356	406	534	639	712
Clayton	379	417	534	692	736
Crawford	399	422	534	702	735
Decatur	365	406	534	651	728
Des Moines	442	483	612	769	867
Emmet	382	412	543	665	780
Floyd	375	405	534	668	688
Fremont	348	425	534	655	705
Hamilton	475	476	611	770	805
Hardin	451	453	542	648	689
Howard	379	417	534	692	736
Ida	399	410	534	702	735
Jackson	367	405	534	690	747
Adams	366	408	536	654	731
Appanoose	347	405	534	674	739
Boone	399	481	613	798	859
Buena Vista	427	432	565	678	778
Calhoun	423	424	534	686	718
Cass	348	425	534	655	705
Cerro Gordo	421	468	616	765	787
Chickasaw	379	417	534	692	736
Clay	347	405	534	648	812
Clinton	361	423	556	709	810
Davis	365	406	534	651	728
Delaware	367	405	534	690	747
Dickinson	346	427	534	676	937
Fayette	379	417	534	692	736
Franklin	386	425	534	682	716
Greene	399	410	534	702	735
Hancock	392	432	543	694	728
Henry	452	454	543	776	800
Humboldt	423	424	534	686	718
Iowa	407	430	534	698	721
Jasper	421	460	604	768	802

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IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Jefferson	497	505	598	753	916
Kossuth	386	425	534	682	716
Louisa	431	482	596	771	816
Lyon	375	405	534	654	767
Marion	419	514	642	793	816
Mitchell	386	425	534	682	716
Monroe	381	425	558	681	761
Muscatine	406	502	624	768	828
Osceola	375	405	534	654	767
Palo Alto	375	405	534	654	767
Pocahontas	423	424	534	686	718
Ringgold	370	412	542	661	739
Shelby	348	425	534	655	705
Tama	425	449	557	729	752
Union	400	445	585	714	798
Wapello	407	473	624	744	776
Webster	404	411	534	739	763
Winneshiek	347	406	534	694	940
Wright	423	424	534	686	718

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Keokuk	365	406	534	651	728
Lee	403	469	553	701	721
Lucas	365	406	534	651	728
Mahaska	374	424	540	647	854
Marshall	414	480	599	770	884
Monona	399	410	534	702	735
Montgomery	386	471	592	726	781
O'Brien	375	405	534	654	767
Page	345	406	534	637	656
Plymouth	484	485	584	787	810
Poweshiek	370	432	568	726	748
Sac	399	410	534	702	735
Sioux	434	440	534	722	743
Taylor	365	406	534	651	728
Van Buren	365	406	534	651	728
Wayne	365	406	534	651	728
Winnebago	386	425	534	682	716
Worth	386	425	534	682	716

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Franklin County, KS HMFA	588	589	730	930	994	Franklin
Kansas City, MO-KS HMFA	547	657	754	1020	1073	Johnson, Leavenworth, Linn, Miami, Wyandotte
Lawrence, KS MSA	556	571	734	1072	1289	Douglas
Manhattan, KS MSA	481	554	673	937	1101	Geary, Pottawatomie, Riley
St. Joseph, MO-KS MSA	395	487	606	763	905	Doniphan
Sumner County, KS HMFA	360	424	557	750	872	Sumner
Topeka, KS MSA	487	530	649	823	865	Jackson, Jefferson, Osage, Shawnee, Wabaunsee
Wichita, KS HMFA	437	489	643	822	925	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	407	411	540	716	779
Atchison	396	441	540	787	948
Barton	350	423	540	718	929
Brown	396	441	540	787	948
Chautauqua	390	434	540	696	757
Cheyenne	404	410	540	691	711
Clay	468	514	632	811	999
Coffey	377	411	540	687	708
Cowley	394	482	590	748	769
Decatur	404	410	540	691	711

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	466	518	644	829	903
Barber	351	414	540	703	829
Bourbon	421	447	580	838	944
Chase	377	411	540	687	708
Cherokee	450	467	540	756	928
Clark	440	444	540	657	721
Cloud	419	427	540	709	732
Comanche	351	414	540	703	829
Crawford	387	454	597	804	897
Dickinson	352	409	540	650	801

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KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edwards	351	414	540	703	829
Ellis	399	451	594	822	860
Finney	470	470	607	737	934
Gove	404	410	540	691	711
Grant	440	444	540	657	721
Greeley	566	571	695	846	928
Hamilton	470	474	577	702	770
Haskell	475	480	584	711	780
Jewell	419	427	540	709	732
Kingman	351	414	540	703	829
Labette	351	420	540	732	753
Lincoln	419	427	540	709	732
Lyon	384	449	590	788	933
Marion	377	411	540	687	708
Meade	475	479	583	710	778
Montgomery	387	432	540	664	827
Morton	501	506	616	750	822
Neosho	350	421	540	643	944
Norton	404	410	540	691	711
Ottawa	419	427	540	709	732
Phillips	404	410	540	691	711
Rawlins	404	410	540	691	711
Republic	419	427	540	709	732
Rooks	404	410	540	691	711
Russell	404	410	540	691	711
Scott	440	444	540	657	721
Sheridan	412	418	550	704	724
Smith	404	410	540	691	711
Stanton	440	444	540	657	721
Thomas	402	410	540	686	707
Wallace	416	422	555	710	731
Wichita	523	528	642	781	857
Woodson	390	434	540	696	757

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Elk	390	434	540	696	757
Ellsworth	419	427	540	709	732
Ford	511	513	617	760	811
Graham	404	410	540	691	711
Gray	440	444	540	657	721
Greenwood	377	411	540	687	708
Harper	351	414	540	703	829
Hodgeman	440	444	540	657	721
Kearny	440	444	540	657	721
Kiowa	351	414	540	703	829
Lane	524	529	644	784	860
Logan	404	410	540	691	711
McPherson	496	497	596	780	802
Marshall	400	439	540	693	853
Mitchell	419	427	540	709	732
Morris	400	439	540	693	853
Nemaha	396	441	540	787	948
Ness	440	444	540	657	721
Osborne	404	410	540	691	711
Pawnee	354	417	544	708	836
Pratt	404	472	620	804	948
Reno	408	453	595	815	839
Rice	391	427	540	716	738
Rush	351	414	540	703	829
Saline	453	455	599	798	822
Seward	445	548	633	777	942
Sherman	397	410	540	678	699
Stafford	351	414	540	703	829
Stevens	528	533	649	790	866
Trego	404	410	540	691	711
Washington	419	427	540	709	732
Wilson	390	433	540	694	755

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bowling Green, KY MSA	449	536	652	869	1024	Edmonson, Warren
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton
Clarksville, TN-KY HMFA	565	587	682	986	1015	Christian, Trigg
Elizabethtown, KY MSA	428	477	575	818	1007	Hardin, Larue
Evansville, IN-KY HMFA	460	537	668	824	896	Henderson, Webster
Grant County, KY HMFA	436	526	669	824	923	Grant

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KENTUCKY continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Boyd, Greenup
Lexington-Fayette, KY MSA	447	537	662	890	918	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN HMFA	509	588	698	975	1036	Bullitt, Henry, Jefferson, Oldham, Spencer, Trimble
Meade County, KY HMFA	514	515	617	792	887	Meade
Nelson County, KY HMFA	379	457	553	806	872	Nelson
Owensboro, KY MSA	416	463	609	845	895	Daviess, Hancock, McLean
Shelby County, KY HMFA	572	573	692	911	938	Shelby

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	372	413	491	599	668	Allen	321	417	491	655	848
Anderson	455	487	643	930	1109	Ballard	405	448	552	707	797
Barren	345	403	523	652	718	Bath	367	398	491	613	634
Bell	323	440	491	586	719	Boyle	391	432	568	680	703
Breathitt	408	428	491	610	638	Breckinridge	380	382	491	656	677
Butler	340	404	491	646	665	Caldwell	409	410	492	623	707
Calloway	469	470	565	696	992	Carlisle	373	412	508	651	734
Carroll	413	414	514	680	738	Carter	318	424	491	585	662
Casey	372	413	491	599	668	Clay	318	441	491	586	603
Clinton	372	413	491	599	668	Crittenden	408	409	491	641	728
Cumberland	372	413	491	599	668	Elliott	407	408	491	624	737
Estill	441	442	531	679	894	Fleming	367	398	491	613	634
Floyd	372	417	491	644	742	Franklin	437	463	609	826	849
Fulton	360	398	491	629	709	Garrard	393	440	528	630	925
Graves	401	402	499	596	727	Grayson	409	409	491	640	751
Green	370	409	491	594	662	Harlan	407	437	491	604	764
Harrison	398	400	523	686	708	Hart	365	399	491	627	730
Hickman	360	398	491	629	709	Hopkins	410	411	495	621	868
Jackson	444	467	536	648	667	Johnson	320	418	491	670	688
Knott	408	428	491	614	638	Knox	322	388	491	692	716
Laurel	416	450	501	615	841	Lawrence	338	395	522	697	718
Lee	408	428	491	614	638	Leslie	486	511	586	733	761
Letcher	408	428	491	610	638	Lewis	367	398	491	613	634
Lincoln	324	443	491	588	777	Livingston	407	408	491	631	717
Logan	462	502	558	764	846	Lyon	434	441	523	678	703
McCracken	362	455	559	750	773	McCreary	408	440	491	633	650
Madison	396	420	538	759	890	Magoffin	408	411	491	604	631
Marion	408	410	527	705	726	Marshall	475	476	574	748	973
Martin	408	411	491	604	631	Mason	320	409	495	722	829
Menifee	367	398	491	613	634	Mercer	454	483	548	722	849
Metcalfe	365	399	491	627	730	Monroe	365	399	491	627	730
Montgomery	319	372	491	586	604	Morgan	367	398	491	613	634
Muhlenberg	405	406	491	624	640	Nicholas	375	375	491	601	663
Ohio	406	431	491	651	715	Owen	419	477	545	734	955

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Owsley	408	428	491	614	638
Pike	407	408	491	589	606
Pulaski	356	395	502	619	656
Rockcastle	407	428	491	594	611
Russell	372	413	491	599	668
Taylor	354	484	538	693	911
Union	406	408	491	598	628
Wayne	321	392	491	636	655
Wolfe	408	428	491	614	638
Perry	408	429	491	587	720
Powell	318	402	491	587	605
Robertson	520	563	695	868	897
Rowan	398	441	491	616	636
Simpson	383	450	591	735	757
Todd	409	416	493	639	663
Washington	380	382	491	656	677
Whitley	359	378	498	595	613

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	509	551	656	853	878	Grant, Rapides
Baton Rouge, LA HMFA	599	651	752	959	1054	Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, West Feliciana
Houma-Bayou Cane-Thibodaux, LA MSA	546	550	682	895	1021	Lafourche, Terrebonne
Iberville Parish, LA HMFA	453	455	547	741	763	Iberville
Lafayette, LA MSA	549	630	698	896	1136	Lafayette, St. Martin
Lake Charles, LA MSA	498	561	683	843	1186	Calcasieu, Cameron
Monroe, LA MSA	456	517	642	852	879	Ouachita, Union
New Orleans-Metairie-Kenner, LA MSA	732	811	948	1217	1258	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
Shreveport-Bossier City, LA MSA	532	612	715	907	936	Bossier, Caddo, De Soto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Acadia	409	409	497	628	721
Assumption	413	414	497	606	623
Beauregard	421	432	508	740	890
Caldwell	392	419	497	629	702
Claiborne	425	433	512	612	670
East Carroll	392	419	497	629	702
Franklin	392	419	497	629	702
Jackson	392	419	497	629	702
La Salle	377	406	497	630	761
Madison	392	419	497	629	702
Natchitoches	447	448	537	643	831
Richland	392	419	497	629	702
St. James	350	408	500	614	633
St. Mary	447	455	547	715	738
Tensas	392	419	497	629	702
Vernon	571	629	697	1012	1208
Webster	392	393	497	670	691
Winn	413	447	497	627	667
Allen	412	414	497	722	802
Avoyelles	322	438	497	676	808
Bienville	413	420	497	594	650
Catahoula	377	406	497	630	761
Concordia	377	406	497	644	761
Evangeline	411	413	497	637	655
Iberia	465	477	562	694	809
Jefferson Davis	447	449	539	682	701
Lincoln	492	508	591	769	794
Morehouse	438	440	547	656	710
Red River	413	420	497	594	650
Sabine	413	420	497	594	650
St. Landry	325	389	497	671	714
Tangipahoa	432	502	631	756	897
Vermilion	414	414	497	681	705
Washington	433	437	522	695	716
West Carroll	392	419	497	629	702

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MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME HMFA	521	608	776	986	1114	Penobscot County towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town
Cumberland County, ME (part) HMFA	562	670	864	1032	1322	Cumberland County towns of Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town, New Gloucester town, Pownal town, Sebago town
Lewiston-Auburn, ME MSA	475	595	727	921	1020	Androscoggin County towns of Auburn city, Durham town, Greene town, Leeds town, Lewiston city, Lisbon town, Livermore town, Livermore Falls town, Mechanic Falls town, Minot town, Poland town, Sabattus town, Turner town, Wales town
Penobscot County, ME (part) HMFA	485	486	584	730	895	Penobscot County towns of Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Portland, ME HMFA	640	760	985	1241	1330	Cumberland County towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town York County towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town
Sagadahoc County, ME HMFA	664	665	797	962	1380	Sagadahoc County towns of Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town, West Bath town, Woolwich town
York County, ME (part) HMFA	625	649	826	988	1079	York County towns of Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town, Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town
York-Kittery-South Berwick, ME HMFA	832	837	1004	1462	1593	York County towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Aroostook County, ME	395	487	584	762	840	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, St. Agatha town, St. Francis town, St. John plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Franklin County, ME	466	503	613	732	950	Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley town, Rangeley plantation, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock County, ME	548	631	735	1035	1065	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, Eastbrook town, East Hancock UT, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec County, ME	455	545	679	927	990	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town,

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox County, ME	514	679	775	1049	1211	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, St. George town, South Thomaston town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln County, ME	603	647	781	943	972	Alna town, Boothbay town, Boothbay Harbor town, Bremen town, Bristol town, Damariscotta town, Dresden town, Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford County, ME	434	576	664	884	1109	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Piscataquis County, ME	447	509	630	799	856	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Somerset County, ME	422	524	621	877	930	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, St. Albans town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, Starks town, The Forks plantation, West Forks plantation
Waldo County, ME	512	550	663	813	865	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town,

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Washington County, ME	474	512	611	757	825	Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town, Winterport town Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia town, Columbia Falls town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, Northfield town, North Washington UT, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Baltimore-Towson, MD HMFA	907	1025	1231	1581	1952	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia city, MD HMFA	1316	1368	1587	2157	2512	Columbia city
Cumberland, MD-WV MSA	411	498	584	788	919	Allegany
Hagerstown, MD HMFA	574	658	842	1215	1254	Washington
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Cecil
Salisbury, MD HMFA	625	778	914	1132	1299	Wicomico
Somerset County, MD HMFA	584	621	732	906	1190	Somerset
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1166	1328	1506	1943	2542	Calvert, Charles, Frederick, Montgomery, Prince George's

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	713	737	862	1165	1197
Garrett	380	470	584	753	999
St. Mary's	793	823	1071	1407	1853
Worcester	751	781	905	1321	1406

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Dorchester	510	613	781	1054	1084
Kent	696	697	839	1029	1382
Talbot	747	749	901	1219	1288

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable Town, MA MSA	798	934	1229	1466	1513	Barnstable County towns of Barnstable Town city, Bourne town, Brewster town, Chatham town, Dennis town, Eastham town, Falmouth town, Harwich town, Mashpee town, Orleans town, Provincetown town, Sandwich town, Truro town, Wellfleet town,

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MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Yarmouth town
Berkshire County, MA (part) HMFA.....	618	694	800	1095	1126	Berkshire County towns of Alford town, Becket town, Clarksburg town, Egremont town, Florida town, Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Boston-Cambridge-Quincy, MA-NH HMFA.....	1099	1166	1369	1637	1799	Essex County towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex County towns of Acton town, Arlington town, Ashby town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city, Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city Norfolk County towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town Plymouth County towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town Suffolk County towns of Boston city, Chelsea city, Revere city, Winthrop town
Brockton, MA HMFA.....	876	912	1148	1373	1721	Norfolk County towns of Avon town Plymouth County towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Marion town, Mattapoisett town, Middleborough town, Plympton town, Rochester town, West Bridgewater town, Whitman town
Eastern Worcester County, MA HMFA.....	677	756	995	1189	1746	Worcester County towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town,

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Mendon town, Milford town, Millville town, Southborough town, Upton town
Easton-Raynham, MA HMFA	793	1051	1222	1462	2113	Bristol County towns of Easton town, Raynham town
Fitchburg-Leominster, MA HMFA	582	669	839	1027	1116	Worcester County towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Franklin County, MA (part) HMFA	585	683	846	1129	1363	Franklin County towns of Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Lawrence, MA-NH HMFA	713	907	1097	1310	1350	Essex County towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA HMFA	720	861	1107	1322	1450	Middlesex County towns of Billerica town, Chelmsford town, Dracut town, Dunstable town, Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA HMFA	559	717	820	982	1325	Bristol County towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city
Pittsfield, MA HMFA	576	673	835	1073	1106	Berkshire County towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence-Fall River, RI-MA HMFA	710	790	910	1087	1341	Bristol County towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA HMFA	566	673	855	1023	1188	Franklin County towns of Sunderland town Hampden County towns of Agawam city, Blandford town, Brimfield town, Chester town, Chicopee city, East Longmeadow town, Granville town, Hampden town, Holland town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, Tolland town, Wales town, Westfield city, West Springfield town, Wilbraham town Hampshire County towns of Amherst town, Belchertown town, Chesterfield town, Cummington town, Easthampton city, Goshen town, Granby town, Hadley town, Hatfield town, Huntington town, Middlefield town, Northampton city, Pelham town, Plainfield town, Southampton town, South Hadley town, Ware town, Westhampton town, Williamsburg town, Worthington town
Taunton-Mansfield-Norton, MA HMFA	659	831	1015	1245	1344	Bristol County towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city
Western Worcester County, MA HMFA	463	636	713	851	1093	Worcester County towns of Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town
Worcester, MA HMFA	640	736	897	1073	1137	Worcester County towns of Auburn town, Barre town,

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, Northborough town, Northbridge town, North Brookfield town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, Westborough town, West Boylston town, West Brookfield town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Dukes County, MA	958	1215	1447	1729	1783	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Nantucket County, MA	1171	1621	1799	2152	2216	Nantucket town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI MSA	641	718	874	1099	1132	Washtenaw
Barry County, MI HMFA	435	549	671	967	1064	Barry
Battle Creek, MI MSA	473	542	664	809	833	Calhoun
Bay City, MI MSA	456	510	620	828	852	Bay
Cass County, MI HMFA	465	532	588	779	905	Cass
Detroit-Warren-Livonia, MI HMFA	586	667	798	954	984	Lapeer, Macomb, Oakland, St. Clair, Wayne
Flint, MI MSA	510	538	646	800	826	Genesee
*Grand Rapids-Wyoming, MI HMFA	578	618	744	949	995	Kent
Holland-Grand Haven, MI MSA	581	591	709	981	1059	Ottawa
Ionia County, MI HMFA	441	512	624	747	832	Ionia
Jackson, MI MSA	511	570	680	845	870	Jackson
Kalamazoo-Portage, MI MSA	530	566	688	914	954	Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	551	598	740	938	1017	Clinton, Eaton, Ingham
Livingston County, MI HMFA	643	678	798	1151	1400	Livingston
Monroe, MI MSA	591	593	714	932	1027	Monroe
Muskegon-Norton Shores, MI MSA	461	481	625	826	850	Muskegon
Newaygo County, MI HMFA	491	519	592	801	824	Newaygo
Niles-Benton Harbor, MI MSA	460	515	628	768	985	Berrien
Saginaw-Saginaw Township North, MI MSA	450	515	650	779	800	Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	412	477	584	787	833	Alger	386	489	584	720	811
Allegan	468	564	676	847	909	Alpena	461	524	584	807	892
Antrim	526	527	636	884	1116	Arenac	464	489	584	781	865
Baraga	386	489	584	720	811	Benzie	548	549	665	831	855
Branch	443	473	622	746	767	Charlevoix	550	595	660	949	979
Cheboygan	407	473	584	784	824	Chippewa	411	511	631	765	857

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clare	441	457	601	810	834
Delta	405	482	584	769	815
Emmet	479	589	734	989	1047
Gogebic	403	482	584	714	849
Gratiot	487	488	584	778	870
Houghton	415	486	584	759	870
Iosco	480	509	588	855	887
Isabella	532	575	641	922	1007
Keweenaw	403	482	584	714	849
Leelanau	548	549	665	831	855
Luce	403	492	584	766	835
Manistee	450	466	611	731	820
Mason	404	475	622	814	894
Menominee	485	486	584	770	1027
Missaukee	414	498	587	771	848
Montmorency	443	514	643	847	896
Ogemaw	449	472	584	755	835
Osceola	485	486	584	799	1007
Otsego	432	505	664	796	837
Roscommon	485	487	584	759	934
Sanilac	489	527	587	826	849
Shiawassee	412	507	631	869	969
Wexford	406	536	625	827	911

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crawford	403	468	584	770	816
Dickinson	384	466	590	712	969
Gladwin	464	489	584	781	865
Grand Traverse	632	634	794	1039	1072
Hillsdale	445	547	652	917	1002
Huron	485	488	584	774	940
Iron	403	482	584	714	849
Kalkaska	572	622	690	838	864
Lake	463	506	605	792	953
Lenawee	411	516	633	808	881
Mackinac	380	472	584	704	767
Marquette	386	501	596	750	815
Mecosta	412	491	594	789	1041
Midland	448	510	629	867	926
Montcalm	471	546	625	844	870
Oceana	423	490	584	707	753
Ontonagon	403	482	584	714	849
Oscoda	451	522	639	861	911
Presque Isle	412	477	584	787	833
St. Joseph	458	510	602	743	833
Schoolcraft	410	501	594	779	849
Tuscola	403	460	584	701	838

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth, MN-WI MSA	447	545	687	863	1099	Carlton, St. Louis
Fargo, ND-MN MSA	433	514	654	944	1091	Clay
Grand Forks, ND-MN MSA	432	542	665	843	1145	Polk
La Crosse, WI-MN MSA	424	496	653	867	1064	Houston
Mankato-North Mankato, MN MSA	487	567	659	919	1066	Blue Earth, Nicollet
Minneapolis-St. Paul-Bloomington, MN-WI MSA	632	745	904	1183	1330	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN HMFA	515	549	722	936	978	Dodge, Olmsted
St. Cloud, MN MSA	517	569	682	964	1120	Benton, Stearns
Wabasha County, MN HMFA	409	456	584	731	1026	Wabasha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	378	444	583	728	787
Beltrami	398	470	598	822	1049
Brown	427	486	583	698	718
Chippewa	447	486	583	697	719
Cook	435	553	671	841	866

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	378	448	583	730	758
Big Stone	378	460	583	745	771
Cass	378	484	583	735	757
Clearwater	408	460	583	736	1023
Cottonwood	427	466	583	743	778

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Crow Wing	411	481	634	813	951
Faribault	427	466	583	743	778
Freeborn	380	445	585	697	920
Grant	378	460	583	745	771
Itasca	426	526	655	793	930
Kanabec	472	553	727	907	981
Kittson	384	459	583	742	870
Lac qui Parle	447	486	583	697	719
Lake of the Woods	475	536	679	857	1191
Lincoln	447	486	583	697	719
McLeod	530	532	659	944	974
Marshall	384	459	583	742	870
Meeker	537	595	690	902	927
Morrison	379	451	583	697	1023
Murray	427	466	583	743	778
Norman	384	459	583	742	870
Pennington	381	448	583	736	804
Pipestone	427	466	583	743	778
Red Lake	384	459	583	742	870
Renville	454	473	583	762	784
Rock	427	466	583	743	778
Sibley	454	473	583	762	784
Stevens	379	476	583	703	949
Todd	420	472	583	704	935
Wadena	420	472	583	704	935
Watonwan	427	466	583	743	778
Winona	408	482	629	869	1103

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Douglas	398	474	596	864	945
Fillmore	388	468	583	761	954
Goodhue	465	546	717	913	987
Hubbard	428	484	613	774	1075
Jackson	427	466	583	743	778
Kandiyohi	458	470	583	785	810
Koochiching	378	484	583	735	757
Lake	429	545	661	828	853
Le Sueur	554	572	688	958	988
Lyon	422	474	583	727	748
Mahnomen	408	460	583	736	1023
Martin	483	484	583	847	872
Mille Lacs	476	490	645	799	888
Mower	399	467	596	740	763
Nobles	384	480	583	774	798
Otter Tail	380	452	583	711	732
Pine	430	466	602	786	811
Pope	408	496	629	804	832
Redwood	447	486	583	697	719
Rice	561	585	770	920	1070
Roseau	378	449	583	727	851
Steele	443	538	679	854	1114
Swift	378	460	583	745	771
Traverse	378	460	583	745	771
Waseca	378	444	583	697	729
Wilkin	378	460	583	745	771
Yellow Medicine	447	486	583	697	719

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Gulfport-Biloxi, MS MSA	608	645	753	981	1008	Hancock, Harrison, Stone
Hattiesburg, MS MSA	475	541	644	938	968	Forrest, Lamar, Perry
Jackson, MS HMFA	558	630	731	879	906	Copiah, Hinds, Madison, Rankin
Marshall County, MS HMFA	341	427	527	769	793	Marshall
Memphis, TN-MS-AR HMFA	594	645	717	955	985	DeSoto
Pascagoula, MS MSA	486	556	668	920	987	George, Jackson
Simpson County, MS HMFA	469	496	567	679	981	Simpson
Tate County, MS HMFA	529	613	682	955	1198	Tate
Tunica County, MS HMFA	455	547	701	842	1033	Tunica

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 27

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	343	475	527	632	905
Amite	421	473	527	637	724
Benton	425	475	527	632	649
Calhoun	432	445	527	706	884
Chickasaw	366	450	527	631	663
Claiborne	438	439	527	661	775
Clay	437	438	527	768	792
Covington	438	439	527	661	775
Greene	409	438	539	704	741
Holmes	409	473	527	630	660
Issaquena	409	473	527	630	660
Jasper	414	447	527	633	674
Jefferson Davis	438	439	527	661	775
Kemper	413	458	527	690	714
Lauderdale	426	478	560	769	794
Leake	446	482	568	683	726
Leflore	342	401	527	700	823
Lowndes	453	464	544	790	815
Monroe	437	466	527	659	705
Neshoba	356	480	550	655	962
Noxubee	437	453	527	722	770
Panola	354	491	547	655	755
Pike	470	510	567	746	769
Prentiss	343	399	527	632	651
Scott	449	477	540	646	697
Smith	414	447	527	633	674
Tallahatchie	356	399	527	699	732
Tishomingo	342	445	527	662	684
Walthall	511	575	640	774	879
Washington	346	451	532	691	844
Webster	432	445	527	706	884
Winston	366	450	527	631	663
Yazoo	475	504	574	685	708

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	438	472	527	732	926
Attala	432	445	527	706	884
Bolivar	461	521	599	718	1053
Carroll	500	561	741	983	1029
Choctaw	432	445	527	706	884
Clarke	413	458	527	690	714
Coahoma	386	399	527	630	925
Franklin	421	473	527	637	724
Grenada	411	451	527	742	883
Humphreys	356	399	527	699	732
Itawamba	341	465	527	696	822
Jefferson	438	439	527	661	775
Jones	383	444	566	745	770
Lafayette	434	513	633	758	780
Lawrence	438	439	527	661	775
Lee	453	473	545	744	839
Lincoln	384	474	527	723	925
Marion	417	473	530	696	792
Montgomery	432	445	527	706	884
Newton	413	458	527	690	714
Oktibbeha	397	483	588	766	789
Pearl River	496	497	595	726	1024
Pontotoc	437	438	527	717	737
Quitman	418	447	527	631	792
Sharkey	409	473	527	630	660
Sunflower	383	471	527	751	775
Tippah	437	475	527	686	854
Union	342	475	527	631	764
Warren	492	540	603	721	742
Wayne	399	428	527	688	725
Wilkinson	421	473	527	637	724
Yalobusha	437	450	533	714	894

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bates County, MO HMFA	412	485	633	889	918	Bates
Calloway County, MO HMFA	453	458	579	791	815	Callaway
Cape Girardeau-Jackson, MO-IL MSA	400	457	596	771	947	Bollinger, Cape Girardeau
Columbia, MO MSA	431	516	641	933	1041	Boone, Howard
Dallas County, MO HMFA	361	469	555	758	782	Dallas
Jefferson City, MO HMFA	395	434	564	799	888	Cole, Osage

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MISSOURI continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Joplin, MO MSA	389	467	595	757	779	Jasper, Newton
Kansas City, MO-KS HMFA	547	657	754	1020	1073	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
McDonald County, MO HMFA	442	443	555	790	815	McDonald
Moniteau County, MO HMFA	374	437	577	698	930	Moniteau
Polk County, MO HMFA	361	422	555	809	927	Polk
Springfield, MO HMFA	405	478	611	871	995	Christian, Greene, Webster
St. Joseph, MO-KS MSA	395	487	606	763	905	Andrew, Buchanan, DeKalb
St. Louis, MO-IL HMFA	588	638	792	1020	1068	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA	425	495	555	730	815	Washington

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	368	428	564	741	818	Atchison	445	446	555	691	855
Audrain	467	469	564	712	904	Barry	362	456	555	724	748
Barton	361	455	555	672	738	Benton	361	430	555	770	798
Butler	459	460	555	769	823	Camden	465	472	580	845	869
Carroll	452	453	572	717	801	Carter	460	461	555	771	829
Cedar	361	430	555	770	798	Chariton	438	440	555	696	777
Clark	408	421	555	687	809	Cooper	422	444	577	770	896
Crawford	361	458	555	739	973	Dade	401	422	555	710	767
Daviess	445	446	555	691	855	Dent	416	452	555	732	931
Douglas	410	460	555	734	851	Dunklin	430	468	555	709	792
Gasconade	394	428	555	695	884	Gentry	445	446	555	691	855
Grundy	445	446	555	691	855	Harrison	467	468	582	725	897
Henry	385	447	590	708	729	Hickory	361	430	555	770	798
Holt	445	446	555	691	855	Howell	382	438	555	688	974
Iron	376	422	555	709	821	Johnson	481	513	622	832	935
Knox	408	421	555	687	809	Laclede	455	456	555	726	952
Lawrence	460	461	555	755	871	Lewis	414	427	563	696	821
Linn	408	421	555	687	809	Livingston	449	450	571	763	999
Macon	448	450	555	664	714	Madison	400	450	591	755	874
Maries	416	452	555	732	931	Marion	361	421	555	722	743
Mercer	452	453	563	701	868	Miller	478	479	572	764	796
Mississippi	389	423	555	733	845	Monroe	376	439	579	744	765
Montgomery	367	428	565	726	747	Morgan	461	462	555	754	877
New Madrid	395	454	555	740	762	Nodaway	445	446	555	664	775
Oregon	410	460	555	734	851	Ozark	410	460	555	734	851
Pemiscot	362	424	555	698	718	Perry	430	468	614	736	1080
Pettis	476	477	618	771	923	Phelps	474	510	640	885	1090
Pike	386	452	595	779	851	Pulaski	490	529	588	854	935
Putnam	464	478	631	781	920	Ralls	360	421	555	713	734
Randolph	388	456	597	757	778	Reynolds	460	461	555	771	829

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ripley	460	461	555	771	829
Ste. Genevieve	386	434	570	728	843
Saline	360	422	555	720	845
Scotland	408	421	555	687	809
Shannon	410	460	555	734	851
Stoddard	436	453	563	767	830
Sullivan	408	421	555	687	809
Texas	438	462	555	764	880
Wayne	460	461	555	771	829
Wright	407	426	555	700	721

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Clair	361	430	555	770	798
St. Francois	490	493	593	828	862
Schuyler	408	421	555	687	809
Scott	456	457	572	713	843
Shelby	408	421	555	687	809
Stone	458	533	704	923	1016
Taney	532	533	673	803	1022
Vernon	386	458	555	777	801
Worth	445	446	555	691	855

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	464	551	713	962	1158	Carbon, Yellowstone
Great Falls, MT MSA	401	483	619	837	1008	Cascade
Missoula, MT MSA	517	595	751	973	1165	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	383	446	586	758	919
Blaine	379	453	574	765	874
Carter	466	483	574	774	823
Custer	374	519	574	836	864
Dawson	466	483	574	774	823
Fallon	466	483	574	774	823
Flathead	417	513	644	911	1117
Garfield	466	483	574	774	823
Golden Valley	466	483	574	774	823
Hill	373	460	574	828	879
Judith Basin	379	453	574	765	874
Lewis and Clark	451	516	644	935	965
Lincoln	374	459	574	794	890
Madison	409	477	627	811	983
Mineral	404	457	574	736	881
Park	424	495	650	777	1028
Phillips	466	483	574	774	823
Powder River	466	483	574	774	823
Prairie	479	497	590	795	846
Richland	466	483	574	774	823
Rosebud	426	443	574	708	755
Sheridan	466	483	574	774	823
Stillwater	466	483	574	774	823
Teton	379	453	574	765	874

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	428	445	574	711	758
Broadwater	394	452	574	776	833
Chouteau	379	453	574	765	874
Daniels	466	483	574	774	823
Deer Lodge	394	452	574	776	833
Fergus	418	436	574	695	740
Gallatin	466	555	722	964	1265
Glacier	379	453	574	765	874
Granite	427	490	622	841	903
Jefferson	394	452	574	776	833
Lake	471	474	574	774	833
Liberty	379	453	574	765	874
McCone	466	483	574	774	823
Meagher	375	437	574	743	900
Musselshell	466	483	574	774	823
Petroleum	479	497	590	795	846
Pondera	379	453	574	765	874
Powell	394	452	574	776	833
Ravalli	478	521	669	876	1037
Roosevelt	466	483	574	774	823
Sanders	374	459	574	794	890
Silver Bow	415	446	574	750	821
Sweet Grass	469	486	577	778	827
Toole	379	453	574	765	874

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MONTANA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Treasure	466	483	574	774	823
Wheatland	479	497	590	795	846
Valley	466	483	574	774	823
Wibaux	466	483	574	774	823

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE HMFA	466	523	665	933	1131	Lancaster
Omaha-Council Bluffs, NE-IA HMFA	529	602	751	1003	1031	Cass, Douglas, Sarpy, Washington
Saunders County, NE HMFA	584	586	704	1026	1057	Saunders
Seward County, NE HMFA	378	467	584	776	985	Seward
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Dakota, Dixon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	411	480	632	799	823
Arthur	463	535	613	809	834
Blaine	509	511	613	758	883
Box Butte	437	443	584	764	909
Brown	437	443	584	758	909
Burt	538	539	647	811	837
Cedar	485	486	584	732	756
Cherry	482	490	645	837	1004
Clay	379	444	584	747	867
Cuming	485	486	584	732	756
Dawes	378	445	584	700	870
Deuel	507	515	678	880	1055
Dundy	441	509	584	771	795
Franklin	379	444	584	747	867
Furnas	441	509	584	771	795
Garden	437	443	584	758	909
Gosper	478	552	633	836	862
Greeley	485	486	584	722	842
Hamilton	542	543	652	806	940
Hayes	463	535	613	809	834
Holt	437	443	584	758	909
Howard	510	511	614	759	885
Johnson	544	546	656	832	872
Keith	572	660	757	999	1030
Kimball	437	443	584	758	909
Lincoln	482	542	690	846	1065
Loup	509	511	613	758	883
Madison	446	470	618	842	869
Morrill	454	461	607	788	944
Nemaha	485	486	584	741	776
Antelope	485	486	584	732	756
Banner	437	443	584	758	909
Boone	485	486	584	732	756
Boyd	437	443	584	758	909
Buffalo	439	514	676	919	1069
Butler	485	486	584	741	776
Chase	441	509	584	771	795
Cheyenne	437	443	584	758	909
Colfax	554	556	667	836	863
Custer	485	486	584	722	842
Dawson	521	565	629	765	789
Dodge	443	519	682	814	994
Fillmore	492	493	593	752	788
Frontier	477	551	632	834	860
Gage	540	541	650	793	817
Garfield	485	486	584	722	842
Grant	461	532	610	805	830
Hall	526	527	661	826	1069
Harlan	379	444	584	747	867
Hitchcock	441	509	584	771	795
Hooker	463	535	613	809	834
Jefferson	485	486	584	741	776
Kearney	387	454	597	764	887
Keya Paha	437	443	584	758	909
Knox	485	486	584	732	756
Logan	549	634	727	960	989
McPherson	463	535	613	809	834
Merrick	485	486	584	722	842
Nance	485	486	584	732	756
Nuckolls	379	444	584	747	867

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Otoe	520	522	626	776	813	Pawnee	485	486	584	741	776
Perkins	441	509	584	771	795	Phelps	379	444	584	747	867
Pierce	485	486	584	732	756	Platte	514	515	618	902	928
Polk	485	486	584	741	776	Red Willow	404	526	584	850	876
Richardson	485	486	584	741	776	Rock	437	443	584	758	909
Saline	566	597	682	833	861	Scotts Bluff	511	513	616	785	1035
Sheridan	437	443	584	758	909	Sherman	485	486	584	722	842
Sioux	437	443	584	758	909	Stanton	485	486	584	732	756
Thayer	511	513	616	781	819	Thomas	445	514	590	779	803
Thurston	489	491	589	738	762	Valley	485	486	584	722	842
Wayne	485	486	584	732	756	Webster	379	444	584	747	867
Wheeler	509	511	613	758	883	York	386	456	597	724	870

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Carson City, NV MSA	592	713	859	1252	1509	Carson
*Las Vegas-Paradise, NV MSA	739	870	1024	1423	1713	Clark
Reno-Sparks, NV MSA	630	752	930	1351	1633	Storey, Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	636	638	801	1013	1190	Douglas	616	758	921	1282	1421
Elko	510	555	720	897	1155	Esmeralda	397	458	584	776	858
Eureka	513	592	755	1003	1109	Humboldt	416	488	640	766	788
Lander	405	468	597	793	877	Lincoln	558	644	822	1092	1208
Lyon	499	561	738	1075	1108	Mineral	513	592	755	1003	1109
Nye	507	705	783	1141	1175	Pershing	418	483	616	818	905
White Pine	466	539	687	912	1009						

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston-Cambridge-Quincy, MA-NH HMFA	1099	1166	1369	1637	1799	Rockingham County towns of Seabrook town, South Hampton town
Hillsborough County, NH (part) HMFA	641	652	855	1246	1501	Hillsborough County towns of Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Lawrence, MA-NH HMFA	713	907	1097	1310	1350	Rockingham County towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Manchester, NH HMFA	686	842	1007	1203	1240	Hillsborough County towns of Bedford town, Goffstown town, Manchester city, Weare town

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Nashua, NH HMFA	750	882	1103	1475	1578	Hillsborough County towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Pelham town, Wilton town
Portsmouth-Rochester, NH HMFA	727	858	1070	1412	1593	Rockingham County towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton town, Hampton Falls town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford County towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Middleton town, Milton town, New Durham town, Rochester city, Rollinsford town, Somersworth city, Strafford town
Western Rockingham County, NH HMFA	948	949	1142	1510	1557	Rockingham County towns of Auburn town, Candia town, Deerfield town, Londonderry town, Northwood town, Nottingham town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap County, NH	572	704	879	1160	1492	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll County, NH	636	672	886	1205	1480	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire County, NH	711	760	952	1148	1398	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos County, NH	393	514	604	847	951	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township,

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton County, NH	653	719	911	1225	1292	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town, Warren town, Waterville Valley town, Wentworth town, Woodstock town
Merrimack County, NH	645	763	996	1230	1577	Allenstown town, Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hooksett town, Hopkinton town, Loudon town, Newbury town, New London town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Sullivan County, NH	536	649	827	1121	1211	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic City-Hammonton, NJ MSA	852	939	1120	1420	1593	Atlantic
*Bergen-Passaic, NJ HMFA	1212	1326	1515	1910	2313	Bergen, Passaic
Jersey City, NJ HMFA	1027	1085	1266	1534	1652	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA	1086	1125	1324	1662	1960	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ HMFA	1005	1161	1417	1846	2004	Monmouth, Ocean
Newark, NJ HMFA	923	1128	1289	1543	1707	Essex, Morris, Sussex, Union
Ocean City, NJ MSA	841	858	1079	1413	1456	Cape May
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA	916	1054	1267	1514	1699	Mercer
Vineland-Millville-Bridgeton, NJ MSA	804	807	1017	1236	1302	Cumberland
Warren County, NJ HMFA	849	950	1111	1330	1369	Warren

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	472	555	701	1021	1224	Bernalillo, Sandoval, Torrance, Valencia
Farmington, NM MSA	513	542	653	863	974	San Juan
Las Cruces, NM MSA	471	508	566	781	867	Dona Ana

NEW MEXICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Fe, NM MSA	583	723	880	1152	1377	Santa Fe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	402	453	542	790	814	Chaves	423	424	542	709	731
Cibola	451	487	542	788	855	Colfax	473	505	568	717	746
Curry	451	467	542	734	954	De Baca	450	464	542	731	890
Eddy	379	483	568	762	926	Grant	411	477	542	764	785
Guadalupe	449	455	542	681	710	Harding	450	464	542	731	890
Hidalgo	402	453	542	790	814	Lea	472	514	570	750	789
Lincoln	420	529	644	811	1132	Los Alamos	617	719	944	1133	1167
Luna	450	488	542	691	830	McKinley	351	412	542	648	839
Mora	449	455	542	681	710	Otero	414	490	542	792	954
Quay	450	464	542	731	890	Rio Arriba	533	542	641	829	920
Roosevelt	449	461	542	751	929	San Miguel	422	456	561	746	866
Sierra	368	458	568	830	999	Socorro	457	458	549	658	932
Taos	647	703	779	932	961	Union	450	464	542	731	890

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	687	713	870	1041	1138	Albany, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	590	593	709	925	1085	Broome, Tioga
Buffalo-Niagara Falls, NY MSA	597	599	719	889	982	Erie, Niagara
Elmira, NY MSA	639	641	769	988	1030	Chemung
Glens Falls, NY MSA	631	667	839	1059	1192	Warren, Washington
Ithaca, NY MSA	802	825	966	1169	1212	Tompkins
Kingston, NY MSA	845	917	1098	1391	1728	Ulster
Nassau-Suffolk, NY HMFA	1233	1425	1682	2232	2432	Nassau, Suffolk
New York, NY HMFA	1183	1280	1424	1752	1970	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA	826	971	1189	1458	1553	Dutchess, Orange
Rochester, NY MSA	591	654	799	960	1016	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	621	623	750	960	1040	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	598	599	721	884	1004	Herkimer, Oneida
Westchester County, NY Statutory Exception Area	1139	1359	1580	1905	2349	Westchester

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	577	579	694	865	1063	Cattaraugus	599	601	723	950	1090
Cayuga	596	597	716	953	1106	Chautauqua	595	598	717	925	1010
Chenango	579	584	699	881	1227	Clinton	655	657	788	1001	1301
Columbia	693	707	834	1007	1074	Cortland	618	620	757	962	1181
Delaware	578	580	696	860	1132	Essex	642	643	772	1027	1116
Franklin	604	605	723	928	1027	Fulton	463	565	714	855	907
Genesee	661	662	796	987	1117	Greene	597	644	785	1021	1112
Hamilton	608	610	732	912	1057	Jefferson	696	697	838	1080	1135

NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lewis	565	568	681	852	951	Montgomery	623	668	750	949	1028
Otsego	699	716	841	1118	1162	St. Lawrence	595	597	718	909	993
Schuyler	558	560	672	896	925	Seneca	632	634	760	1000	1265
Steuben	593	595	715	917	1012	Sullivan	624	692	888	1063	1245
Wyoming	612	629	738	1075	1173	Yates	572	579	688	891	918

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anson County, NC HMFA	486	522	584	821	867	Anson
Asheville, NC HMFA	528	617	704	943	1236	Buncombe, Henderson, Madison
Burlington, NC MSA	594	614	716	972	1002	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC HMFA	657	713	791	997	1160	Cabarrus, Gaston, Mecklenburg, Union
Durham-Chapel Hill, NC HMFA	507	695	779	1018	1098	Chatham, Durham, Orange
Fayetteville, NC HMFA	570	617	689	978	1158	Cumberland
Goldsboro, NC MSA	449	533	624	781	1044	Wayne
Greene County, NC HMFA	485	486	584	825	852	Greene
Greensboro-High Point, NC HMFA	513	586	653	827	885	Guilford, Randolph
Greenville, NC HMFA	536	556	685	949	980	Pitt
Haywood County, NC HMFA	512	513	640	829	1073	Haywood
Hickory-Lenoir-Morganton, NC MSA	491	516	593	761	886	Alexander, Burke, Caldwell, Catawba
Hoke County, NC HMFA	485	527	584	799	975	Hoke
Jacksonville, NC MSA	580	621	698	980	1150	Onslow
Pender County, NC HMFA	508	510	613	806	829	Pender
Person County, NC HMFA	533	534	644	769	882	Person
Raleigh-Cary, NC MSA	681	763	849	1067	1105	Franklin, Johnston, Wake
Rockingham County, NC HMFA	466	493	584	725	748	Rockingham
Rocky Mount, NC MSA	401	484	616	765	788	Edgecombe, Nash
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	882	919	1064	1454	1753	Currituck
Wilmington, NC HMFA	605	668	807	1131	1163	Brunswick, New Hanover
Winston-Salem, NC MSA	468	533	618	842	990	Davie, Forsyth, Stokes, Yadkin

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	434	510	584	766	790	Ashe	484	485	584	772	913
Avery	464	574	678	811	957	Beaufort	397	518	610	734	755
Bertie	400	507	584	699	721	Bladen	384	466	591	861	930
Camden	545	711	839	1133	1161	Carteret	566	567	681	992	1194
Caswell	477	478	584	714	745	Cherokee	380	492	584	849	1023
Chowan	439	572	675	911	934	Clay	486	489	586	769	895
Cleveland	505	507	609	802	901	Columbus	409	526	584	700	720
Craven	558	637	730	984	1229	Dare	797	798	979	1294	1331
Davidson	513	515	620	808	923	Duplin	485	524	584	739	762
Gates	387	504	595	803	823	Graham	485	487	584	766	892
Granville	598	599	720	899	1068	Halifax	390	541	599	762	874
Harnett	564	613	680	918	1194	Hertford	387	533	594	779	801

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hyde	499	650	767	1035	1062	Iredell	594	599	717	950	1240
Jackson	499	516	614	806	832	Jones	451	488	584	808	1028
Lee	409	559	631	775	1107	Lenoir	474	476	626	748	1074
Lincoln	395	547	608	734	755	McDowell	379	452	584	721	742
Macon	468	508	655	796	1149	Martin	485	515	584	756	778
Mitchell	400	494	584	698	825	Montgomery	484	526	584	728	1026
Moore	516	517	651	936	1142	Northampton	381	515	584	743	764
Pamlico	429	545	641	807	830	Pasquotank	447	577	686	996	1026
Perquimans	380	495	584	788	808	Polk	483	484	594	743	766
Richmond	420	526	584	734	757	Robeson	416	503	584	701	780
Rowan	552	597	663	946	1010	Rutherford	475	478	584	699	720
Sampson	485	495	584	811	1028	Scotland	494	495	628	763	951
Stanly	469	506	619	843	917	Surry	436	525	584	780	802
Swain	541	544	652	855	996	Transylvania	431	600	664	838	884
Tyrrell	380	495	584	788	808	Vance	541	543	653	782	806
Warren	486	487	584	714	734	Washington	380	512	584	701	719
Watauga	508	621	781	950	1226	Wilkes	427	489	584	749	780
Wilson	607	608	738	883	937	Yancey	484	485	584	697	718

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	464	486	604	875	899	Burleigh, Morton
Fargo, ND-MN MSA	433	514	654	944	1091	Cass
Grand Forks, ND-MN MSA	432	542	665	843	1145	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	409	476	584	774	808	Barnes	549	552	662	926	1163
Benson	478	480	584	805	1016	Billings	433	504	618	819	855
Bottineau	452	496	617	869	946	Bowman	409	476	584	774	808
Burke	433	476	592	834	908	Cavalier	478	480	584	805	1016
Dickey	511	514	625	862	1087	Divide	409	476	584	774	808
Dunn	409	476	584	774	808	Eddy	478	480	584	805	1016
Emmons	427	470	584	822	896	Foster	478	480	584	805	1016
Golden Valley	409	476	584	774	808	Grant	430	500	613	812	848
Griggs	478	480	584	805	1016	Hettinger	409	476	584	774	808
Kidder	427	470	584	822	896	LaMoure	532	534	650	896	1130
Logan	427	470	584	822	896	McHenry	489	537	668	941	1025
McIntosh	451	495	616	867	945	McKenzie	409	476	584	774	808
McLean	427	470	584	822	896	Mercer	409	476	584	774	808
Mountrail	489	537	668	941	1025	Nelson	394	489	584	790	877
Oliver	409	476	584	774	808	Pembina	394	489	584	790	877

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pierce	427	470	584	822	896
Ransom	554	556	677	934	1177
Richland	384	461	584	759	900
Sargent	515	517	629	867	1094
Sioux	417	485	595	788	823
Stark	484	588	681	991	1197
Stutsman	542	544	652	903	1146
Traill	416	517	617	835	927
Ward	449	558	686	947	1124
Williams	394	480	605	797	845

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ramsey	443	455	599	746	944
Renville	427	470	584	822	896
Rolette	427	470	584	822	896
Sheridan	427	470	584	822	896
Slope	433	504	618	819	855
Steele	394	489	584	790	877
Towner	478	480	584	805	1016
Walsh	406	504	601	813	903
Wells	478	480	584	805	1016

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH MSA	496	580	742	944	973	Portage, Summit
Brown County, OH HMFA	453	475	626	808	973	Brown
Canton-Massillon, OH MSA	459	509	643	812	860	Carroll, Stark
Cincinnati-Middleton, OH-KY-IN HMFA	471	558	723	968	1005	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH MSA	520	603	727	932	990	Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH HMFA	537	625	790	994	1080	Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway
Dayton, OH HMFA	487	556	685	922	1100	Greene, Miami, Montgomery
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Lawrence
Lima, OH MSA	501	507	628	774	795	Allen
Mansfield, OH MSA	387	473	596	774	805	Richland
Parkersburg-Marietta-Vienna, WV-OH MSA	442	473	606	805	868	Washington
Preble County, OH HMFA	510	526	638	826	856	Preble
Sandusky, OH MSA	449	541	691	902	949	Erie
Springfield, OH MSA	487	542	652	843	1083	Clark
Steubenville-Weirton, OH-WV MSA	387	474	584	729	792	Jefferson
Toledo, OH MSA	483	537	665	858	935	Fulton, Lucas, Ottawa, Wood
Union County, OH HMFA	646	647	777	930	959	Union
Wheeling, WV-OH MSA	380	457	584	734	857	Belmont
Youngstown-Warren-Boardman, OH HMFA	444	499	603	759	819	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	475	493	584	774	817
Ashtabula	405	476	607	771	899
Auglaize	438	471	617	802	824
Clinton	457	565	626	912	1071
Coshocton	406	490	584	755	861
Darke	379	485	584	777	800
Fayette	481	553	675	813	1084
Guernsey	411	507	584	771	793
Hardin	487	529	587	736	964
Henry	415	508	615	792	815

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	384	458	593	765	787
Athens	533	579	642	826	859
Champaign	379	463	584	720	774
Columbiana	458	484	584	722	878
Crawford	486	493	588	757	829
Defiance	420	481	584	736	897
Gallia	397	527	584	743	975
Hancock	417	487	632	860	913
Harrison	390	465	584	748	769
Highland	521	522	628	846	874

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OHIO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hocking	378	527	584	833	857	Holmes	485	486	584	770	817
Huron	405	490	599	831	915	Jackson	485	488	584	700	722
Knox	519	523	628	804	921	Logan	518	523	622	782	808
Marion	407	513	627	795	967	Meigs	485	526	584	800	824
Mercer	394	511	603	812	837	Monroe	485	486	584	717	802
Morgan	485	486	584	717	802	Muskingum	473	485	584	748	943
Noble	485	486	584	717	802	Paulding	429	470	584	762	785
Perry	485	486	584	731	752	Pike	380	488	584	700	728
Putnam	401	443	584	725	756	Ross	455	516	602	744	854
Sandusky	489	500	588	731	799	Scioto	467	489	584	767	917
Seneca	431	452	584	734	756	Shelby	472	483	628	784	868
Tuscarawas	380	444	586	742	764	Van Wert	380	454	584	711	734
Vinton	426	526	584	799	995	Wayne	404	502	618	739	808
Williams	472	479	594	786	869	Wyandot	485	486	584	801	825

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR-OK HMFA	393	446	556	741	807	Sequoyah
Grady County, OK HMFA	392	437	544	736	845	Grady
Lawton, OK MSA	471	508	639	934	1123	Comanche
Le Flore County, OK HMFA	354	413	524	648	794	Le Flore
Lincoln County, OK HMFA	433	435	524	690	712	Lincoln
Oklahoma City, OK HMFA	526	574	697	941	1009	Canadian, Cleveland, Logan, McClain, Oklahoma
Okmulgee County, OK HMFA	398	448	590	801	850	Okmulgee
Pawnee County, OK HMFA	510	525	611	792	815	Pawnee
Tulsa, OK HMFA	551	599	732	967	998	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	437	439	524	625	644	Alfalfa	438	453	526	714	736
Atoka	379	425	524	681	795	Beaver	436	451	524	712	734
Beckham	511	553	614	803	1077	Blaine	436	451	524	712	734
Bryan	425	427	524	678	807	Caddo	361	399	524	627	784
Carter	457	487	551	685	734	Cherokee	421	453	524	658	757
Choctaw	433	470	524	743	765	Cimarron	436	451	524	712	734
Coal	379	425	524	681	795	Cotton	384	416	524	758	888
Craig	353	412	542	649	953	Custer	425	426	550	787	810
Delaware	376	423	524	704	726	Dewey	487	504	585	794	819
Ellis	436	451	524	712	734	Garfield	450	473	569	788	811
Garvin	339	396	524	689	839	Grant	436	451	524	712	734
Greer	406	421	524	704	738	Harmon	406	421	524	704	738
Harper	462	478	555	754	777	Haskell	341	409	524	660	723
Hughes	386	439	524	668	686	Jackson	362	470	528	741	763
Jefferson	384	416	524	758	888	Johnston	379	425	524	681	795

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OKLAHOMA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kay	385	477	592	818	845
Kiowa	406	421	524	704	738
Love	379	425	524	681	795
McIntosh	387	438	524	656	744
Marshall	379	425	524	681	795
Murray	479	480	575	773	990
Noble	375	435	524	728	750
Okfuskee	386	439	524	668	686
Payne	420	481	590	835	860
Pontotoc	368	411	524	714	737
Pushmataha	341	409	524	660	723
Seminole	340	420	524	629	648
Texas	415	497	560	708	847
Washington	453	454	553	774	852
Woods	389	416	524	762	785

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kingfisher	486	503	584	821	844
Latimer	341	409	524	660	723
McCurtain	340	397	524	680	702
Major	436	451	524	712	734
Mayes	340	472	524	656	750
Muskogee	395	465	552	698	771
Nowata	421	446	553	737	832
Ottawa	438	439	524	714	737
Pittsburg	384	448	590	743	906
Pottawatomie	452	514	572	725	841
Roger Mills	419	434	540	726	760
Stephens	343	398	524	716	738
Tillman	384	416	524	758	888
Washita	406	421	524	704	738
Woodward	364	425	524	653	673

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bend, OR MSA	596	693	826	1203	1241	Deschutes
Corvallis, OR MSA	512	622	774	1125	1293	Benton
Eugene-Springfield, OR MSA	525	637	806	1128	1255	Lane
Medford, OR MSA	541	642	807	1174	1209	Jackson
Portland-Vancouver-Hillsboro, OR-WA MSA	665	771	891	1297	1558	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA	559	620	742	1078	1301	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	380	443	584	850	875
Coos	417	505	640	849	978
Curry	541	622	734	1072	1294
Gilliam	493	577	697	944	1105
Harney	425	494	622	860	914
Jefferson	484	516	584	849	956
Klamath	407	478	609	852	946
Lincoln	453	517	659	913	1031
Malheur	420	479	584	844	869
Sherman	425	498	601	814	953
Umatilla	407	464	593	833	929
Wallowa	398	464	612	876	941
Wheeler	413	484	584	791	926

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clatsop	478	595	735	1064	1097
Crook	437	563	673	911	1066
Douglas	388	463	597	810	1002
Grant	413	484	584	791	926
Hood River	384	475	592	842	869
Josephine	490	561	678	964	1070
Lake	399	464	584	807	858
Linn	457	553	690	952	1178
Morrow	425	498	601	814	953
Tillamook	430	513	660	923	950
Union	384	447	590	861	886
Wasco	462	518	645	917	1135

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PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA HMFA	662	806	954	1234	1306	Carbon, Lehigh, Northampton
Altoona, PA MSA	453	496	600	786	811	Blair
Armstrong County, PA HMFA	479	521	576	737	967	Armstrong
Erie, PA MSA	471	532	687	822	934	Erie
Harrisburg-Carlisle, PA MSA	523	598	753	950	985	Cumberland, Dauphin, Perry
Johnstown, PA MSA	450	458	563	709	812	Cambria
Lancaster, PA MSA	560	665	819	1039	1092	Lancaster
Lebanon, PA MSA	452	540	696	944	974	Lebanon
*Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	788	899	1075	1315	1586	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pike County, PA HMFA	839	872	1011	1369	1676	Pike
Pittsburgh, PA HMFA	528	579	693	861	930	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	591	660	814	1088	1123	Berks
Scranton--Wilkes-Barre, PA MSA	438	523	628	796	841	Lackawanna, Luzerne, Wyoming
Sharon, PA HMFA	498	521	635	778	855	Mercer
State College, PA MSA	642	716	843	1007	1039	Centre
Williamsport, PA MSA	526	604	728	956	983	Lycoming
York-Hanover, PA MSA	545	626	795	960	995	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	550	601	719	968	1073	Bedford	429	487	563	673	893
Bradford	367	491	563	704	863	Cameron	469	486	563	747	803
Clarion	468	508	563	718	751	Clearfield	429	473	563	807	952
Clinton	519	520	627	751	771	Columbia	459	503	613	784	929
Crawford	464	515	583	774	884	Elk	469	490	563	730	882
Forest	469	498	563	730	750	Franklin	454	516	651	857	1050
Fulton	376	479	563	694	812	Greene	467	498	563	673	692
Huntingdon	366	453	563	727	749	Indiana	468	487	563	672	735
Jefferson	383	473	563	745	768	Juniata	432	468	563	765	789
Lawrence	422	551	648	775	910	McKean	481	506	578	775	833
Mifflin	396	459	563	731	915	Monroe	545	672	840	1073	1200
Montour	428	491	565	676	697	Northumberland	387	504	563	698	722
Potter	468	508	563	746	767	Schuylkill	375	489	563	703	773
Snyder	366	480	565	707	763	Somerset	468	468	563	692	732
Sullivan	367	491	563	705	840	Susquehanna	450	490	574	690	761
Tioga	464	510	567	745	796	Union	512	533	616	809	871
Venango	437	477	569	719	815	Warren	366	470	563	731	774
Wayne	478	481	604	754	850						

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Newport-Middleton-Portsmouth, RI HMFA	745	909	1123	1525	1971	Newport County towns of Middletown town, Newport city, Portsmouth town
Providence-Fall River, RI-MA HMFA	710	790	910	1087	1341	Bristol County towns of Barrington town, Bristol town, Warren town

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RHODE ISLAND continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kent County towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport County towns of Jamestown town, Little Compton town, Tiverton town Providence County towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington County towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town
Westerly-Hopkinton-New Shoreham, RI HMFA.....	605	760	889	1062	1387	Washington County towns of Hopkinton town, New Shoreham town, Westerly town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anderson, SC MSA.....	413	536	609	771	793	Anderson
Augusta-Richmond County, GA-SC MSA.....	568	616	692	927	974	Aiken, Edgefield
Charleston-North Charleston-Summerville, SC MSA...	697	773	874	1139	1326	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC HMFA.....	657	713	791	997	1160	York
Columbia, SC HMFA.....	634	690	769	950	980	Calhoun, Fairfield, Lexington, Richland, Saluda
Darlington County, SC HMFA.....	369	473	568	682	735	Darlington
Florence, SC HMFA.....	465	524	606	727	913	Florence
Greenville-Mauldin-Easley, SC MSA.....	516	560	623	822	845	Greenville, Pickens
Kershaw County, SC HMFA.....	379	477	587	738	856	Kershaw
Laurens County, SC HMFA.....	466	507	561	709	827	Laurens
Myrtle Beach-North Myrtle Beach-Conway, SC MSA....	629	692	808	966	1170	Horry
Spartanburg, SC MSA.....	516	533	623	784	807	Spartanburg
Sumter, SC MSA.....	495	538	596	766	811	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville.....	342	475	528	641	660	Allendale.....	439	475	528	655	847
Bamberg.....	438	440	528	704	725	Barnwell.....	437	460	528	636	822
Beaufort.....	642	772	873	1064	1131	Cherokee.....	432	433	528	632	671
Chester.....	439	440	528	631	671	Chesterfield.....	373	465	528	631	927
Clarendon.....	439	440	528	633	721	Colleton.....	343	427	528	747	767
Dillon.....	438	446	528	660	725	Georgetown.....	524	525	633	820	990
Greenwood.....	451	472	542	786	811	Hampton.....	447	455	538	663	753
Jasper.....	567	616	686	818	928	Lancaster.....	374	472	553	760	837
Lee.....	361	442	528	649	813	McCormick.....	439	460	528	730	754
Marion.....	436	437	528	641	658	Marlboro.....	438	439	528	666	789
Newberry.....	467	509	565	718	884	Oconee.....	344	402	528	655	929
Orangeburg.....	447	484	538	668	828	Union.....	439	440	528	729	819

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SOUTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Williamsburg	439	440	528	633	721

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Meade County, SD HMFA	371	443	573	833	930	Meade
Rapid City, SD HMFA	445	519	654	866	890	Pennington
Sioux City, IA-NE-SD MSA	407	478	627	789	813	Union
Sioux Falls, SD MSA	499	525	670	875	968	Lincoln, McCook, Minnehaha, Turner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	345	401	528	676	722	Beadle	450	451	541	787	893
Bennett	398	414	528	706	786	Bon Homme	345	401	528	676	722
Brookings	368	462	568	801	998	Brown	374	401	528	670	796
Brule	345	401	528	676	722	Buffalo	405	471	620	794	848
Butte	445	463	590	789	878	Campbell	384	402	528	697	828
Charles Mix	345	401	528	676	722	Clark	353	411	528	714	842
Clay	405	431	566	781	993	Codington	368	429	565	730	834
Corson	398	414	528	706	786	Custer	398	414	528	706	786
Davison	374	440	577	740	796	Day	384	402	528	697	828
Deuel	353	411	528	714	842	Dewey	398	414	528	706	786
Douglas	345	401	528	676	722	Edmunds	411	430	565	746	886
Fall River	442	460	605	785	873	Faulk	384	402	528	697	828
Grant	363	422	543	734	866	Gregory	345	401	528	676	722
Haakon	398	414	528	706	786	Hamlin	353	411	528	714	842
Hand	384	402	528	697	828	Hanson	345	401	528	676	722
Harding	404	420	536	717	798	Hughes	370	464	573	719	741
Hutchinson	345	401	528	676	722	Hyde	345	401	528	676	722
Jackson	398	414	528	706	786	Jerauld	384	402	528	697	828
Jones	398	414	528	706	786	Kingsbury	353	411	528	714	842
Lake	353	411	528	714	842	Lawrence	363	440	542	755	806
Lyman	345	401	528	676	722	McPherson	390	408	536	708	841
Marshall	384	402	528	697	828	Mellette	398	414	528	706	786
Miner	353	411	528	714	842	Moody	353	411	528	714	842
Perkins	483	503	641	858	954	Potter	398	414	528	706	786
Roberts	384	402	528	697	828	Sanborn	365	425	559	716	765
Shannon	398	414	528	706	786	Spink	384	402	528	697	828
Stanley	466	543	714	915	977	Sully	392	457	601	770	822
Todd	398	414	528	706	786	Tripp	362	421	554	710	758
Walworth	384	402	528	697	828	Yankton	367	435	565	741	761
Ziebach	398	414	528	706	786						

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TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	504	533	628	773	909	Hamilton, Marion, Sequatchie
Clarksville, TN-KY HMFA	565	587	682	986	1015	Montgomery
Cleveland, TN MSA	477	487	628	788	1002	Bradley, Polk
Hickman County, TN HMFA	345	479	531	774	798	Hickman
Jackson, TN MSA	500	546	689	923	947	Chester, Madison
Johnson City, TN MSA	384	464	575	714	890	Carter, Unicoi, Washington
Kingsport-Bristol-Bristol, TN-VA MSA	422	453	563	754	902	Hawkins, Sullivan
Knoxville, TN MSA	477	549	661	886	914	Anderson, Blount, Knox, Loudon, Union
Macon County, TN HMFA	330	402	508	605	672	Macon
Memphis, TN-MS-AR HMFA	594	645	717	955	985	Fayette, Shelby, Tipton
Morristown, TN MSA	463	465	558	732	825	Grainger, Hamblen, Jefferson
Nashville-Davidson--Murfreesboro--Franklin, TN MSA	572	653	751	974	1003	Cannon, Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, Wilson
Smith County, TN HMFA	441	443	530	707	730	Smith
Stewart County, TN HMFA	329	429	506	690	711	Stewart

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	357	437	549	687	708	Benton	399	400	506	625	687
Bledsoe	331	415	506	664	685	Campbell	420	421	506	652	776
Carroll	419	420	506	624	697	Claiborne	329	419	506	677	759
Clay	409	410	506	657	676	Cocke	330	407	506	606	826
Coffee	476	477	573	777	849	Crockett	420	456	506	660	681
Cumberland	447	448	540	766	947	Decatur	378	416	506	650	740
DeKalb	436	437	525	758	783	Dyer	347	407	534	712	778
Fentress	409	410	506	657	676	Franklin	349	419	538	782	942
Gibson	418	427	510	641	708	Giles	337	396	522	628	646
Greene	328	414	506	686	704	Grundy	331	415	506	664	685
Hancock	419	420	506	648	779	Hardeman	366	453	506	685	888
Hardin	370	413	506	671	691	Haywood	413	428	560	669	735
Henderson	360	476	556	663	683	Henry	328	385	506	605	737
Houston	399	400	506	625	687	Humphreys	420	455	506	721	745
Jackson	409	410	506	657	676	Johnson	330	410	509	683	716
Lake	376	420	506	657	696	Lauderdale	419	420	506	615	635
Lawrence	348	391	506	626	714	Lewis	337	392	506	645	664
Lincoln	419	420	506	618	637	McMinn	450	452	543	649	866
McNairy	329	387	506	731	752	Marshall	429	456	598	719	902
Maury	396	494	609	775	798	Meigs	331	415	506	664	685
Monroe	398	399	506	605	772	Moore	422	423	506	668	689
Morgan	430	431	521	652	760	Obion	347	419	506	667	703
Overton	330	415	506	618	636	Perry	337	392	506	645	664
Pickett	409	410	506	657	676	Putnam	430	431	537	773	829
Rhea	341	422	527	700	720	Roane	450	465	540	722	741
Scott	420	428	506	670	891	Sevier	499	540	609	733	1070
Van Buren	409	410	506	657	676	Warren	389	393	506	678	807

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TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	337	392	506	645	664
White	398	405	532	752	772
Weakley	367	452	506	740	892

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	541	569	718	935	1183	Callahan, Jones, Taylor
Amarillo, TX MSA	514	557	696	959	1075	Armstrong, Carson, Potter, Randall
Aransas County, TX HMFA	460	570	679	990	1020	Aransas
Atascosa County, TX HMFA	405	471	622	786	809	Atascosa
Austin County, TX HMFA	556	558	671	890	919	Austin
*Austin-Round Rock-San Marcos, TX MSA	713	812	989	1331	1516	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	515	578	691	857	888	Hardin, Jefferson, Orange
Brazoria County, TX HMFA	614	684	786	1084	1164	Brazoria
Brownsville-Harlingen, TX MSA	463	535	613	758	856	Cameron
Calhoun County, TX HMFA	438	519	665	838	1122	Calhoun
College Station-Bryan, TX MSA	538	609	743	941	970	Brazos, Burleson, Robertson
Corpus Christi, TX HMFA	645	663	823	1130	1231	Nueces, San Patricio
Dallas, TX HMFA	649	719	868	1130	1337	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	521	559	666	955	1133	El Paso
*Fort Worth-Arlington, TX HMFA	667	709	863	1153	1277	Johnson, Parker, Tarrant
*Houston-Baytown-Sugar Land, TX HMFA	694	772	937	1249	1570	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller
Kendall County, TX HMFA	661	661	796	1159	1398	Kendall
Killeen-Temple-Fort Hood, TX HMFA	484	535	680	989	1192	Bell, Coryell
Lampasas County, TX HMFA	380	484	584	852	998	Lampasas
Laredo, TX MSA	531	582	696	910	1192	Webb
Longview, TX HMFA	549	577	662	906	932	Gregg, Upshur
Lubbock, TX MSA	478	582	735	1041	1074	Crosby, Lubbock
McAllen-Edinburg-Mission, TX MSA	483	532	627	752	864	Hidalgo
Medina County, TX HMFA	464	516	607	726	883	Medina
Midland, TX MSA	552	598	787	1147	1358	Midland
Odessa, TX MSA	518	549	719	1036	1204	Ector
Rusk County, TX HMFA	486	487	584	699	719	Rusk
San Angelo, TX MSA	504	581	740	1058	1157	Irion, Tom Green
San Antonio-New Braunfels, TX HMFA	553	616	760	980	1191	Bandera, Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	572	603	708	930	1076	Grayson
Texarkana, TX-Texarkana, AR MSA	500	505	622	759	825	Bowie
Tyler, TX MSA	582	684	770	1055	1153	Smith
Victoria, TX HMFA	493	568	727	905	1072	Goliad, Victoria
Waco, TX MSA	605	606	754	944	975	McLennan
Wichita Falls, TX MSA	566	596	709	995	1025	Archer, Clay, Wichita
Wise County, TX HMFA	592	593	713	871	968	Wise

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	553	580	668	879	1153
Angelina	575	654	732	947	977
Baylor	408	484	602	767	910
Andrews	502	516	606	811	906
Bailey	678	755	879	1144	1449
Bee	508	509	610	819	917

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Blanco	524	563	712	935	1071
Bosque	508	509	612	744	891
Briscoe	475	478	584	778	802
Brown	493	536	676	859	986
Camp	474	475	584	797	822
Castro	475	478	584	778	802
Childress	511	514	628	836	863
Coke	399	459	584	840	916
Collingsworth	475	478	584	778	802
Comanche	460	493	584	743	811
Cooke	603	604	762	940	969
Crane	570	603	687	892	1059
Culberson	484	513	584	758	900
Dawson	482	484	584	753	778
DeWitt	432	448	584	763	825
Dimmit	479	481	584	795	943
Duval	403	506	584	778	828
Edwards	479	481	584	795	943
Falls	380	519	584	745	773
Fayette	454	515	624	775	798
Floyd	450	502	584	760	963
Franklin	448	514	621	761	915
Frio	391	480	584	739	880
Garza	450	502	584	760	963
Glasscock	524	525	634	818	844
Gray	451	453	584	733	756
Hale	403	509	599	734	819
Hamilton	430	462	584	767	878
Hardeman	397	470	585	745	885
Hartley	506	509	622	829	855
Hemphill	475	478	584	778	802
Hill	435	603	668	946	1032
Hood	662	717	798	1054	1400
Houston	522	560	628	752	814
Hudspeth	484	513	584	758	900
Jack	450	534	664	846	1004
Jasper	504	506	607	751	868
Jim Hogg	485	521	584	835	929
Karnes	433	446	584	764	827
Kent	594	596	770	1101	1196
Kimble	532	533	644	831	858
Kinney	479	481	584	795	943

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Borden	524	525	634	818	844
Brewster	595	621	817	977	1059
Brooks	485	521	584	835	929
Burnet	446	522	686	863	888
Cass	381	526	584	802	944
Cherokee	477	523	587	785	817
Cochran	450	502	584	760	963
Coleman	430	462	584	767	878
Colorado	535	590	669	884	909
Concho	809	811	980	1264	1305
Cottle	430	510	634	808	959
Crockett	489	490	592	764	789
Dallam	451	494	652	779	799
Deaf Smith	421	536	647	940	1071
Dickens	450	502	584	760	963
Donley	526	529	646	860	888
Eastland	460	493	584	743	811
Erath	490	531	663	809	833
Fannin	548	552	658	821	845
Fisher	451	452	584	835	907
Foard	396	470	584	744	883
Freestone	458	625	704	920	948
Gaines	485	517	584	758	908
Gillespie	538	629	827	1145	1179
Gonzales	400	457	584	849	874
Grimes	528	579	645	840	865
Hall	475	478	584	778	802
Hansford	496	499	609	811	837
Harrison	477	480	632	817	841
Haskell	451	452	584	835	907
Henderson	512	530	697	914	942
Hockley	523	556	672	933	962
Hopkins	484	558	681	864	1195
Howard	526	530	634	890	915
Hutchinson	486	487	584	699	869
Jackson	432	558	663	808	1166
Jeff Davis	526	557	634	823	977
Jim Wells	448	601	669	889	917
Kenedy	631	678	760	1086	1209
Kerr	644	697	784	1011	1043
King	489	545	634	825	1045
Kleberg	591	632	710	1037	1250

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	396	470	584	744	883
Lamb	450	502	584	760	963
Lavaca	467	515	584	771	793
Leon	498	547	609	793	817
Lipscomb	513	516	630	839	866
Llano	534	537	707	846	871
Lynn	450	502	584	760	963
McMullen	437	550	634	844	899
Marion	530	532	653	891	919
Mason	482	484	584	753	778
Maverick	486	488	584	849	875
Milam	380	470	584	756	803
Mitchell	451	452	584	835	907
Moore	450	554	638	929	956
Motley	450	502	584	760	963
Navarro	593	604	729	886	914
Nolan	453	454	584	753	1023
Oldham	554	557	680	906	934
Panola	486	526	584	711	1026
Pecos	482	526	584	708	857
Presidio	484	513	584	758	900
Reagan	534	535	646	833	860
Red River	421	484	584	715	860
Refugio	457	575	663	883	940
Runnels	482	484	584	753	778
San Augustine	484	485	584	759	1023
Schleicher	501	503	607	783	809
Shackelford	451	452	584	835	907
Sherman	519	522	637	848	875
Starr	485	528	584	851	1029
Sterling	524	525	634	818	844
Sutton	482	484	584	753	778
Terrell	484	513	584	758	900
Throckmorton	510	512	661	945	1027
Trinity	485	521	584	699	757
Upton	482	484	584	753	778
Val Verde	418	500	590	734	855
Walker	605	647	782	1006	1303
Washington	611	694	769	1079	1114
Wheeler	475	478	584	778	802
Willacy	530	576	639	930	1035
Wood	458	462	610	889	1069

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	428	496	622	784	876
La Salle	479	481	584	795	943
Lee	477	542	602	824	849
Limestone	421	586	647	828	857
Live Oak	464	583	673	896	954
Loving	526	557	634	823	977
McCulloch	493	495	594	865	892
Madison	478	524	584	760	783
Martin	600	601	726	937	967
Matagorda	430	564	660	962	1160
Menard	482	484	584	753	778
Mills	430	462	584	767	878
Montague	467	597	665	839	1166
Morris	421	484	584	715	860
Nacogdoches	510	639	754	900	1234
Newton	497	498	600	780	1051
Ochiltree	481	484	591	826	850
Palo Pinto	555	556	689	952	978
Parmer	475	478	584	778	802
Polk	537	544	646	773	796
Rains	518	519	646	871	897
Real	479	481	584	795	943
Reeves	485	517	584	749	908
Roberts	516	519	634	844	871
Sabine	484	485	584	759	1023
San Saba	462	497	628	825	945
Scurry	385	456	584	850	933
Shelby	485	486	584	839	1023
Somervell	460	493	584	746	811
Stephens	501	512	674	928	1008
Stonewall	451	452	584	835	907
Swisher	475	478	584	778	802
Terry	449	500	584	767	961
Titus	434	514	610	733	1071
Tyler	555	557	669	862	1116
Uvalde	500	681	767	999	1345
Van Zandt	559	562	687	960	989
Ward	485	491	584	728	864
Wharton	530	596	661	875	901
Wilbarger	448	534	690	886	988
Winkler	554	587	668	867	1029
Yoakum	517	576	671	873	1106

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TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Young	457	532	701	890	1035
Zavala	479	481	584	795	943
Zapata	485	521	584	835	929

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Logan, UT-ID MSA	461	498	622	834	1030	Cache
Ogden-Clearfield, UT MSA	493	593	730	1004	1187	Davis, Morgan, Weber
Provo-Orem, UT MSA	531	585	683	994	1197	Juab, Utah
Salt Lake City, UT HMFA	591	642	774	1089	1268	Salt Lake
St. George, UT MSA	603	632	751	1092	1228	Washington
Summit County, UT HMFA	574	797	886	1240	1554	Summit
Tooele County, UT HMFA	519	581	691	873	1211	Tooele

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	477	478	584	827	880
Carbon	485	486	584	767	901
Duchesne	496	538	597	771	1049
Garfield	477	478	584	827	880
Iron	509	537	618	900	1086
Millard	477	478	584	827	880
Rich	657	697	872	1172	1422
Sanpete	480	481	588	833	886
Uintah	531	577	640	840	945
Wayne	732	734	897	1270	1352
Box Elder	388	475	598	791	920
Daggett	510	554	614	796	1079
Emery	485	527	584	757	1026
Grand	546	594	659	849	1157
Kane	477	478	584	827	879
Piute	534	535	654	926	986
San Juan	485	527	584	757	1026
Sevier	477	478	584	827	880
Wasatch	573	670	883	1055	1267

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington-South Burlington, VT MSA	809	896	1124	1439	1613	Chittenden County towns of Bolton town, Buels gore, Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Huntington town, Jericho town, Milton town, Richmond town, St. George town, Shelburne town, South Burlington city, Underhill town, Westford town, Williston town, Winooski city Franklin County towns of Bakersfield town, Berkshire town, Enosburg town, Fairfax town, Fairfield town, Fletcher town, Franklin town, Georgia town, Highgate town, Montgomery town, Richford town, St. Albans city, St. Albans town, Sheldon town, Swanton town Grand Isle County towns of Alburg town, Grand Isle town, Isle La Motte town, North Hero town, South Hero town

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VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison County, VT	629	787	947	1245	1661	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington County, VT	584	732	852	1110	1304	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia County, VT	577	599	752	952	986	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, St. Johnsbury town, Sheffield town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Essex County, VT	534	599	728	928	1088	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Lamoille County, VT	678	814	948	1321	1665	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange County, VT	638	721	839	1168	1204	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town, Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans County, VT	483	668	746	942	1185	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland County, VT	560	734	853	1128	1443	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington County, VT	632	740	926	1251	1400	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham County, VT	664	692	909	1098	1133	Athens town, Brattleboro town, Brookline town, Dover town,

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VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor County, VT	782	876	1030	1402	1668	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, Weston town, West Windsor town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Blacksburg-Christiansburg-Radford, VA HMFA	591	647	724	993	1272	Montgomery, Radford city
Charlottesville, VA MSA	723	870	1029	1334	1476	Albemarle, Fluvanna, Greene, Nelson, Charlottesville city
Danville, VA MSA	410	471	608	758	814	Pittsylvania, Danville city
Franklin County, VA HMFA	396	474	610	730	777	Franklin
Giles County, VA HMFA	352	457	541	690	952	Giles
Harrisonburg, VA MSA	580	644	784	1098	1128	Rockingham, Harrisonburg city
Kingsport-Bristol-Bristol, TN-VA MSA	422	453	563	754	902	Scott, Washington, Bristol city
Louisa County, VA HMFA	533	604	688	823	847	Louisa
Lynchburg, VA MSA	529	543	654	806	900	Amherst, Appomattox, Bedford, Campbell, Bedford city, Lynchburg city
Pulaski County, VA HMFA	437	462	576	825	887	Pulaski
Richmond, VA HMFA	725	786	878	1171	1399	Amelia, Caroline, Charles, Chesterfield, Cumberland, Dinwiddie, Goochland, Hanover, Henrico, King and Queen, King William, New Kent, Powhatan, Prince George, Sussex, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA HMFA	532	567	732	929	1014	Botetourt, Craig, Roanoke, Roanoke city, Salem city
*Virginia Beach-Norfolk-Newport News, VA-NC MSA	882	919	1064	1454	1753	Gloucester, Isle of Wight, James, Mathews, Surry, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
Warren County, VA HMFA	582	678	844	1187	1223	Warren
*Washington-Arlington-Alexandria, DC-VA-MD HMFA	1166	1328	1506	1943	2542	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city
Winchester, VA-WV MSA	653	678	895	1235	1271	Frederick, Winchester city

SCHEDULE B - FY 2012 Final FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	418	572	643	781	962
Augusta	469	482	629	899	1035
Bland	451	466	541	690	767
Buchanan	451	466	541	690	767
Carroll	450	488	541	649	721
Culpeper	641	652	772	998	1061
Essex	452	558	687	935	964
Grayson	451	466	541	690	767
Halifax	352	489	541	727	951
Highland	419	436	541	747	901
Lancaster	525	646	787	968	1042
Lunenburg	493	509	593	739	1024
Mecklenburg	352	439	541	664	885
Northampton	440	542	660	804	874
Nottoway	539	582	648	920	1054
Page	400	467	613	791	815
Prince Edward	525	527	633	758	1014
Richmond	424	522	636	775	842
Russell	353	467	541	662	683
Smyth	447	486	541	687	889
Tazewell	451	452	541	695	786
Wise	450	459	541	704	887
Buena Vista city	489	550	612	891	1073
Covington city	352	451	541	657	685
Franklin city	453	627	695	860	1223
Lexington city	489	550	612	891	1073
Norton city	450	459	541	704	887
Waynesboro city	469	482	629	899	1035

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	352	451	541	657	685
Bath	430	448	556	767	926
Brunswick	450	464	541	675	934
Buckingham	450	486	541	695	880
Charlotte	450	486	541	695	880
Dickenson	451	483	541	706	726
Floyd	448	488	541	753	953
Greensville	475	514	571	690	857
Henry	417	434	541	694	795
King George	678	680	817	1188	1223
Lee	351	423	541	695	736
Madison	524	585	706	977	1008
Middlesex	407	501	610	743	808
Northumberland	438	539	656	799	869
Orange	509	700	780	1135	1369
Patrick	448	489	541	670	690
Rappahannock	587	655	791	1095	1130
Rockbridge	489	550	612	891	1073
Shenandoah	496	532	650	867	961
Southampton	453	627	695	860	1223
Westmoreland	529	645	814	1117	1150
Wythe	352	445	541	709	952
Clifton Forge city	352	451	541	657	685
Emporia city	475	514	571	690	857
Galax city	450	488	541	649	721
Martinsville city	417	434	541	694	795
Staunton city	469	482	629	899	1035

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	614	677	850	1240	1397	Whatcom
Bremerton-Silverdale, WA MSA	678	760	936	1339	1463	Kitsap
Kennewick-Pasco-Richland, WA MSA	549	599	751	1015	1203	Benton, Franklin
Lewiston, ID-WA MSA	479	498	623	885	1078	Asotin
Longview, WA MSA	478	601	698	1017	1159	Cowlitz
Mount Vernon-Anacortes, WA MSA	599	742	920	1259	1570	Skagit
Olympia, WA MSA	626	703	898	1304	1577	Thurston
Portland-Vancouver-Hillsboro, OR-WA MSA	665	771	891	1297	1558	Clark, Skamania
Seattle-Bellevue, WA HMFA	800	912	1098	1551	1895	King, Snohomish
Spokane, WA MSA	489	573	755	1037	1176	Spokane
Tacoma, WA HMFA	638	745	929	1354	1523	Pierce
Wenatchee-East Wenatchee, WA MSA	545	577	729	983	1132	Chelan, Douglas

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WASHINGTON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Yakima, WA MSA	460	540	698	919	970	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	385	459	588	789	814	Clallam	540	598	777	1135	1170
Columbia	379	443	584	789	941	Ferry	382	452	584	784	808
Garfield	379	443	584	789	941	Grant	392	466	603	815	836
Grays Harbor	446	523	687	967	994	Island	743	744	898	1307	1577
Jefferson	587	720	880	1280	1316	Kittitas	517	603	794	1064	1104
Klickitat	509	516	613	861	886	Lewis	494	631	759	1014	1060
Lincoln	438	518	669	898	926	Mason	559	657	788	1076	1275
Okanogan	456	550	646	884	973	Pacific	487	525	688	976	1014
Pend Oreille	426	505	652	875	902	San Juan	696	748	925	1329	1623
Stevens	421	507	648	888	969	Wahkiakum	483	600	701	1021	1171
Walla Walla	463	540	713	1025	1057	Whitman	501	552	716	1010	1238

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boone County, WV HMFA	329	426	505	625	692	Boone
Charleston, WV HMFA	459	501	626	798	821	Clay, Kanawha, Lincoln, Putnam
Cumberland, MD-WV MSA	411	498	584	788	919	Mineral
Huntington-Ashland, WV-KY-OH MSA	422	499	599	739	763	Cabell, Wayne
Jefferson County, WV HMFA	591	797	908	1326	1596	Jefferson
Martinsburg, WV HMFA	577	651	782	1046	1255	Berkeley, Morgan
Morgantown, WV MSA	537	558	660	856	1015	Monongalia, Preston
Parkersburg-Marietta-Vienna, WV-OH MSA	442	473	606	805	868	Pleasants, Wirt, Wood
Steubenville-Weirton, OH-WV MSA	387	474	584	729	792	Brooke, Hancock
Wheeling, WV-OH MSA	380	457	584	734	857	Marshall, Ohio
Winchester, VA-WV MSA	653	678	895	1235	1271	Hampshire

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	406	423	527	690	727	Braxton	412	430	535	701	738
Calhoun	345	411	499	648	745	Doddridge	354	451	532	641	758
Fayette	416	417	499	617	664	Gilmer	384	401	499	654	688
Grant	421	486	546	715	887	Greenbrier	396	451	499	600	789
Hardy	417	481	541	709	879	Harrison	479	480	576	722	806
Jackson	345	411	499	648	745	Lewis	393	426	499	626	644
Logan	348	423	499	613	630	McDowell	416	431	499	681	865
Marion	362	463	556	665	810	Mason	414	423	499	632	675
Mercer	429	445	516	698	883	Mingo	325	438	499	629	816
Monroe	415	450	499	622	643	Nicholas	415	450	499	635	695
Pendleton	383	442	499	651	808	Pocahontas	420	436	505	618	733
Raleigh	440	468	528	674	694	Randolph	386	387	499	644	662

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WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ritchie	345	411	499	648	745	Roane	345	411	499	648	745
Summers	427	464	514	640	663	Taylor	356	453	535	641	762
Tucker	384	401	499	654	688	Tyler	345	411	499	648	745
Upshur	348	435	536	720	743	Webster	415	431	499	611	725
Wetzel	332	452	508	647	736	Wyoming	416	431	499	681	865

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton, WI MSA	510	524	650	937	964	Calumet, Outagamie
Columbia County, WI HMFA	454	530	698	942	972	Columbia
Duluth, MN-WI MSA	447	545	687	863	1099	Douglas
Eau Claire, WI MSA	434	518	648	878	914	Chippewa, Eau Claire
Fond du Lac, WI MSA	512	549	661	869	942	Fond du Lac
Green Bay, WI HMFA	531	543	684	962	991	Brown, Kewaunee
Iowa County, WI HMFA	452	528	695	831	854	Iowa
Janesville, WI MSA	493	577	718	940	967	Rock
Kenosha County, WI HMFA	658	685	850	1169	1345	Kenosha
La Crosse, WI-MN MSA	424	496	653	867	1064	La Crosse
Madison, WI HMFA	576	719	850	1141	1413	Dane
Milwaukee-Waukesha-West Allis, WI MSA	577	688	822	1036	1067	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul-Bloomington, MN-WI MSA	632	745	904	1183	1330	Pierce, St. Croix
Oconto County, WI HMFA	434	526	584	756	788	Oconto
Oshkosh-Neenah, WI MSA	461	542	642	842	1091	Winnebago
Racine, WI MSA	494	578	725	902	990	Racine
Sheboygan, WI MSA	418	537	634	784	962	Sheboygan
Wausau, WI MSA	413	515	635	848	937	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	430	472	584	760	784	Ashland	451	453	584	742	1005
Barron	408	515	614	783	806	Bayfield	399	465	584	748	776
Buffalo	402	457	584	741	773	Burnett	399	465	584	748	776
Clark	377	446	584	798	822	Crawford	485	519	584	725	893
Dodge	585	587	707	895	966	Door	421	538	647	869	974
Dunn	462	498	625	911	936	Florence	391	471	584	743	780
Forest	430	472	584	760	784	Grant	485	486	584	756	1025
Green	467	504	661	839	980	Green Lake	439	503	584	764	933
Iron	399	465	584	748	776	Jackson	415	471	602	763	796
Jefferson	474	555	731	876	1104	Juneau	383	472	589	775	799
Lafayette	431	454	584	748	838	Langlade	485	486	584	770	840
Lincoln	488	489	586	853	880	Manitowoc	379	444	584	698	869
Marinette	486	526	584	765	788	Marquette	453	508	618	796	884
Menominee	457	512	623	802	891	Monroe	389	454	598	759	829
Oneida	453	495	650	831	1144	Pepin	402	457	584	741	773

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WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Polk	448	524	688	846	873	Portage	526	533	636	842	866
Price	399	465	584	748	776	Richland	411	458	584	749	773
Rusk	399	465	584	748	776	Sauk	475	631	724	973	1004
Sawyer	399	470	584	748	776	Shawano	402	474	584	729	837
Taylor	405	473	593	759	788	Trempealeau	459	461	584	798	822
Vernon	464	466	584	738	805	Vilas	433	475	587	799	824
Walworth	505	594	775	967	998	Washburn	422	493	618	791	821
Waupaca	416	523	635	829	854	Waushara	446	500	608	783	869
Wood	384	471	584	711	778						

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	436	477	603	877	1057	Natrona
Cheyenne, WY MSA	482	508	644	876	1129	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	442	506	642	881	933	Big Horn	467	488	584	762	912
Campbell	582	627	702	951	1035	Carbon	380	454	584	732	889
Converse	380	470	584	797	1027	Crook	467	488	584	762	912
Fremont	471	474	602	754	961	Goshen	484	485	584	720	991
Hot Springs	467	488	584	762	912	Johnson	455	474	584	742	887
Lincoln	539	570	649	866	1025	Niobrara	467	488	584	762	912
Park	459	527	620	779	1026	Platte	467	488	584	762	912
Sheridan	482	519	638	816	996	Sublette	727	765	888	1162	1376
Sweetwater	492	598	750	1049	1088	Teton	622	694	873	1151	1185
Uinta	406	513	584	798	947	Washakie	467	488	584	762	912
Weston	467	488	584	762	912						

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	765	821	1003	1461	1747						

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla-Isabela-San Sebastián, PR MSA	362	393	436	560	627	Aguada, Aguadilla, Añasco, Isabela, Lares, Moca, Rincón, San Sebastián
Arecibo, PR HMFA	381	414	460	627	735	Arecibo, Camuy, Hatillo
Barranquitas-Aibonito-Quebradillas, PR HMFA	375	405	451	574	660	Aibonito, Barranquitas, Ciales, Maunabo, Orocovis, Quebradillas
Caguas, PR HMFA	419	453	505	700	843	Caguas, Cayey, Cidra, Gurabo, San Lorenzo

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PUERTO RICO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fajardo, PR MSA	433	472	524	762	919	Ceiba, Fajardo, Luquillo
Guayama, PR MSA	383	413	460	653	809	Arroyo, Guayama, Patillas
Mayagüez, PR MSA	411	446	495	592	817	Hormigueros, Mayagüez
Ponce, PR MSA	443	480	532	739	843	Juana Díaz, Ponce, Villalba
San Germán-Cabo Rojo, PR MSA	357	372	430	562	606	Cabo Rojo, Lajas, Sabana Grande, San Germán
San Juan-Guaynabo, PR HMFA	459	499	554	733	868	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Comerío, Corozal, Dorado, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa
Yauco, PR MSA	354	374	425	536	682	Guánica, Guayanilla, Peñuelas, Yauco

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	353	381	425	582	632	Coamo	353	381	425	582	632
Culebra	353	381	425	582	632	Jayuya	353	381	425	582	632
Las Marías	353	381	425	582	632	Maricao	353	381	425	582	632
Salinas	353	381	425	582	632	Santa Isabel	353	381	425	582	632
Utuado	353	381	425	582	632	Vieques	353	381	425	582	632

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix	562	586	710	887	1015	St. John	638	763	982	1217	1272
St. Thomas	638	763	982	1217	1272						

Note1: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the FMR Area name.
Note3: FMR areas designated by 3 asterisks (***) are part of the Small Area Demonstration Program and will use the FMRs found on Schedule B Addendum.

09/22/2011

SCHEDULE B Addendum - FY 2012 FINAL FAIR MARKET RENTS FOR EXISTING HOUSING WITHIN THE DALLAS, TX HMFA PAGE 1

Collin County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75002	820	900	1090	1420	1680	75009	640	710	860	1120	1320
75013	850	940	1130	1470	1740	75023	760	840	1020	1330	1570
75024	760	840	1020	1330	1570	75025	790	870	1050	1370	1620
75034	760	840	1010	1320	1560	75035	970	1080	1300	1690	2000
75048	660	730	880	1150	1360	75069	630	700	840	1090	1290
75070	900	990	1200	1560	1850	75071	670	750	900	1170	1390
75074	700	770	930	1210	1430	75075	700	780	940	1220	1450
75078	730	810	980	1280	1510	75080	750	830	1000	1300	1540
75082	850	940	1140	1480	1760	75093	760	840	1020	1330	1570
75094	730	810	980	1280	1510	75098	760	840	1020	1330	1570
75121	730	810	980	1280	1510	75164	730	810	980	1280	1510
75166	730	810	980	1280	1510	75173	730	810	980	1280	1510
75189	810	890	1080	1410	1660	75248	700	780	940	1220	1450
75252	590	650	790	1030	1220	75287	640	700	850	1110	1310
75407	730	810	980	1280	1510	75409	730	810	980	1280	1510
75424	670	750	900	1170	1390	75442	700	780	940	1220	1450
75452	730	810	980	1280	1510	75454	730	810	980	1280	1510
75491	730	810	980	1280	1510	75495	730	810	980	1280	1510
Other	730	810	980	1280	1510						

Dallas County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75001	650	720	870	1130	1340	75006	660	730	880	1150	1360
75007	720	790	960	1250	1480	75019	810	890	1080	1410	1660
75038	650	720	870	1130	1340	75039	790	870	1050	1370	1620
75040	820	900	1090	1420	1680	75041	630	700	840	1090	1290
75042	600	660	800	1040	1230	75043	670	740	890	1160	1370
75044	730	800	970	1260	1490	75044	730	800	970	1260	1490
75047	640	700	850	1110	1310	75048	660	730	880	1150	1360
75050	610	670	810	1050	1250	75051	580	650	780	1020	1200
75052	770	850	1030	1340	1590	75054	640	700	850	1110	1310
75060	580	650	780	1020	1200	75061	550	600	730	950	1120
75062	610	680	820	1070	1260	75063	730	810	980	1280	1510
75080	750	830	1000	1300	1540	75081	760	840	1020	1330	1570
75082	850	940	1140	1480	1760	75088	830	920	1110	1450	1710
75089	970	1080	1300	1690	2000	75098	760	840	1020	1330	1570
75104	850	940	1130	1470	1740	75115	660	730	880	1150	1360
75116	700	780	940	1220	1450	75125	650	720	870	1130	1340
75134	730	810	980	1280	1510	75137	820	900	1090	1420	1680
75141	640	700	850	1110	1310	75146	630	700	840	1090	1290
75149	690	760	920	1200	1420	75150	670	740	890	1160	1370
75154	790	870	1050	1370	1620	75159	640	700	850	1110	1310

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Dallas County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75172	550	600	730	950	1120	75180	590	650	790	1030	1220
75181	640	700	850	1110	1310	75182	640	700	850	1110	1310
75201	960	1060	1280	1670	1970	75202	940	1040	1260	1640	1940
75203	490	550	660	860	1020	75204	800	890	1070	1390	1650
75205	810	890	1080	1410	1660	75206	660	730	880	1150	1360
75207	640	700	850	1110	1310	75208	550	610	740	960	1140
75209	640	700	850	1110	1310	75210	500	550	670	870	1030
75211	560	620	750	980	1160	75212	560	620	750	980	1160
75214	610	680	820	1070	1260	75215	530	590	710	920	1090
75216	580	640	770	1000	1190	75217	640	710	860	1120	1320
75218	740	820	990	1290	1520	75219	670	740	890	1160	1370
75220	550	600	730	950	1120	75221	640	700	850	1110	1310
75223	600	660	800	1040	1230	75224	550	600	730	950	1120
75225	640	700	850	1110	1310	75226	700	780	940	1220	1450
75227	590	650	790	1030	1220	75228	520	580	700	910	1080
75229	610	670	810	1050	1250	75230	550	600	730	950	1120
75231	510	560	680	890	1050	75232	640	700	850	1110	1310
75233	610	680	820	1070	1260	75234	630	700	840	1090	1290
75235	640	710	860	1120	1320	75236	620	690	830	1080	1280
75237	570	630	760	990	1170	75238	560	620	750	980	1160
75240	560	620	750	980	1160	75241	660	730	880	1150	1360
75242	640	700	850	1110	1310	75243	570	630	760	990	1170
75244	790	870	1050	1370	1620	75246	500	550	670	870	1030
75247	640	700	850	1110	1310	75248	700	780	940	1220	1450
75249	850	940	1140	1480	1760	75251	900	990	1200	1560	1850
75252	590	650	790	1030	1220	75253	620	690	830	1080	1280
75254	650	720	870	1130	1340	76051	720	790	960	1250	1480
Other	640	700	850	1110	1310						

Delta County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75415	550	600	730	950	1120	75432	550	600	730	950	1120
75448	550	600	730	950	1120	75450	550	600	730	950	1120
75469	550	600	730	950	1120	Other	550	600	730	950	1120

Denton County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75007	720	790	960	1250	1480	75007	720	790	960	1250	1480
75009	640	710	860	1120	1320	75010	820	910	1100	1430	1690
75019	810	890	1080	1410	1660	75022	680	750	910	1180	1400
75024	760	840	1020	1330	1570	75028	970	1080	1300	1690	2000

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ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75034	760	840	1010	1320	1560	75056	880	970	1170	1520	1800
75057	690	760	920	1200	1420	75065	680	750	910	1180	1400
75067	670	750	900	1170	1390	75067	670	750	900	1170	1390
75068	680	750	910	1180	1400	75077	860	950	1150	1500	1770
75078	730	810	980	1280	1510	75093	760	840	1020	1330	1570
75287	640	700	850	1110	1310	75287	640	700	850	1110	1310
76052	640	700	850	1110	1310	76078	610	670	810	1050	1250
76092	640	700	850	1110	1310	76177	680	750	910	1180	1400
76201	520	570	690	900	1060	76204	680	750	910	1180	1400
76205	610	680	820	1070	1260	76207	610	670	810	1050	1250
76208	690	760	920	1200	1420	76209	630	700	840	1090	1290
76210	680	750	910	1180	1400	76226	680	750	910	1180	1400
76227	680	750	910	1180	1400	76234	610	670	810	1050	1250
76247	680	750	910	1180	1400	76249	790	880	1060	1380	1630
76258	680	750	910	1180	1400	76259	680	750	910	1180	1400
76262	790	870	1050	1370	1620	76266	680	750	910	1180	1400
76272	680	750	910	1180	1400	Other	680	750	910	1180	1400

Ellis County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75101	660	730	880	1150	1360	75104	850	940	1130	1470	1740
75119	610	670	810	1050	1250	75120	660	730	880	1150	1360
75125	650	720	870	1130	1340	75146	630	700	840	1090	1290
75152	640	700	850	1110	1310	75154	790	870	1050	1370	1620
75165	640	710	860	1120	1320	75167	660	730	880	1150	1360
76041	660	730	880	1150	1360	76050	620	690	830	1080	1280
76055	660	730	880	1150	1360	76063	770	850	1030	1340	1590
76064	660	730	880	1150	1360	76065	670	740	890	1160	1370
76065	670	740	890	1160	1370	76084	720	790	960	1250	1480
76623	660	730	880	1150	1360	76651	660	730	880	1150	1360
76670	550	610	740	960	1140	Other	660	730	880	1150	1360

Hunt County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75135	540	600	720	940	1110	75169	550	610	740	960	1140
75189	810	890	1080	1410	1660	75401	530	590	710	920	1090
75402	530	590	710	920	1090	75422	540	600	720	940	1110
75423	540	600	720	940	1110	75428	540	600	720	940	1110
75428	540	600	720	940	1110	75442	700	780	940	1220	1450

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Hunt County continued

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75448	540	600	720	940	1110	75449	540	600	720	940	1110
75452	540	600	720	940	1110	75453	680	750	910	1180	1400
75469	550	600	730	950	1120	75474	540	600	720	940	1110
75496	540	600	720	940	1110	Other	540	600	720	940	1110

Kaufman County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75114	650	720	870	1130	1340	75126	650	720	870	1130	1340
75142	650	720	870	1130	1340	75143	650	720	870	1130	1340
75147	650	720	870	1130	1340	75156	650	720	870	1130	1340
75157	650	720	870	1130	1340	75158	650	720	870	1130	1340
75159	640	700	850	1110	1310	75160	630	700	840	1090	1290
75160	630	700	840	1090	1290	75161	650	720	870	1130	1340
75169	550	610	740	960	1140	75182	640	700	850	1110	1310
75474	540	600	720	940	1110	Other	650	720	870	1130	1340

Rockwall County

ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR	ZIP Codes	0 BR	1 BR	2 BR	3 BR	4 BR
75032	970	1080	1300	1690	2000	75087	850	940	1140	1480	1760
75087	850	940	1140	1480	1760	75088	830	920	1110	1450	1710
75089	970	1080	1300	1690	2000	75098	760	840	1020	1330	1570
75126	650	720	870	1130	1340	75132	660	730	880	1150	1360
75189	810	890	1080	1410	1660	Other	650	720	870	1130	1340

Note: The FMRs for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom.

09/01/2011

SCHEDULE D - FY 2012 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	*Orange County, CA HUD Metro FMR Area	$790
	*Riverside-San Bernardino-Ontario, CA MSA	$513
	Los Angeles-Long Beach, CA HUD Metro FMR A	$651
	San Diego-Carlsbad-San Marcos, CA MSA	$795
	Santa Rosa-Petaluma, CA MSA	$692
	Vallejo-Fairfield, CA MSA	$557
Colorado	Boulder, CO MSA	$453
Maryland	St. Mary's County	$478
Oregon	Bend, OR MSA	$343
	Salem, OR MSA	$472
Pennsylvania	Adams County	$546
Washington	Olympia, WA MSA	$572
	Seattle-Bellevue, WA HUD Metro FMR Area	$629
West Virginia	Logan County	$433
	McDowell County	$433
	Mercer County	$433
	Mingo County	$433
	Wyoming County	$433

* 50th percentile FMR areas.

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S. 846/P.L. 112–31
To designate the United States courthouse located at 80 Lafayette Street in Jefferson City, Missouri, as the Christopher S. Bond United States Courthouse. (Sept. 23, 2011; 125 Stat. 360)

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