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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 235 and 245

[FNS–2007–0023]

RIN 0584–AD54

Applying for Free and Reduced Price Meals in the National School Lunch Program and School Breakfast Program and for Benefits in the Special Milk Program, and Technical Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes changes to eligibility determinations for free and reduced price school meals to implement nondiscretionary provisions of the Child Nutrition and WIC Reauthorization Act of 2004. This rule also finalizes the following changes set forth in the interim rule published on November 13, 2007 (72 FR 63785)—addition of a statutory definition of ''local educational agency,'' specification that a family only has to submit one application for all children in the household as long as they attend schools in the same local educational agency, and requirements to enhance descriptive materials distributed to families. This rule finalizes requirements for electronically-submitted applications, electronic signatures, and use and disclosure standards for such applications. This rule also finalizes year-long eligibility for free or reduced price school meals, unless the household chooses to decline a level of benefits. These changes are intended to provide children with increased access to the school nutrition programs by simplifying the certification process, streamlining program operations, and improving program management.

DATES: *Effective Date:* This rule is effective November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service (FNS) at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, enacted June 30, 2004, amended the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 *et seq.*) and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1771 *et seq.*) concerning applications for free and reduced price meals under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP), and for free milk under the Special Milk Program for Children. Please note that while the application and certification procedures of this final rule apply to the Special Milk Program, the preamble will only discuss free and reduced price meal benefits in the NSLP and SBP, as only a very small number of schools and children participate in the Special Milk Program. However, this rule finalizes appropriate changes to the Special Milk Program regulations. All references to regulatory citations in this preamble are to Title 7, United States Code unless otherwise indicated.

In response to the statutorily imposed effective dates established by sections 501 and 502 of Public Law 108–265, the Department of Agriculture (USDA) issued memoranda to implement some of the provisions regulatorily codified in this final rule. For a list of memoranda, see the interim rule published by FNS on November 13, 2007 (72 FR 63785). All memoranda are located on the FNS Web site at *http://www.fns.usda.gov/cnd/,* click on Policy.

This rule finalizes modifications made by Public Law 108–265 that necessitated changes to the existing regulatory procedures relating to application and certification for free and reduced price meal benefits. This rule also finalizes definitions and other technical changes to 7 CFR Part 210 (National School Lunch Program), 7 CFR part 215 (Special Milk Program for Children), 7 CFR part 220 (School Breakfast Program), 7 CFR part 235 (State Administrative Expense Funds) and 7 CFR part 245 (Determining Eligibility for Free and Reduced Meals and Free Milk in Schools) to increase consistency in application and certification requirements among these regulatory divisions.

In addition, this rule finalizes changes to the definitions sections of 7 CFR 215.2, 220.2, 235.2, and 245.2, including removing primary designations and alphabetizing the definitions, and finalizing a definition for ''Nonprofit.''

For details, see the interim rule published by FNS on November 13, 2007 (72 FR 63785). This rule finalizes changes to the regulations in 7 CFR parts 210, 215, 220, 235 and 245 to reflect the changes mandated by Public Law 108–265.

II. Discussion of Public Comments and FNS Response

The 180-day comment period for the interim rule began November 13, 2007 and ended May 12, 2008. FNS received 26 comments on the interim rule: 17 comments from advocacy group officials, seven from individuals, one from a school food service association, and one from a State agency. The comments addressed the following areas:

Understandable Communications With Applicant Households

The interim rule stated that the school meals programs application must be clear and simple in design. The rule added language reflecting the statutory requirement that any communication with households regarding certification be understandable, and to the maximum extent practicable, provided in a language that parents and guardians can understand (§ 245.6 (a)(2)).

Advocacy groups and individuals emphasized the need for local educational agencies (LEAs) to provide information to parents and guardians at a low literacy level (5–6th grade was suggested), and in the primary languages represented in the school district (including providing oral translations, as needed).

Currently, FNS promotes understandable communication with families by providing LEAs with prototype application materials on our *Web site: http://www.fns.usda.gov/cnd/frp/frp.process.htm.* The application materials have an 8th grade reading level (6th grade with the required

privacy, penalty, and disclosure statements omitted) as determined by the Flesch-Kincaid and the McLaughlin Simple Measure of Gobbledygook (SMOG) reading level tests. FNS conducted focus groups with low-income parents to ensure that application materials are clear and easy to understand, can be completed quickly, and elicit accurate household income information.

FNS also provides translations of the prototype application materials on our Web site in 33 languages (available at: *http://www.fns.usda.gov/cnd/frp/frp.process.htm*). In 2005, FNS polled State agencies to determine the languages in which translated NSLP application packets were needed. This method of assessing needs was conducted because each geographical area is best positioned to determine the needs of their own communities. Based on State agency responses, languages were identified and prioritized based on the number of States requesting a particular language. Application packets were translated into those languages, reviewed by internal and external persons fluent in the appropriate language(s), and made available on our Web site. FNS recently created prototype application materials in eight additional languages to be consistent with the languages in which Supplemental Nutrition Assistance Program (SNAP) application materials are available. If a prototype application is not available in a language needed to communicate with a household, FNS encourages LEAs to utilize free and low-cost resources to provide families with meaningful access to school meals programs. LEAs should be aware of and utilize resources available within schools. School staff may be available to assist in communicating with households. Communities with limited English speaking populations often have community organizations or advocacy groups who may be able to assist in communicating with households. There are also several technology resources that can assist LEAs with providing families with meaningful access to school meals programs. Several Web sites offer free translation services; there are also several low-cost telephone translation services that provide assistance on an as-needed basis. These are the same types of resources that hospitals use to communicate with limited English speaking patients.

On a national level, commenters asked USDA to specify what is expected of LEAs to comply with the requirements of the statutory provision to provide ''understandable'' communication, and emphasized the need to monitor compliance at the State and local levels.

In addition to providing prototype application materials on our Web site, FNS ensures that States and LEAs develop ways to provide assistance in completing applications when there are language or literacy barriers. FNS Instruction 113–1 (November 8, 2005), *Civil Rights Compliance and Enforcement—Nutrition Programs and Activities,* requires State agencies and LEAs to provide bilingual services to applicants, including translators and translated materials. LEAs are responsible for determining the type of translation services, and language(s) in which translation services are available, that are needed to facilitate participation in school meals programs. State agencies must provide oversight and technical assistance to ensure that language is not a barrier to program participation. Compliance with these requirements is currently part of State agency reviews of LEAs and our review of State agencies.

FNS is taking steps to help LEAs identify the languages in which NSLP application materials are needed. The NSLP prototype application was translated into 33 languages and released together with an ISpeak form. These resources will help LEAs identify households' primary languages and readily provide application materials. Schools are required by the Department of Education to collect information on the primary languages spoken in student households through the Home Language Survey. FNS will promote providing NSLP application materials to households in the languages schools determine using information collected via the Home Language Survey.

In addition, FNS developed a strategic plan to improve program access for populations with limited English proficiency (LEP). FNS convened a ''Tiger Team'' to assess program applications and identify LEP-related barriers. FNS intends for these efforts to result in improved resources and guidance available to State and local authorities responsible for administering the Child Nutrition Programs, including the NSLP, SBP, and SMP.

Commenters also expressed the need for consistent policies across FNS programs, specifically recommending that Child Nutrition Programs adopt SNAP's policies regarding limited English proficiency. SNAP reimburses States for 50% of administrative expenses; Child Nutrition Programs do not have comparable resources for administrative expenses. As such, State burdens in achieving full parity with SNAP administrative policies would be very costly in many circumstances.

In considering national requirements for translation services, FNS must balance the administrative burden placed on State agencies and LEAs with the impact on households. That said, on a national level FNS will issue additional guidance to establish its expectations and assist LEAs in communicating with student households, including a short explanation of the recent provisions that remove participation barriers and encouraging both the use of the application translations and utilization of existing translation resources.

In light of limited LEA resources, FNS will also continue to develop ready-to-use communication resources, informed by periodically reviewing the languages in which the application packet is available, identifying unmet needs, and making translations available in additional languages as necessary. FNS is committed to providing all eligible children access to free and reduced-price school meals. Consequently, FNS expects LEAs to use the resources provided and take appropriate measures to ensure that language and communication are not barriers to program participation.

Transferring Eligibility for Free or Reduced Price Meals

The interim rule stated that the NSLA requires year long eligibility, which is effective through the current school year and up to 30 days into the subsequent school year. The interim rule, at § 245.6(a)(4), also includes a provision that allows LEAs the option of accepting the eligibility determination from the student's old school district without incurring liability for the accuracy of the initial determination.

Advocacy groups commented that, ideally, full year eligibility requires a system to transfer a child's status from one LEA to another, even across state lines. These commenters asked USDA to require LEAs to provide materials to each student newly enrolled during the school year and process the new application quickly. They also suggested that LEAs should conduct direct certification on each new student to determine if s/he is a member of a household receiving assistance benefits or is otherwise categorically eligible.

Currently, LEAs are encouraged, to the maximum extent practicable, to transfer/receive information about a child's eligibility for free or reduced price meals. In order to avoid placing an undue burden on districts where the costs of compliance would outweigh the benefits, the final rule does not make

these provisions mandatory. USDA is sensitive to LEA burden and seeks to provide LEAs flexibility to conduct certification and direct certification activities differently, in ways that are most suitable to local eligibility systems. Therefore, USDA has taken measures other than mandatory provisions to ensure that students who transfer during the school year can access school meal programs, including the following: USDA is supporting transfers by removing any liability from the receiving LEA for errors made in the initial application approval; as suggested by the comment letters, we added language in the final rule at § 245.6(a)(1) requiring LEAs to provide newly enrolled students with applications and determine eligibility promptly; and, finally, we also encourage LEAs to directly certify these students, and encourage State and local agencies to develop and support systems that allow schools to determine the eligibility status of transferred students. Our recently published rule, *Direct Certification and Certification of Homeless, Migrant and Runaway Children for Free School Meals* (76 FR 22785), requires that LEAs conduct direct certification at least three times during the school year and encourages more frequent direct certification. This measure should also help LEAs capture and provide free meal eligibility to more students who transfer between schools during the school year.

Temporary Approvals

The interim rule stated that year-long eligibility does not apply when a household is given temporary approval, a determination made by the LEA when a household's need for assistance appears to be short-term, such as when a household experiences a temporary reduction in income. A suggested time period for temporary approvals was 45 days unless otherwise stipulated by the State agency. At the end of temporary approval, determining officials re-evaluate the household's situation. The provision on temporary approval was included in the interim rule at § 245.6(c)(3)(iii).

Advocacy groups stated that there is no statutory authority to permit temporary approvals due to the new requirement for year-long eligibility, and noted that the statutory exemptions for year-long eligibility do not address temporary approvals. The school food service association echoed that anything less than year-long approval is not warranted.

After careful reconsideration, we agree that the requirement for year-long eligibility negates the use of temporary approvals. Temporary approvals were used to safeguard Federal benefits in situations where the need for assistance appeared to be short-term. In lieu of temporary approvals, in situations where a LEA is concerned about the accuracy of application information, we highly encourage the LEA to conduct ''verification for cause.'' Therefore, this final rule removes the paragraph on temporary approvals, § 245.6 (c)(3)(iii). We will also update our guidance to reflect this change. We will address the use of verification for cause in a separate rulemaking.

Carryover of Previous Year's Eligibility Into the New School Year

Per Section 106 of Public Law 108–265, the interim rule stated that year-long eligibility is valid for the full school year and for a period not to exceed the first 30 operating days following the first operating day at the beginning of the school year, or until the new eligibility determination is made, whichever comes first. USDA used the long-standing permissive carry-over authority of current § 245.6(c) as the basis for this new requirement.

Advocacy groups requested that USDA clarify that siblings of previously eligible children may receive benefits when they start school, and encouraged USDA to address ways that LEAs should identify siblings.

The provision concerning newly enrolled siblings receiving benefits is currently only included in our guidance materials. LEAs can claim and be reimbursed for free and reduced price meals or free milk served to new children in an LEA from households with children who were approved for benefits the previous year. The *Eligibility Manual for School Meals* (available at: *http://www.fns.usda.gov/cnd/guidance/eligibility_guidance.pdf*) currently states that categorical eligibility may not be extended to siblings. This determination was made because different assistance programs confer benefits based on household characteristics using different definitions of ''household.'' After reconsideration, this final rule, at § 245.6(c)(2), requires the extension of categorical eligibility to children living in the same household as children previously receiving benefits, based on the definition of ''household'' provided in § 245.2. This change is consistent with our policy SP 38–2009 (August 27, 2009), *Extending Categorical Eligibility to Additional Children in a Household.*

In addition, a State agency found ambiguity in the wording ''* * * a period not to exceed * * *'' in § 245.6(c)(2) and suggested the omission of those words. We agree with the State agency, and omitted the ambiguous language from the final rule.

Processing Changes During the School Year

With the exception of incorrect eligibility determinations, a household's initial eligibility determination remains valid for the entire school year and up to 30 operating days into the next school year, unless a new application is submitted. Households are no longer required to report changes in income or household size or loss of SNAP (formerly the Food Stamp Program) or Temporary Assistance for Needy Families benefits. (Please note that current regulations refer to the Food Stamp Program. Regulatory references to the Food Stamp Program will be updated in future rulemaking to reflect the Program's name change.) However, households may voluntarily report changes, and may apply for benefits any time during the school year.

Advocacy groups were pleased that the interim rule states that a household must be given the option to decline a reduction of benefits if it reports a change in income or household size during the school year. Commenters also requested that the regulations prohibit reducing benefits using information from a source other than the household (*e.g.,* child is no longer homeless as reported by the school district's homeless liaison).

Due to year-long eligibility, the final rule specifies that benefits may only be reduced during the school year if a household voluntarily makes a written request for benefit reduction, for example, by submitting a new application or other documentation. The final rule clarifies that benefits cannot be reduced by new information received through other sources without the consent of the household. This is consistent with guidance materials which are very specific about how to handle changes reported during the school year, especially as they relate to households' ability to decline a reduction in benefits.

The interim rule also defined ''local educational agency'' and ''nonprofit,'' provided for electronically-submitted applications, addressed electronic signatures, and established use and disclosure standards for such applications. Commenters did not recommend any changes to these provisions; therefore, USDA is adopting these changes as set forth in the interim rule.

III. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all 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 rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for action:

This rule modifies and finalizes interim regulations published in November 2007 to carry out nondiscretionary provisions of the 2004 Child Nutrition and WIC Reauthorization Act. The rule implements provisions intended to facilitate the certification of children for free and reduced price school meals and free milk. These provisions are meant to benefit children eligible for school meal benefits as well as program administrators responsible for the certification process.

Benefits:

The rule finalizes provisions that mandate or provide for year-long eligibility, single applications for most households, extension of eligibility for newly enrolled siblings of most eligible students, electronic applications, the transfer of eligibility across schools and districts, and clarity in written communication between applicant households and school officials. These provisions will benefit eligible children who may have been denied benefits for at least part of the school year under previous program rules. Several of these provisions, particularly greater use of household applications and electronic applications, and the promotion of transferred eligibility across districts, promise long-term benefits to program administrators as well.

Costs:

Although the rule promotes the certification of eligible children for school meals benefits, at least one of its most significant provisions, year-long certifications, serves to affirm what had previously occurred in practice. To the extent that these provisions increase the number of children certified for free or reduced price school meals or free milk, the cost of federal reimbursements will increase. Other provisions, such as those encouraging electronic applications and the transfer of eligibility across districts, may require short-term investment by LEAs. Overall, the costs of the rule are expected to be small.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities. Households applying for free or reduced price school meals for their children are affected, as they are no longer required to complete and submit an application for each child. Local educational agencies are also affected because there are fewer applications to process and there will be potential for more economically beneficial centralized systems.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP, Special Milk Program, SBP, and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, 10.553 and 10.560, respectively. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V, and final rule related notice at 48 FR 29114, June 24, 1983, these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Because these programs are federally funded programs administered at the State level, FNS headquarters and regional office staff have ongoing formal and informal discussions with State and local officials regarding operational issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule's intent and

provisions revealed that this rule is not intended to reduce participants' ability to participate in the NSLP, SBP, or Special Milk Program.

Executive Order 13175

USDA will undertake, within 6 months after this rule becomes effective, a series of Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule on Tribal governments, communities and individuals. These sessions will establish a baseline of consultation for future actions, should any be necessary, regarding this rule. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with the final rule. We request that commenters address any concerns in this regard in their responses.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. Information collections associated with this rule have been approved under following OMB control numbers 0584–0005, 0584–0006, 0584–0012, 0584–0026 and 0584–0067.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes.

List of Subjects in 7 CFR Part 245

Civil rights, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, the interim rule amending 7 CFR parts 210, 215, 220, 235 and 245, published at 72 FR 63785 on November 13, 2007, is adopted as a final rule with the following changes:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

■ 1. The authority citation for Part 245 continues to read as follows:

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

■ 2. In § 245.6:
■ a. Amend paragraph (a) introductory text by adding a comma between the words ''school'' and ''shall'';
■ b. Amend paragraph (a)(1) by adding a new sentence between the first and second sentences of the paragraph, and removing the word ''issued'' and adding in its place the word ''provided'';
■ c. Amend the first sentence of paragraph (a)(4) by removing the word ''another'' and adding in its place the words ''a new'';
■ d. Amend paragraph (a)(5)(i) by removing the word ''that'';
■ e. Amend paragraph (a)(9) by adding a new sentence at the end of the paragraph.
■ f. Revise paragraph (c)(1);
■ g. Revise paragraph (c)(2);
■ h. Revise paragraph (c)(3)(i);
■ i. Remove paragraph (c)(3)(iii);
■ j. Amend the first sentence of paragraph (c)(6)(iii) by adding the words ''or reduced price'' between the words ''free'' and ''benefits'';
■ k. Amend the last sentence of paragraph (c)(7) by removing the word ''As'' and adding in its place the word ''At''.

The revisions and additions read as follows:

§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.

(a) * * *

(1) *Household applications.* * * * The local educational agency must provide newly enrolled students with an application and determine eligibility promptly. * * *

* * * * *

(9) * * * Applicants must attest to changes in information as specified in this paragraph (b), if changes are voluntarily reported in writing during the eligibility period.

* * * * *

(c) * * * (1) *Duration of eligibility.* Except as otherwise specified in paragraph (c)(3) of this section, eligibility for free or reduced price meals, as determined through an approved application or by direct certification, must remain in effect for the entire school year and for up to 30 operating days into the subsequent school year. The local educational agency must determine household eligibility for free or reduced price meals either through direct certification or the application process at or about the beginning of the school year. The local educational agency must determine eligibility for free or reduced price meals when a household submits an application or, if feasible, through direct certification, at any time during the school year.

(2) *Use of prior year's eligibility status.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year shall be offered reimbursable free and reduced price meals or free milk, as appropriate. The local educational agency must extend eligibility to newly enrolled children when other children in their household (as defined in § 245.2) were approved for benefits the previous year. However, applications and documentation of direct certification from the preceding year shall be used only to determine eligibility for the first 30 operating days following the first operating day at the beginning of the school year, or until a new eligibility determination is made in the current school year, whichever comes first.

(3) *Exceptions for year-long duration of eligibility.* (i) *Voluntary reporting of changes.* Households are not required to report changes in circumstances during the school year, but a household may voluntarily contact the local educational agency to report any changes. If the household voluntarily reports a change in income or in program participation that would result in loss of categorical eligibility, the local educational agency may only reduce benefits if the household requests the reduction in writing, for example, by submitting a new application.

(ii) Households must attest to changes in information as specified in § 245.3(a)(9). In addition, benefits cannot be reduced by information received through other sources without the written consent of the household, except for information received through verification.

* * * * *

Dated: October 24, 2011.

Kevin W. Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2011–27933 Filed 10–27–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0759; Airspace Docket No. 11–AAL–12]

Amendment of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Nuiqsut, AK, to accommodate the amendment of two standard instrument approach procedures at the Nuiqsut Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Nuiqsut Airport. The action also adjusts the coordinates for the Nuiqsut 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; *email: 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 Wednesday, August 10, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Nuiqsut, AK (76 FR 49386).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received, but the FAA determined that the 1200 ft transition airspace overlies Control 1485L and that airspace should have been excluded from the rule. This action corrects that error. The FAA also noted that the coordinates published for the Nuiqsut Airport were outdated and they are corrected in this action.

Class E5 airspace designated as 700 and 1200 foot transition areas are published in 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, 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 Nuiqsut Airport, Nuiqsut, AK, to accommodate the amendment of a two standard instrument approach procedures. The Class E airspace provides adequate controlled 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 action also revises the geographic coordinates for the Nuiqsut Airport to be in concert with 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 Nuiqsut 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 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′35″ N., long. 151°00′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Nuiqsut Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Nuiqsut Airport, AK, excluding that airspace which overlies Control 1485L.

Issued in Anchorage, AK, on October 14, 2011.

Marshall G. Severson,

Acting Manager, Alaska Flight Services.

[FR Doc. 2011–27806 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 351, 353, 359, and 360

United States Savings Bonds, Series EE, HH and I

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is discontinuing the over-the-counter sales of definitive (paper) savings bonds. This includes sales through financial institutions and mail-in orders. The elimination of definitive savings bond issuances will reduce program costs, enhance customer service, and minimize environmental impact.

DATES: *Effective date:* January 1, 2012.

ADDRESSES: You can download this Final Rule at the following Internet addresses: *http://www.publicdebt.treas.gov, http://www.gpo.gov,* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

David Copenhaver, Senior Attorney, Ann Fowler, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *david.copenhaver@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: United States Savings Bonds are non-marketable Treasury securities which have been sold continuously since March 1935. Savings bonds were introduced as a means of encouraging broad public participation in government financing by making Treasury securities available in small denominations specially tailored to the small investor. Savings bonds continue to be an important savings and investment tool for individuals, and Treasury is committed to offering savings bonds to the public as efficiently as possible.

Treasury made savings bonds available in electronic (book-entry) form through the TreasuryDirect® system in 2002, and savings bonds will continue to be available electronically. However, the issuance of paper (definitive) savings bonds will be discontinued as of January 1, 2012. The elimination of definitive savings bond issuances will reduce program costs, enhance customer service, and minimize environmental impact.

Although no new paper savings bonds will be issued after the effective date, this change does not impact the ability to hold or redeem existing paper bonds. Individuals will also be able to obtain paper Series I savings bonds with their tax refunds through Internal Revenue Service Form 8888.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply.

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is expected to decrease costs for taxpayers; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect January 1, 2012, after we submit a copy of it to Congress and the Comptroller General.

List of Subjects

31 CFR Part 351

Bonds, Federal Reserve System, Government Securities.

31 CFR Part 353

Bonds, Federal Reserve System, Government Securities.

31 CFR Part 359

Bonds, Federal Reserve System, Government Securities.

31 CFR Part 360

Bonds, Federal Reserve System, Government Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

■ 1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 2. Revise § 351.4 to read as follows:

§ 351.4 In what form are Series EE savings bonds issued?

Series EE savings bonds are issued in book-entry form. Effective January 1, 2012, Treasury discontinued the issuance of definitive Series EE savings bonds.

■ 3. Revise § 351.40 to read as follows:

§ 351.40 What were the denominations and prices of definitive Series EE savings bonds?

Prior to January 1, 2012, we issued definitive Series EE savings bonds in denominations of $50, $75, $100, $200, $500, $1000, $5000, and $10,000. The purchase price was one-half the amount of the denomination.

■ 4. Revise § 351.42 to read as follows:

§ 351.42 What is the issue date of a definitive series EE savings bond?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent received payment of the issue price.

■ 5. Revise the last sentence of § 351.43 to read as follows:

§ 351.43 Are Taxpayer Identification Numbers (TINs) required for the registration of definitive series EE savings bonds?

* * * If the bond was purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the registration of the bond.

■ 6. Remove and reserve § 351.44 through § 351.45.

■ 7. Revise § 351.46 to read as follows:

§ 351.46 May I purchase definitive Series EE savings bonds over-the-counter?

Effective January 1, 2012, Treasury discontinued the over-the-counter sale of definitive Series EE savings bonds.

■ 8. Remove and reserve § 351.83.

PART 353—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES EE AND HH

■ 9. The authority citation for part 353 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

■ 10. Amend § 353.5 by revising the first sentence of paragraph (a) and the first

sentence of paragraph (c) to read as follows:

§ 353.5 General rules.

(a) *Registration is conclusive of ownership.* Definitive savings bonds were issued only in registered form. * * *

* * * * *

(c) *Registration of bonds purchased as gifts.* If the bonds were purchased as gifts, awards, prizes, etc., and the taxpayer identifying numbers of the intended owners are not known, the purchaser's number must be furnished. * * *

■ 11. Amend § 353.30 by revising the first sentence to read as follows:

§ 353.30 Series EE bonds.

Definitive Series EE bonds were issued at a discount. * * *

■ 12. Revise § 353.45 to read as follows:

§ 353.45 General.

(a) Reissue of a bond may be made only under the conditions specified in these regulations, and only at:

(1) A Federal Reserve Bank or Branch, or

(2) The Bureau of the Public Debt.

(b) Reissue will not be made if the request is received less than one full calendar month before the final maturity date of a bond. The request, however, will be effective to establish ownership as though the requested reissue had been made. We reserve the right to reissue savings bonds in book-entry form only.

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 13. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 14. Revise § 359.4 to read as follows:

§ 359.4 In what form are Series I savings bonds issued?

Series I savings bonds are issued in book-entry form. Effective January 1, 2012, Treasury discontinued the issuance of definitive Series I savings bonds.

■ 15. Revise § 359.25 to read as follows:

§ 359.25 What were the denominations and prices of definitive Series I savings bonds?

Prior to January 1, 2012, definitive Series I savings bonds were issued in denominations of $50, $75, $100, $200, $500, $1,000, $5,000, and $10,000. These definitive bonds were sold at par; that is, the purchase price was the same as the denomination (face value).

■ 16. Revise § 359.27 to read as follows:

§ 359.27 What is the issue date of a definitive Series I savings bond?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent received payment of the issue price.

■ 17. Revise the last sentence of § 359.28 to read as follows:

§ 359.28 Are Taxpayer Identification Numbers (TINs) required for the registration of definitive series I savings bonds?

* * * If the bond was purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the registration of the bond.

■ 18. Remove and reserve § 359.29 through § 359.33.

■ 19. Revise § 359.34 to read as follows:

§ 359.34 May I purchase definitive Series I savings bonds over-the-counter?

Effective January 1, 2012, Treasury discontinued the over-the-counter sale of definitive Series I savings bonds.

■ 20. Remove and reserve § 359.68.

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

■ 21. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 22. Amend § 360.5 by revising the first sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 360.5 General rules.

(a) *Registration is conclusive of ownership.* Definitive savings bonds were issued only in registered form. * * *

* * * * *

(c) *Registration of bonds purchased as gifts.* If the bonds were purchased as gifts, awards, prizes, etc., and the taxpayer identifying numbers of the intended owners are not known, the purchaser's number must be furnished. * * *

■ 23. Amend § 360.45 by adding the following sentence at the end of the section:

§ 360.45 General.

* * * We reserve the right to reissue savings bonds in book-entry form only.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2011–27740 Filed 10–27–11; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110818511–1641–03]

RIN 0648–BB32

Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Secretarial Emergency Action

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

ACTION: Temporary rule; emergency action.

SUMMARY: This final rule increases catch limits in the Northeast skate fishery for the remainder of the 2011 fishing year. The increases are supported by the latest scientific information that shows significant increases in the abundance of skates, and are intended to provide a significant economic opportunity while still protecting skates from overfishing.

DATES: Effective November 28, 2011, through April 30, 2012.

ADDRESSES: A supplemental environmental assessment (EA) was prepared for this action. The supplemental EA describes the action and provides a thorough analysis of the impacts of the proposed measures and other alternatives that were considered. Copies of the supplemental EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; *fax:* (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) manages skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council's Scientific and Statistical Committee reviews the best available information on the status of skate populations, and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This

recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

In June 2011, after 2011 measures had been set for the skate fishery in Amendment 3 to the Skate FMP, the Scientific and Statistical Committee gave the Council a new recommended ABC for the skate complex totaling 50,435 mt. This new ABC justifies raising skate catch limits for the rest of the 2011 fishing season to allow the fishery to harvest more skates and have a longer fishing season, which should increase the likelihood of achieving optimum yield in this fishery. This increase will help avoid the economic impacts associated with possibly closing the skate fisheries, and preserve a significant economic opportunity that otherwise might be foregone. In light of this new ABC, the Council requested that NMFS implement the revised catch limits through an emergency action for the remainder of the 2011 fishing year. The Council will be using the new ABC as the basis for setting quotas and other measures for the 2012 and 2013 fishing years.

NMFS has determined that there is adequate justification to implement the increase in skate catch limits through an emergency action as provided for in section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) as more fully described below in the Classification section. The preamble to the proposed rule describes the recent history of the Skate FMP, including the implementation of Amendment 3 (which implemented annual catch limits and accountability measures for the 2010 and 2011 fishing years) and Framework 1 (which adjusted possession limits in the skate wing fishery to lengthen the fishing season), and the method in which catch limits are calculated based on the ABC recommendation (76 FR 53872, August 30, 2011).

Approved Measures

Based on the new ABC recommendation, this emergency action implements the following changes to the skate fishery for the rest of the 2011 fishing year:

1. The skate ABC and annual catch limit are increased from 41,080 mt to 50,435 mt;

2. The annual catch target is increased from 30,810 mt to 37,826 mt; and

3. The total allowable landings (i.e., quota) is increased from 13,848 mt to 21,561 mt. The skate wing fishery is allocated 66.5 percent of the quota (14,338 mt) and the skate bait fishery is allocated 33.5 percent of the quota (7,223 mt).

Skate possession limits are unchanged by this action. Until further notice, the skate wing possession limit for vessels using a day-at-sea will remain at 4,100 lb (1,860 kg) per trip (wing weight), and the skate bait possession limit will remain at 20,000 lb (9,072 kg) whole weight per trip for vessels carrying a Skate Bait Letter of Authorization.

Comments and Responses

On August 30, 2011 (76 FR 53872), NMFS published a proposed rule soliciting public comment on the proposed increase in skate catch limits. NMFS received three comments on the proposed rule, all from non-governmental organizations opposing the proposed measures. This section summarizes the principal comments contained in the comment letters, and NMFS's response to those comments.

Comment 1: All three commenters expressed concerns that the proposed increase in skate catch limits would adversely impact the overfished population of thorny skates in U.S. waters. Specifically, they said the quota increases would result in increased bycatch and discards of thorny skates, and more precautionary management is needed to help rebuild this vulnerable stock.

Response: NMFS acknowledges the overfished condition and vulnerability of the thorny skate population. Possession and landing of thorny skates has been prohibited by the Skate FMP since 2003, and it is listed as a Species of Concern in the NMFS Proactive Conservation Program. However, the projected increase in thorny skate bycatch mortality asserted by these commenters is not likely to occur. Vessels that participate in the skate wing fishery mostly target other more valuable species such as groundfish or monkfish, and retain the skates they catch incidentally. Therefore, overall fishing effort is not directly influenced by the skate quotas, but rather the effort controls or quotas in these other fisheries. Effort in the Northeast multispecies (groundfish) fishery, the primary source of skate discards, has been significantly reduced in recent years, resulting in reduced skate discard rates. Increasing skate quotas effectively allows these vessels to land the skates that would otherwise have to be discarded. Furthermore, recent analyses by the Council's Skate Plan Development Team indicate that there is not a considerable amount of overlap between the trawl and gillnet fishing effort (that accounts for most of the skate landings) and the distribution of thorny skates. Most fishing occurs in areas where thorny skates are not found.

Comment 2: One commenter argued that this action should be withdrawn because it does not constitute an ''emergency,'' and it does not meet NMFS's policy guidelines for use of emergency rulemaking. The commenter also suggested that this emergency action does not meet the legal requirements for public notice and comment.

Response: NMFS has reviewed the Council's request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997), as more fully described below in the Classification section and in the proposed rule for this action, and determined that the Council's request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the Magnuson-Stevens Act. Contrary to the commenter's arguments, emergency actions under section 305(c) of the Magnuson-Stevens Act, as discussed in NMFS policy for such actions, can be used to address economic concerns not necessarily related to conservation concerns (e.g., overfishing), and Magnuson-Stevens Act emergency actions have been used in the past for economic purposes. Moreover, in this case, prior notice and comment were provided to better inform the public and the agency before the agency made a final decision to take this action.

Comment 3: One commenter requested that this action be withdrawn until NMFS issues its 90-day finding determination on two recently-submitted petitions to list thorny, barndoor, smooth, and winter skates as threatened or endangered under the Endangered Species Act (ESA).

Response: NMFS is currently reviewing a petition from the Animal Welfare Institute to list thorny skate, and a joint petition from WildEarth Guardians and the Friends of Animals to list thorny, barndoor, smooth, and winter skates as threatened or endangered under the ESA. These petitions are being considered independently of this emergency action. A 90-day finding is forthcoming on whether these petitions present substantial information indicating that listing of these species may be warranted. Delaying the final decision on this action to accommodate the ESA petition 90-day finding could undermine the purpose of the action because of the need to get this in place as soon as possible. Since this temporary rule is only effective for 180

days, future Council actions for the skate fishery may address additional conservation measures, if necessary.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. NMFS has determined that the new assessment of the status of the skate complex, and the significantly higher ABC recommendation, justifies the emergency in-season adjustment requested by the Council. NMFS reviewed the Council's request for temporary emergency rulemaking with respect to section 305(c) of the Magnuson-Stevens Act and NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997) and determined that the Council's request meets both the criteria and justifications for invoking the emergency rulemaking provisions of the Magnuson-Stevens Act. Specifically, the SSC revision of its previously recommended ABC was a recent and unforeseen event. Without this action there would be a serious management problem in the fishery, because it would result in unnecessary closures and economic impacts that are not supported by the best available science. This emergency rulemaking is justified because increasing the FY 2011 skate complex ABC, ACL, ACT, and TALs, relieves restrictions imposed by the previous, lower catch levels. This will assist in preventing significant direct economic loss for fishery participants and associated industries that otherwise would be subject to lower commercial harvest levels, and will preserve a significant economic opportunity that would otherwise be foregone.

The Office of Management and Budget has determined that this rule is not significant for the purposes of Executive Order 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses contained in the action and its supplemental EA and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the action and supplemental EA is available from NMFS (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Three comments were received on the proposed rule. For a summary of the comments, and NMFS's responses to them, see the Comments and Responses section above. None of the comments raised issues or concerns related to the IRFA, and no changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The increase in the skate catch limits would impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. For the purposes of this analysis, each permitted vessel is treated as a single small entity and is determined to be a small entity under the guidelines established by the Small Business Administration. All of these entities are considered small businesses by the Small Business Administration because they have annual receipts not totaling more than $4 million. Therefore, there are no differential impacts between large and small entities from this action. According to the Framework 1 final rule and FRFA (76 FR 28328, May 17, 2011), as of December 31, 2010, there is a maximum of 2,607 small fishing entities that may be affected by this action (the number of skate permit holders). However, during the 2010 fishing year, only 503 vessels landed skates for the wing market, and only 56 landed skates for the bait market.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The purpose of this action is to increase the skate ABC and associated catch limits in order to increase landings, thereby extending the duration of the fishing season and helping to prevent the negative economic impacts that would be associated with an early closure of the directed skate fisheries. NMFS considered one alternative (No Action Alternative) to the preferred alternative implemented by this rule. Under the No Action Alternative, the skate catch limit would remain at 41,080 mt. This alternative was rejected because it does not represent the best available scientific information, and would likely result in negative economic impacts as compared to the preferred alternative. Compared to the other alternative considered, this action is expected to better maximize profitability for the skate fishery by allowing higher levels of landings for the duration of the 2011 fishing year while still being consistent with requirements of the Magnuson-Stevens Act and other applicable law. Therefore, the economic impacts resulting from this action as compared to the No Action Alternative are positive, since the action would provide additional fishing opportunity for vessels participating in the skate fishery for the 2011 fishing year.

The action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates allowable under the quotas. The estimated potential revenue from the sale of skates under the revised catch limits is approximately $9.0 million, compared to $5.8 million if this action were not implemented. Due to the implications of closing the directed skate fisheries early in the fishing year, the higher catch limits associated with this action will result in additional revenue if fishing is prolonged. According to analyses in Framework 1, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (e.g., groundfish, monkfish). Therefore, relative to total fishing revenues, catch limits of other species would be expected to have more significant economic impacts than revenues derived from skates alone. However, as skate prices have begun increasing in recent years, more vessels are deriving a greater proportion of their income from skates.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at *http://www.nero.noaa.gov.*

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

Dated: October 25, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2011–27989 Filed 10–25–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 209
Friday, October 28, 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.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Services

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN 0575–AC90

Single Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Rural Business-Cooperative Services, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agricultural (USDA), Rural Housing Service (RHS) proposes a change to its Single Family Housing Guaranteed Loan Program (SFHGLP) regulation. The proposed action is taken to implement authorities granted the Secretary of the USDA, in Sec. 102 of the Supplemental Appropriations Act, 2010 (Pub. L. 111–212, July 29, 2010) to collect from the lender an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan. The intent of the annual fee is to make the SFHGLP subsidy neutral when used in conjunction with the one-time guarantee fee, thus eliminating the need for taxpayer support of the program. For Fiscal Year (FY) 2012, an annual fee of 0.3 percent of the outstanding principal balance will be required in order that the SFHGLP may maintain subsidy neutrality. Beginning with all loans obligated on or after October 1, 2011, RHS proposes to charge an annual fee of 0.3 percent of the outstanding principal balance of the loan for the life of the loan.

DATES: Written or email comments on the proposed rule must be received on or before December 27, 2011.

ADDRESSES: You may submit comments on this proposed rule by any one of the following methods:

- *Email: comments@wdc.usda.gov.* Include ''RIN No. 0575–AC90'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments electronically.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express mail, or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Cathy Glover, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, USDA Rural Development, Room 2250, STOP 0784, 1400 Independence Ave., SW., Washington, DC 20250, *Telephone:* (202) 720–1452, *Email: cathy.glover@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been determined to be not significant by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Federalism—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule change will not have a significant impact on a substantial number of small entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determinations of program benefits for guarantees of loans made to individuals.

Intergovernmental Consultation

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection and record keeping requirements contained in this regulation have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The assigned OMB control number is 0575–AC83.

E-Government Act Compliance

The Rural Housing Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Background

As a result of Public Law 111–212, ''Supplemental Appropriations Act, 2010,'' enacted on July 29, 2010, Section 502 (h)(8) of the Housing Act of 1949 (42 U.S.C. 1472 (h) (8)), was amended to read as follows: ''(8) Fees.—Notwithstanding paragraph (14) (D), with respect to a guaranteed loan issued or modified under this subsection, the Secretary may collect from the lender—''(A) at the time of issuance of the guarantee or modification, a fee not to exceed 3.5 percent of the principal obligation of the loan; and ''(B) an annual fee not to exceed 0.5 percent of the outstanding principal balance of the loan for the life of the loan.''

The annual fee provision is applicable to purchase and refinance loan transactions. The intent of the annual fee is to make the SFHGLP subsidy neutral, thus eliminating the need for taxpayer support of the program. RHS has determined that in order for the SFHGLP to maintain subsidy neutrality, beginning with loans obligated on or after October 1, 2011, an annual fee of 0.3 percent will be charged on the outstanding principal balance of the loan for the life of the loan.

RHS currently collects an upfront guarantee fee of 3.5 percent for purchase loans, and 1 percent for refinance loan transactions. The lender collects the upfront guarantee fee from the borrower at the time of loan closing. The borrower either pays the upfront guarantee fee from personal funds, or the fee may be included in the guaranteed loan amount. The proposed annual fee of 0.3 percent will be collected in addition to the upfront guarantee fee.

RHS operational systems currently do not accommodate the annual fee provision. RHS will take steps necessary to enhance the operational systems in the coming months so that an annual fee of 0.3 percent may be collected on all loans obligated on or after October 1, 2011. RHS is aware that lenders will need time to enhance their systems, and intends to work closely with lenders and service bureaus to ensure they can support the proposed annual fee requirement in the shortest possible timeframe. Supporting documentations for servicers as well as training materials for loan originators and servicers will be developed by RHS prior to implementation of the annual fee.

RHS proposes to structure the annual fee as follows:

(1) Determining the Annual Fee: The annual fee will be calculated based on the guaranteed loan amount and on the average annual scheduled unpaid principal balance for the life of the loan. The fee will be calculated when the loan is made and every 12 months thereafter, until the loan is paid in full or no longer outstanding and the guarantee is cancelled or expired. For example, to determine the annual fee for a $100,000 loan (guaranteed amount), 6% interest rate, 30 year term, calculate as follows:

a. *Step 1:* Compute the average annual scheduled unpaid principal balance (UPB). The average annual scheduled UPB for year 1, for a $100,000 loan = $99,443.244 is $99,443.24 (*standard 5–3–3 rounding*)

b. *Step 2:* Compute Annual Fee based off the average annual UPB. Based on an annual fee of.3%, $99,443.24 x .3% = $298.33 (*rounded up to the next cent*)

c. *Step 3:* Compute monthly escrow required for annual fee. $298.33/12 = $24.87 (*rounded up to the next cent*).

(2) Annual Fee Billing

a. Lenders will be billed retroactively for a 12 month period, commencing on the first anniversary of the loan and each anniversary thereafter. For example, if the loan closes on November 1, 2011, the lender will be billed for the initial fee on December 1, 2012.

b. The annual fee payment will be due to RHS by the 15th calendar day after each anniversary of the loan. Using the example above, the initial annual fee will be due to RHS by no later than December 15, 2012.

c. If the fee is not paid by the due date, RHS will assess a late fee of 4 percent of the billed amount on the 16th calendar day after the bill is due. If the annual fee for a loan is still unpaid after 30 days, RHS may assess additional late fees on the delinquent fee amount.

d. Although, RHS will collect the fee annually, lenders may establish an escrow account to collect the fee from the borrower on a monthly basis.

(3) The Annual Fee will be collected through Pay.Gov as follows:

a. Fully web-based for lenders with 3,000 or less loans; and

b. An overnight matching batch process for lenders with greater than 3,000 loans.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

For the reason stated in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1980—GENERAL

(1) The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart D—Rural Housing Loans

(2) Section 1980.323 is revised to read as follows:

§ 1980.323 Guarantee loan fees.

The Lender will pay an up-front guarantee fee, and will also be charged an annual fee. The amount of the up-front guarantee fee and annual fee will be calculated based on the figure identified in exhibit K of subpart A of part 1810 of this chapter (RD Instruction 440.1, available in any Rural Development office). The nonrefundable fees may be passed on to the borrower.

(a) *Up-front guarantee fee.* The amount of the up-front guarantee fee is determined by multiplying the appropriate figure in RD Instruction 440.1, Exhibit K, times 90 percent of the principal amount of the loan.

(b) *Annual fee.* The annual fee will be based on the average annual scheduled unpaid principal balance of the guaranteed loan amount. The fee percentage can be found in RD Instruction 440.1, Exhibit K. The Agency will assess a late fee for annual fees not timely paid.

* * * * *

Dated: July 19, 2011.

Dallas Tonsanger,

Under Secretary, Rural Development.

Dated: August 2, 2011.

Michael Scuse,

Acting Under Secretary, Farm and Foreign Agriculture Services.

[FR Doc. 2011–27945 Filed 10–27–11; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

8 CFR Part 100

19 CFR Part 101

[Docket No. USCBP–2011–0032]

RIN 1651–AA90

Opening of Boquillas Border Crossing and Update to the Class B Port of Entry Description

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking proposes to create a border crossing in Big Bend National Park to be called Boquillas. The Boquillas crossing would be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service plan to partner on the construction of a joint use facility in Big Bend National Park where the border crossing would operate. This NPRM proposes to designate the Boquillas border crossing as a ''Customs station'' for customs purposes and a Class B port of entry for immigration purposes.

This NPRM also proposes to update the description of a Class B port of entry to reflect current border crossing documentation requirements.

DATES: Comments must be received on or before December 27, 2011.

ADDRESSES: You may submit comments identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2011–0032.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, Regulations and Rulings, Attention: Border Security Regulations Branch, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, CBP Office of Field Operations, telephone (202) 344–3003.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this notice of proposed rulemaking. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to CBP will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

The term ''port of entry'' is used in the Code of Federal Regulations (CFR) in title 19 for customs purposes and in title 8 for immigration purposes. Concerning customs purposes, CBP operates Customs ports of entry,[1] service ports,[2] and ''Customs stations'' [3] listed and described in part 101 of the CBP regulations (19 CFR part 101). Section 101.3 of the CBP regulations (19 CFR 101.3) lists the Customs ports of entry and service ports. Section 101.4 of the CBP regulations (19 CFR 101.4) lists the ''Customs stations'' and the supervisory port of entry for each station. In addition, for immigration purposes, 8 CFR 100.4(a) lists ports of entry for aliens arriving by vessel and land transportation. These ports are listed according to location by districts and are designated as Class A, B, or C, which designates which aliens may use the port. As explained in detail in the section of this document entitled ''Proposed Revision of Class B Port of Entry Description,'' we are proposing to revise the description of a Class B port of entry so that it conforms to recent changes to documentary requirements.[4]

This notice of proposed rulemaking (NPRM) proposes to establish a border crossing in Big Bend National Park where U.S. citizens and certain aliens would be able to cross into the United States. Before 2002, a border crossing, called Boquillas, was open in the national park. The new border crossing would be located at the site of the historic crossing and would also be called the Boquillas border crossing. This NPRM proposes to designate the Boquillas border crossing as a Class B port of entry and a ''Customs station'' under the supervisory port of entry of Presidio, Texas. Presidio, Texas is a

[1] A port of entry is defined in 19 CFR 101.1 as ''any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws.'' The authority of the Secretary of the Treasury referred to in this definition has been transferred to the Secretary of Homeland Security. Sections 403(l) and 411 of the Homeland Security Act of 2002 (''the Act,'' Pub. L. 107–296, 6 U.S.C. 203(l), 211) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security.

[2] A service port is defined in 19 CFR 101.1 as ''a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.''

[3] A ''Customs station'' is defined in 19 CFR 101.1 as ''any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of Customs and navigation laws of the United States.''

[4] Class A ports of entry are those designated for all aliens. Class C ports of entry are designated only for aliens arriving as crewmen, as the term is defined by the Immigration and Nationality Act with respect to vessels.

Customs port of entry listed in section 101.3 of the CBP regulations (19 CFR 101.3). For ease of reference, this NPRM refers to the proposed Boquillas port of entry/''Customs station'' in this document as a border crossing.

History of Big Bend National Park

Sixty-five years ago, the Presidents of the United States and Mexico corresponded about creating Big Bend National Park in the United States, wherein they envisioned the conservation of the shared ecosystems on both sides of the Rio Grande. Mexico later established the Cañon de Santa Elena and Maderas del Carmen protected areas in Chihuahua and Coahuila, which are adjacent to Big Bend. In 1935, the U.S. Congress authorized Big Bend National Park to preserve and protect a representative area of the Chihuahuan Desert along the Rio Grande for the benefit and enjoyment of present and future generations. The park, formally established in June 1944, encompasses more than 800,000 acres in southwest Texas. The Rio Grande runs through the park and forms part of the international boundary between Mexico and the United States. The park includes rich biological and geological diversity, cultural history, recreational resources, and outstanding opportunities for binational protection of our shared natural and cultural heritage.

Prior to 2002, visitors to the park could cross the Rio Grande to eat, buy goods, and experience the villages near the border, such as Boquillas, Mexico. In May 2002, following September 11, 2001 (9/11), the Boquillas crossing was closed until appropriate security measures could be implemented. Since 2002, there has been no authorized international crossing point within Big Bend National Park. The nearest border crossing currently is located in the port of entry of Presidio, Texas, located approximately 100 miles west. Due to the current situation, park staff and visitors of Big Bend National Park who wish to travel to the protected areas of Mexico directly across from the park must drive several hours to depart and reenter the United States through the nearest port of entry at Presidio, Texas.

United States-Mexico Joint Presidential Statement

On May 19, 2010, President Obama and President Calderón issued a joint statement pledging both countries' commitment to protecting wild lands on opposite sides of the Rio Grande, noting the long history of bilateral cooperation in the conservation of natural and cultural resources. The Presidents recognized that the Big Bend National Park and Rio Grande Wild and Scenic River in the United States, along with the Protected Areas of Maderas del Carmen, Cañon de Santa Elena, Ocampo, and Río Bravo del Norte in Mexico, together comprise one of the largest and most significant ecological systems in North America. To preserve this region of extraordinary biological diversity, they expressed their support for the U.S. Department of the Interior and the Secretariat of Environment and Natural Resources of Mexico to work through appropriate national processes to recognize and designate Big Bend-Río Bravo as a natural area of binational interest. The Presidents noted that increased cooperation in these protected areas would restrict development and enhance security in the region and within this fragile desert ecosystem. The joint Presidential statement encourages an increased level of cooperation between the two countries.

Based on this joint Presidential statement, on January 6, 2011, the Commissioner of CBP announced that CBP plans to re-establish a border crossing at Boquillas. The ability to enter the United States from within the protected areas would foster the Presidents' goals by supporting visitor access to these unique areas.

Proposed Boquillas Border Crossing

This NPRM proposes to create a border crossing in Big Bend National Park where U.S. citizens and certain aliens with proper documentation would be able to enter the United States from Mexico. The Boquillas border crossing would fill the void of a long stretch of border between Presidio and Del Rio, Texas where there is currently no authorized international border crossing and would facilitate travel within the Big Bend-Río Bravo region. This NPRM proposes to designate the Boquillas border crossing as a ''Customs station'' for customs purposes and a Class B port of entry for immigration purposes. Under this NPRM, CBP is also proposing to update the description of a Class B port of entry to reflect current border crossing document requirements. The Boquillas border crossing would fit within the proposed new description of a Class B port of entry.

Big Bend National Park is one of the most biologically diverse regions in the world and represents an area of binational interest. A border crossing would support park rangers and scientists on both sides of the border and aid in the joint protection of shared wildlife such as black bear and cougars. The partnership with Mexico would add to the cooperative environment that has developed for the protection of wildlife and encourage travel to this biologically diverse region.

Coordination With the National Park Service

The National Park Service (NPS) within the U.S. Department of the Interior is working with CBP on the proposed border crossing. Efforts to establish this new border crossing were set in motion by discussions between the White House, the U.S. Department of the Interior, and the Department of Homeland Security. CBP and NPS plan to collaborate on the construction of a joint use facility in Big Bend National Park where the border crossing will operate. NPS would provide the needed land and would construct the facility. NPS also would provide parking, an access trail, and a landing point for the cross-border boats. Additionally, NPS has prepared an environmental analysis, as required by the National Environmental Policy Act (NEPA), to determine the impact the new facility will have on the environment.

The new facility would include the infrastructure necessary to operate a border crossing, functioning as a ''Customs station'' and a Class B immigration port of entry. The facility would also accommodate the NPS functions that support the ability to manage visitor use of the border crossing, and would provide public restrooms, an information lobby, and a waiting area. NPS plans to provide staffing for visitor contact during normal park operational hours.

Boquillas Border Crossing Operations

The proposed Boquillas border crossing would be a ''Customs station'' under the supervisory port of entry of Presidio, Texas, which is a Customs port of entry. 19 CFR 101.3. The site of the border crossing would be in the southeast portion of Big Bend National Park, approximately one mile northeast of Rio Grande Village. The site is adjacent to the Rio Grande just outside of the floodplain and would be accessible from Boquillas Canyon Road, a paved road leading from Rio Grande Village to the Boquillas Canyon Trailhead. CBP Border Patrol agents and NPS law enforcement currently work onsite within the Big Bend National Park boundaries and would provide a law enforcement presence and response as needed. The border crossing would only be open during daylight hours.

The Boquillas border crossing would allow U.S. citizens and certain aliens with appropriate lawful documentation to enter the United States from Mexico. We anticipate that park visitors, park

staff, and researchers would use the border crossing. As there is no bridge across the Rio Grande (the international border) to support vehicular traffic, travelers would reach the building on foot after crossing the river on their own or by ferry.

Traveler Inspection at the Boquillas Border Crossing

CBP intends to use a combination of staffing and technology solutions to operate the border crossing. Remote technology would assist CBP in maintaining security and verifying the identity of those entering the United States, while also ensuring that they possess proper documentation to do so. Kiosks electronically connected to the El Paso port of entry would enable CBP officers in El Paso to remotely process travelers at the Boquillas border crossing.[5] CBP officers in El Paso would be in contact with Border Patrol agents within the park, who could respond when a physical inspection is required. CBP officers would assist onsite as operational needs dictate. CBP would install a 24-hour surveillance camera at the Boquillas crossing to monitor activity. CBP will process and clear all persons who use the Boquillas border crossing to enter the United States.

The Boquillas border crossing would service only pedestrians visiting Big Bend National Park and Mexican Protected Areas—not import business. Therefore, CBP will not process cargo, commercial entries, or vehicles at Boquillas. Persons using the Boquillas border crossing would only be permitted to bring limited merchandise into the United States; CBP would only process items exempt from duties and taxes under 19 CFR 10.151. This provision generally covers importations that do not exceed $200 in value.[6] All such items must comply with all applicable regulations, including all relevant Animal and Plant Health Inspection Service restrictions. Persons using the Boquillas crossing must also comply with Federal wildlife protection laws and U.S. Fish and Wildlife Service wildlife import/export regulations.

Proposed Revision of Class B Port of Entry Description

The current description of a Class B port of entry in 8 CFR 100.4(a) refers to aliens admissible without documents under documentary waivers found in 8 CFR part 212. These waivers, however, were generally eliminated by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law No. 108–458, § 7209, 118 Stat. 3638, 3823, as amended.

Pursuant to IRTPA, DHS and the Department of State (DOS) issued two rules implementing the Western Hemisphere Travel Initiative (WHTI), which require U.S. citizens and nonimmigrant aliens from Bermuda, Canada, and Mexico to present certain documents when entering the United States from within the Western Hemisphere.[7] The WHTI rules amended, among other sections of the Code of Federal Regulations, 8 CFR 212.0, 212.1, and 235.1, pertaining to documentary requirements for nonimmigrants and the inspection of persons applying for admission to enter the United States.

Prior to the implementation of WHTI, nationals of Bermuda and Canada, and certain nationals of Mexico, were exempt from documentary requirements if entering the United States from within the Western Hemisphere. The WHTI final rules amended the relevant sections of the regulations (in parts 212 and 235) to provide that these travelers are no longer admissible without documents and must present a document compliant with WHTI when seeking to enter the United States.

As a result of the changes implemented by WHTI, the description of Class B ports of entry in 8 CFR 100.4(a) is now outdated. CBP regulations currently describe Class B ports as follows:

> Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are lawfully in possession of valid Permanent Resident Cards or valid non-resident aliens' border-crossing identification cards or *are admissible without documents under the documentary waivers contained in part 212 of this chapter.* (emphasis added)

The aliens who were previously admissible without documents pursuant to 8 CFR part 212 were nonimmigrant aliens who were nationals of Bermuda or Canada or certain nationals of Mexico. In general, these persons must now comply with WHTI documentary requirements as set forth in parts 212 and 235. Thus, this NPRM proposes amending the description of a Class B port of entry to delete the outdated phrase ''are admissible without documents under the documentary waivers contained in part 212 of this chapter'' and replace it with language that is more precise and consistent with WHTI requirements.

The WHTI rules did not remove the exemption from documentary requirements for International Boundary and Water Commission (IBWC) workers. *See* 8 CFR 212.1(c)(5). Therefore, employees, who are involved either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with a 1944 treaty between the United States and Mexico regarding the functions of the IBWC, and entering the United States temporarily in connection with such employment, continue to be exempt from WHTI document requirements. Under the proposed Class B description, these persons will continue to be admissible without documents at a Class B port of entry.

The proposed Class B description is set forth below:

> Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document requirements by section 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and nonimmigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in section 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing.

The proposed Class B description includes other technical and clarifying revisions that will make the regulation easier for the public to understand. Specifically, one change under the proposed description would remove reference to ''valid non-resident aliens' border-crossing cards'' from the Class B description. This reference would be redundant if included in the new description because border-crossing cards are one of the acceptable WHTI compliant documents listed in section 212.1(c). Therefore, it is unnecessary to specify border-crossing cards in the Class B description. Moreover, CBP will continue to accept these border-crossing cards at Class B ports of entry under the new description.

Another change under the proposed Class B description expressly would permit Mexican nationals in lawful possession of valid WHTI-compliant documents, including border-crossing

[5] Although Boquillas would be under the supervision of the Presidio port of entry, the kiosks would be connected to the El Paso port of entry because El Paso has the appropriate facilities for remote processing.

[6] Under 19 CFR 10.151, importations that do not exceed $200 in value are generally exempt from duty and taxes. Such merchandise shall be entered under the informal entry procedures. *See* 19 CFR 128.24(d).

[7] On November 24, 2006, DHS and DOS issued a joint final rule, effective on January 23, 2007, that implemented WHTI at U.S. air ports of entry. *See* 71 FR 68412. On April 3, 2008, DHS and DOS issued another joint final rule, effective on June 1, 2009, that implemented WHTI at U.S. land and sea ports of entry. *See* 73 FR 18384.

cards, to use Class B ports of entry. The current Class B description does not specify that Mexican nationals possessing WHTI-compliant documents, other than a border-crossing card, may use Class B ports of entry. This change will align the Class B description with current WHTI requirements.

Finally, CBP notes that while Class A ports are designated for all aliens and designed to provide full processing at the border, Class B ports are designed for processing a more limited segment of those aliens entering the United States. Class B ports generally provide limited functions and are not now and were not previously intended to provide full service processing, including issuing documents (such as a Form I–94) at the border. Therefore, the proposed description includes language to clarify that the aliens listed in the Class B description must be admissible without further arrival documentation or immigration processing.

Proposed Amendments to the Regulations

If the proposed opening of the Boquillas border crossing is adopted, the list of ports of entry in 8 CFR 100.4(a) and the list of ''Customs stations'' in 19 CFR 101.4(c) will be amended to reflect this change.

Authority

These changes are proposed pursuant to 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103, 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458), and 19 U.S.C. 1, 58b, 66 and 1624.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866, as amended by Executive Order 13563, requires Federal agencies to assess the costs and benefits of regulatory actions as a means to improve regulatory decision making. This NPRM is not an ''economically significant'' rulemaking action under Executive Order 12866, because it will not result in the expenditure of more than $100 million in any one year. This NPRM, however, is a significant regulatory action under Executive Order 12866; therefore, the Office of Management and Budget has reviewed this regulation.

The opening of the Boquillas border crossing will entail constructing a small inspection facility and installing hardware that meets the technical specifications for land ports of entry. NPS will construct a building large enough to house both a small visitor center and the CBP inspection station. This construction is to be funded entirely by NPS and is expected to cost $2.1 million,[8] which accounts for special construction needed to address the remoteness of the facility. CBP will be responsible for procuring and installing all equipment needed for its operation, which includes inspection kiosks, surveillance equipment, and an agricultural waste disposal system. This equipment will cost $1,577,000 the first year, which includes installation, hardware, connectivity, and security.[9] We estimate that the facility will cost $200,000 each year for operation and maintenance; an estimated $195,000 will be incurred by CBP and $5,000 by NPS.[10] NPS will also staff the facility with a combination of paid seasonal and volunteer personnel. NPS estimates that 0.5 paid Full-Time Equivalents (FTEs) will be needed to staff the new facility at a cost of approximately $17,800 per year.[11] The total cost of opening the Boquillas border crossing is estimated to be $3.7 million in the first year and $217,800 in subsequent years, all of which will be incurred by the U.S. government.

NPS anticipates that 15,000 to 20,000 people will use the Boquillas border crossing in the first year.[12] Most of this traffic is expected to be U.S. citizens who will benefit from visiting the town of Boquillas del Carmen on the Mexican side of the border for food, souvenirs, and a unique cultural experience. The number of border crossers may grow over time as NPS continues to work with the Mexican government to develop ecotourism and sports and recreational opportunities. Because of the absence of data on the number of future border crossers and their willingness to pay for these experiences, we are not able to quantify the benefit of the availability of these experiences to the U.S. economy.

In addition to opening a new border crossing at Boquillas, this NPRM would revise the definition of a Class B port to make the admissibility documents allowed at a Class B port consistent with WHTI. The costs and benefits of obtaining WHTI-compliant documents were included in the Final Rule establishing WHTI.[13] This NPRM would not result in any additional costs or benefits.

Regulatory Flexibility Act

This section examines the impact of the NPRM on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This NPRM does not directly impact small entities because individuals will be affected by the NPRM and individuals are not considered small entities. Thus, we believe that this NPRM will likely not have a significant economic impact on a substantial number of small entities. We welcome any comments regarding this assessment. If we do not receive any comments with information that shows this NPRM would have a significant economic impact on a substantial number of small entities, we will certify that this NPRM will not have a significant economic impact on a substantial number of small entities at the final rule stage.

Executive Order 13132

The NPRM will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this NPRM does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

The National Environmental Policy Act of 1969

DHS and CBP, in consultation with NPS within the Department of Interior, have been reviewing the potential environmental and other impacts of this

[8] Source: National Park Service Predesign Study—Boquillas Crossing Visitor Contact/Border Station. January 2011.

[9] Source: CBP Office of Information Technology estimate on March 4, 2011.

[10] Sources: CBP Office of Information Technology estimate on March 4, 2011 and National Park Service estimate on March 24, 2011.

[11] NPS assumes the facility will be staffed seasonally for approximately half the year with a GS–05 step 5 employee ($35,489 annual salary). Email communication with Big Bend park management staff on March 24, 2011. Salary information: *http://www.opm.gov/oca/11tables/html/RUS.asp,* accessed March 24, 2011. Calculation: 0.5 FTE × $35,489 = $17,745, rounded to $17,800. This calculation does not include benefits, because the facility will be staffed by part-time seasonal employees.

[12] *Source:* Telephone communication with Big Bend park management staff on January 10, 2011.

[13] The Regulatory Assessments for the April 2008 final rule for WHTI requirements in the land environment can be found at *http://www.regulations.gov,* document numbers USCBP–2007–0061–0615 and USCBP–2007–0061–0616.

proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 023–01, Environmental Planning Program of April 19, 2006.

NPS prepared an environmental assessment (EA) that examines the effects on the natural and human environment associated with the proposed construction and operation of a visitor station and establishment of a Class B port of entry on the Rio Grande between the United States and Mexico within Big Bend National Park. The NPS EA encompasses all components of the Boquillas border crossing, including CBP operations of the port of entry. On April 29, 2011, NPS posted a notice of availability of the EA on NPS's Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/bibe* and described how the public may provide comments on the EA. On June 28, 2011, NPS issued a Finding of No Significant Impact (FONSI) concluding that the proposed activities would not result in a significant impact to the human and natural environment.

In accordance with NEPA, CBP has carefully reviewed the EA developed by NPS and has determined that it accurately considers all potential impacts of the project; therefore, CBP intends to adopt the EA developed by NPS and issue a FONSI. CBP has posted the EA prepared by NPS and a Draft FONSI on the CBP Web site at *http://www.cbp.gov* and in the docket for this rulemaking at *http://www.regulations.gov* and solicits public comment. Members of the public may submit comments via email to *CBP EnvironmentalPrograms@cbp.dhs.gov* or via mail to U.S. Customs and Border Protection, Environmental Planning Branch, 1331 Pennsylvania Ave. NW., Suite 1220, Washington, DC 20229. Please reference ''Boquillas'' in the subject line. CBP will accept comments on these documents until December 27, 2011.

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of this Customs station is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or her delegate).

List of Subjects

8 CFR Part 100

Organization and functions (Government agencies).

19 CFR Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

Amendments to the Regulations

For the reasons stated in the preamble, we propose to amend 8 CFR part 100 and 19 CFR part 101 as set forth below.

Title 8—Aliens and Nationality

CHAPTER I—DEPARTMENT OF HOMELAND SECURITY

PART 100—STATEMENT OF ORGANIZATION

1. Revise the authority citation for part 100 to read as follows:

Authority: 8 U.S.C. 1103; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); 8 CFR part 2.

2. Amend § 100.4(a) as follows:

a. Revise the fifth sentence of § 100.4(a) as set forth below.

b. Under the heading ''District No. 15—El Paso, Texas,'' add the subheading, ''*Class B''* and add ''Boquillas, TX'' under the new ''*Class B''* heading.

§ 100.4 Field Offices

(a) * * * Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document requirements by § 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and nonimmigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in §§ 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing. * * *

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

PART 101—GENERAL PROVISIONS

3. The general authority citation for part 101, and the sectional authority citation for §§ 101.3 and 101.4, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.4 [Amended]

4. In § 101.4(c), under the state of Texas, add ''Boquillas'' in alphabetical order to the Customs station column and add ''Presidio.'' to the corresponding Supervisory port of entry column.

Janet Napolitano,

Secretary.

[FR Doc. 2011–27792 Filed 10–27–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0630; Airspace Docket No. 11–ASW–8]

Proposed Amendment of Class D Airspace; Altus AFB, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace at Altus Air Force Base (AFB), OK. Procedural changes implemented to enhance safety for aircraft operating in the vicinity of Altus/Quartz Mountain Regional Airport, Altus, OK, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Altus AFB.

DATES: 0901 UTC. Comments must be received on or before December 12, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0630/Airspace Docket No. 11–ASW–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–(800) 647–

5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0630/Airspace Docket No. 11–ASW–8.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by modifying Class D airspace at Altus AFB, Altus, OK. Airspace reconfiguration is necessary due to procedural changes implemented to enhance safety for aircraft operating in the vicinity of Altus/Quartz Mountain Regional Airport. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class D airspace areas are published in Paragraph 5000 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 D airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Altus AFB, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASW OK D Altus AFB, OK [Amended]

Altus AFB, OK
(Lat. 34°39′59″ N., long. 99°16′05″ W.)
Altus AFB ILS Localizer
(Lat. 34°38′31″ N., long. 99°16′26″ W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 6-mile radius of Altus AFB, and within 2 miles each side of the Altus AFB ILS 17R Localizer north course extending from the 6-mile radius to 7.6 miles north of the airport, and excluding that airspace below 2,500 feet MSL west of long. 99°18′52″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX, on September 29, 2011.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–27974 Filed 10–27–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1146; Airspace Docket No. 11–ASO–36]

Proposed Amendment of Class E Airspace; Rockingham, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at Rockingham, NC, as the Roscoe Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Richmond County Airport. This action also would update the airport's geographic coordinates and note the name change to Richmond County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, Comments must be received on or before December 12, 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.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *Telephone:* 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–1146; Airspace Docket No. 11–ASO–36, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1146; Airspace Docket No. 11–ASO–36) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1146; Airspace Docket No. 11–ASO–36.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Richmond County Airport, Rockingham, NC. Airspace reconfiguration is necessary due to the decommissioning of the Roscoe NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. The geographic coordinates for Richmond County Airport also would be adjusted to coincide with the FAA's aeronautical database. Also, the airport name would be changed from Rockingham-Hamlet Airport to Richmond County Airport.

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 designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would amend Class E airspace at Richmond County Airport, Rockingham, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

ASO NC E5 Rockingham, NC [Amended]

Richmond County Airport, NC
(Lat. 34°53′48″ N., long. 79°45′58″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Richmond County Airport.

Issued in College Park, Georgia, on October 21, 2011.

Michael Vermuth,

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

[FR Doc. 2011–27928 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0850; Airspace Docket No. 11–AGL–17]

Proposed Amendment of Class E Airspace; Portsmouth, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Portsmouth, OH. Decommissioning of the Portsmouth non-directional beacon (NDB) at the Greater Portsmouth Regional Airport, Portsmouth, OH, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before December 12, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0850/Airspace Docket No. 11–AGL–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-(800) 647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0850/Airspace Docket No. 11–AGL–17.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Greater Portsmouth Regional Airport, Portsmouth, OH. Airspace reconfiguration is necessary due to the decommissioning of the Portsmouth NDB and cancellation of the NDB approach. Geographical coordinates would also be updated to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Greater Portsmouth Regional Airport, Portsmouth, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and 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.

* * * * *

AGL OH E5 Portsmouth, OH [Amended]

Greater Portsmouth Regional Airport, OH
(Lat. 38°50′26″ N., long. 82°50′50″ W.)
Portsmouth, Southern Ohio Medical Center Helipad, OH
Point in Space Coordinates
(Lat. 38°45′05″ N., long. 83°00′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Greater Portsmouth Regional Airport, and within a 6-mile radius of the Point in Space serving Southern Ohio Medical Center Helipad.

Issued in Fort Worth, TX, on September 29, 2011.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–27941 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0433; Airspace Docket No. 11–AGL–12]

Proposed Amendment of Class E Airspace; Rugby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Rugby, ND. Decommissioning of the Rugby non-directional beacon (NDB) at Rugby Municipal Airport, Rugby, ND, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Rugby Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before December 12, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0433/Airspace Docket No. 11–AGL–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1 (800) 647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0433/Airspace Docket No. 11–AGL–12.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Rugby Municipal Airport, Rugby, ND. Airspace reconfiguration is necessary due to the decommissioning of the Rugby NDB and the cancellation of the NDB approach. Controlled airspace is necessary for the safety and

management of IFR operations at the airport.

Class E airspace areas 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 designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Rugby Municipal Airport, Rugby, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and 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.

* * * * *

AGL ND E5 Rugby, ND [Amended]

Rugby Municipal Airport, ND
(Lat. 48°23′25″ N., long. 100°01′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Rugby Municipal Airport; and that airspace extending upward from 1,200 feet above the surface within a 13-mile radius of the Rugby Municipal Airport and within 8.1 miles north and 4.2 miles south of the 115° bearing from the airport extending from the 13-mile radius to 16.1 miles east of the airport, and within 8.5 miles south and 3.8 miles north of the 314° bearing from the airport extending from the 13-mile radius to 16.1 miles northwest of the airport, excluding that airspace within the Minot, ND, and Rolla, ND, Class E airspace areas, and excluding all Federal Airways.

Issued in Fort Worth, TX, on October 11, 2011.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–27970 Filed 10–27–11; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0540; Airspace Docket No. 11–ASO–20]

Proposed Establishment of Class E Airspace; Inverness, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E Airspace at Inverness, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Inverness Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before December 12, 2011.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001; Telephone: 1–(800) 647–5527; Fax: (202) 493–2251. You must identify the Docket Number FAA–2011–0540; Airspace Docket No. 11–ASO–20, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

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:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–0540; Airspace Docket No. 11–ASO–20) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0540; Airspace Docket No. 11–ASO–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Inverness, FL, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Inverness Airport. Controlled airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations at the airport.

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 designation listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 proposed 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 proposed regulation is within the scope of that authority as it would establish Class E airspace at Inverness Airport, Inverness, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

ASO FL E5 Inverness, FL [New]

Inverness Airport, FL

(Lat. 28°48′22″ N., long. 82°19′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Inverness Airport.

Issued in College Park, Georgia, on October 21, 2011.

Michael Vermuth,

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

[FR Doc. 2011–27966 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 110817508–1529–01]

RIN 0691–AA79

International Services Surveys: Amendments to the BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to add new entities that would be required to report information on the BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions. Specifically, this rule would expand the covered entities to include companies that operate personal identification number (PIN)-based debit networks. As proposed, PIN-based debit network companies would be required to report on cross-border transactions between (1) U.S. cardholders traveling abroad and foreign businesses and (2) foreign cardholders traveling in the United States and U.S. businesses. BEA is proposing this change to improve the identification of cross-border travel transactions. BEA also proposes to change the survey title from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel to reflect this change to the regulations. In addition, BEA proposes to make certain changes to the data collected on the BE–150 form to collect them in greater detail. If these changes are approved, the BE–150 survey would be conducted on a quarterly basis beginning with the first quarter of 2012.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. December 27, 2011.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- *Email: Christopher.Emond@bea.gov.*
- *Fax:* Chris Emond, Chief, Special Surveys Branch, (202) 606–5318.
- *Mail:* Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving Section, M100, 1441 L Street, NW., Washington, DC 20005.

Please include in your comment a reference to RIN 0691–AA79 in the subject line.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent both to BEA, through any of the methods listed above, and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project, Attention PRA Desk Officer for BEA, via email at *pbugg@omb.eop.gov,* or by FAX at (202) 395–7245.

Public Inspection: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commentator may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. BEA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Chris Emond, Chief, Special Surveys Branch, Balance of Payments Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; email *Christopher.Emond@bea.gov;* or phone (202) 606–9826.

SUPPLEMENTARY INFORMATION: This proposed rule would amend BEA's regulations at 15 CFR 801.9 to expand the types of entities that are required to submit information on BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to include companies that operate personal identification number (PIN)-based debit networks. To reflect this change to the regulations, BEA also proposes to change the title of the form from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel. In addition, BEA revises the BE–150 survey form to collect certain data in greater detail.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

BEA proposes to amend 15 CFR 801.9(c)(7) to require companies that operate personal identification number (PIN)-based debit networks to submit information on BE–150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions. If this change is adopted, PIN-based debit network companies would be required to submit information on cross-border transactions between (1) U.S. cardholders traveling abroad and foreign businesses and (2) foreign cardholders traveling in the United States and U.S. businesses. The survey as proposed would be mandatory for all PIN-based debit network companies as it is for the U.S. credit card companies that are currently required to complete the survey. The PIN-based debit network companies have been added to the list of required reporters to close a gap in the coverage of international travel transactions. BEA also proposes to change the title of the form from Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions to Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel to reflect this change.

In addition, BEA proposes to make certain changes to the information collected on the BE–150 form. As proposed, the BE–150 would collect the same information as the current BE–150, but in greater detail. The proposed survey would distinguish between transactions when the bank or payment card is present at the point of sale and when the bank or payment card is not present at the point of sale. This change would improve the identification of cross-border travel transactions. In addition, the survey would disaggregate transactions by spending category by type of card—personal card versus government, business or corporate card. This change would provide the detail necessary for BEA to publish U.S. international travel statistics in accordance with international economic accounting guidelines.

The BE–150 survey proposed in this rule would be conducted by BEA on a quarterly basis, beginning with transactions for the first quarter of 2012, under the authority provided in the International Investment and Trade in Services Survey Act (Pub. L. 94–472. 90 Stat. 2059, 22 U.S.C. 3101–3108), hereinafter, ''the Act.'' The proposed BE–150 survey would be mandatory for both U.S. credit card and PIN-based debit network companies. If this rule is implemented, BEA would begin sending the survey to potential respondents in March of 2012; responses would be due by May 15, 2012.

The proposed BE–150 survey data will be used by BEA to estimate the travel component of the U.S. International Transactions Accounts (ITAs). In constructing the estimates, these data will be used in conjunction with data BEA collected separately from U.S. and foreign travelers on the Survey of International Travel Expenditures about the methods these travelers used to pay for their international travel, such as credit, debit, and charge card purchases, cash withdrawals, currency brought from home, and travelers' checks.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from the existing records, that instructions are clear, and that unreasonable burdens are not imposed. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous annual and quarterly surveys.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, would conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical

information collected pursuant to this subsection.

In section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA.

The survey would provide a basis for compiling the travel account of the United States international transactions accounts. In constructing the estimates, these data would be used in conjunction with data BEA collected separately from U.S. and foreign travelers on the Survey of International Travel Expenditures on the methods these travelers used to pay for international travel expenditures. With the two data sources, BEA would be able to estimate total expenditures by foreign travelers in the United States (U.S. exports) and total expenditures by U.S. travelers abroad (U.S. imports) by country and region.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The requirement will be submitted to OMB as a request for a new collection of information.

Notwithstanding any other provisions 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 Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE–150 quarterly survey, as proposed, is expected to result in the filing of reports from six respondents on a quarterly basis, or 24 reports annually. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average 16 hours per response (64 hours annually), including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the BE–150 survey is estimated at 384 hours.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the proposed rule should be sent to both BEA and OMB following the instructions given in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. A description of the changes proposed by this rule are described in the preamble and are not repeated here.

BEA estimates that this rule would not have an impact on any small entities as the BE–150 survey would be mandatory for only those U.S. credit card companies that operate networks used to clear and settle credit card transactions between issuing banks and acquiring banks, and PIN-based debit network companies. BEA estimates that there are only six companies that would be subject to this rule. Of the six companies, none is considered to be a small entity under the Small Business Administration's Table of Small Business Size Standards. All six companies are corporations that exceed the maximum annual revenue threshold to be considered a small entity. Because no small businesses are subject to reporting, the Chief Counsel for Regulation certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Foreign trade, Penalties, Reporting and recordkeeping requirements, Travel expenses, Cross-Border transactions, Credit card, and Debit card.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p. 86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Amend § 801.9 by adding paragraph (c)(7):

§ 801.9 Reports required.

(c) Quarterly surveys. * * *

(7) BE–150, Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel:

(i) A BE–150, Quarterly Survey of Payment Card and Bank Card Transactions Related to International Travel will be conducted covering the first quarter of the 2012 calendar year and every quarter thereafter.

(A) *Who must report.* A BE–150 report is required from each U.S. company that operates networks for clearing and settling credit card transactions made by U.S. cardholders in foreign countries and by foreign cardholders in the United States and from PIN-based debit network companies. Each reporting company must complete all applicable parts of the BE–150 form before transmitting it to BEA. Issuing banks, acquiring banks, and individual cardholders are not required to report.

(B) *Covered Transactions.* The BE–150 survey collects aggregate information on the use of credit, debit, and charge cards by U.S. cardholders when traveling abroad and foreign cardholders when traveling in the United States. Data are collected by the type of transaction, by type of card, by spending category, and by country.

(ii) [Reserved]

[FR Doc. 2011–27938 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 102, 123, 128, 141, 143, 145, and 148

[USCBP–2011–0042]

RIN 1515–AD69

Informal Entry Limit and Removal of a Formal Entry Requirement

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend provisions in Customs and Border Protection (CPB) regulations to increase the informal entry limit from $2,000 to $2,500. Section 662 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act raised the statutory limit by which the Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment does not exceed an amount specified, but not greater than $2,500. The current limit of $2000 was established in 1998 and while that dollar amount has been unchanged, inflation over the intervening years has reduced the value of that amount in real terms. Consequently, CBP proposes to raise the current informal entry amount to its maximum statutory limit in response to inflation that has occurred and thereby to reduce the administrative burden on importers and other entry filers. Moreover, CBP proposes to remove the language requiring formal entry for certain articles, because with the elimination of absolute quotas under the Agreement on Textiles and Clothing, CBP no longer needs to require formal entries for these articles. This document also makes non-substantive editorial and nomenclature changes.

DATE: Comments must be received on or before December 27, 2011.

ADDRESSES: You may submit comments, identified by USCBP docket number, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2011–0042.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Cynthia F. Whittenburg, Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, (202) 863–6512.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

All merchandise imported into the customs territory of the United States is subject to entry and clearance procedures. Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), provides that the ''importer of record'' or his authorized agent shall: (1) Make entry for imported merchandise by filing such documentation or information as is necessary to enable CBP to determine whether the merchandise may be released from CBP custody; and (2) complete the entry by filing with CBP the declared value, classification and rate of duty applicable to the merchandise and such other documentation or other information as is necessary to enable CBP to properly assess duties on the merchandise and collect accurate statistics with respect to the merchandise and determine whether any other applicable requirement of law is met. Part 142 of the Code of Federal Regulations (19 CFR part 142) implements section 484 of the Tariff Act, as amended, and prescribes procedures applicable to most CBP entry transactions. These procedures are referred to as formal entry procedures and generally involve the completion and filing of one or more CBP forms (such as CBP Form 7501, Entry/Entry Summary, which contains detailed information regarding the import transaction), or their electronic equivalent, as well as the filing of commercial documents pertaining to the transaction. As originally enacted, section 498, Tariff Act of 1930, as amended (subsequently codified at 19 U.S.C. 1498), authorized the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of, among other things, imported merchandise when the aggregate value of the shipment did not exceed an amount specified, but not greater than $250. Regulations implementing this aspect of section 498 of the Tariff Act, as amended, are contained in Subpart C of part 143 of the CFR (19 CFR part 143) which is entitled ''Informal Entry.'' Section 662 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) amended section 498 by increasing to $2,500 the maximum dollar amount that the Secretary could prescribe by regulation for purposes of the declaration and entry of merchandise.

In 1998, in accordance with 19 U.S.C. 1498, as amended, CBP raised the informal entry limit to $2,000. Currently, part 143 of title 19 of the CFR (19 CFR part 143) still reflects the $2,000 informal entry limit. In this document CBP proposes to increase the informal entry amount to its statutory maximum limit of $2,500 in response to inflation. The informal entry procedures set forth in subpart C of part 143 are less burdensome than the formal entry procedures prescribed in part 142 of the regulations. By increasing the limit by $500, CBP believes that this proposed change will reduce the overall administrative burden on importers and

other entry filers by expanding the availability of the simplified informal entry procedures. In fact, CBP has determined that increasing the informal entry limit to $2,500 will save the trade community approximately $11 million in merchandise processing fees. Accordingly, this document proposes to amend part 143 of the CBP regulations to increase the informal entry limit from $2,000 to $2,500, and to amend any other regulatory provisions that reflect the informal entry limit.

However, 19 CFR 143.22, provides that CBP may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes, (b) revenue protection, or (c) the efficient conduct of Customs business.

CBP also proposes to remove language stating that formal entry is required for certain ''articles valued in excess of $250'' that are classified in specified parts of the Harmonized Tariff Schedule of the United States (HTSUS). We propose to remove this language because CBP no longer needs to require formal entries for these articles due to the elimination of absolute quotas and visa requirements for textile articles.

Consequently, CBP proposes to remove paragraph (a) of section 102.24 of title 19 of the CFR, which requires the use of a formal entry and visa or export license for certain shipments of textile or apparel products due to the elimination of quotas formerly established under the Agreement on Textiles and Clothing.

This document also proposes to amend section 143.21(c) of the CBP regulations to correct an erroneous cross-reference.

Explanation of Proposed Amendments

This document proposes to increase the informal entry limit by amending title 19 of the CFR part 143, which establishes the informal entry limit, and parts 10, 24, 123, 128, 141, 145, and 148, which reflect the current informal entry limit. Specifically, this document proposes to replace any references made to ''$2,000'', when pertaining to the informal entry limit, with ''$2,500''.

To eliminate the language stating that formal entry is required for ''articles valued in excess of $250'' that are classified in certain parts of the Harmonized Tariff Schedule of the United States (HTSUS), CBP proposes to amend title 19 of the CFR parts 141, 143, and 148.

CBP also proposes to remove paragraph (a) of section 102.24 of title 19 of the CFR due to the elimination of visa programs for textile and apparel imports.

CBP further proposes to amend section 143.21(c) of title 19 of the CFR to correct an erroneous cross-reference.

In addition, this document proposes non-substantive amendments to the CFR to reflect nomenclature changes effected by the transfer of the agency to the Department of Homeland Security and other minor grammatical and editorial edits.

Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all 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 rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. CBP has prepared the following analysis to help inform stakeholders of the potential impacts of this proposed rule.

CBP requires importers to submit a completed CBP Form 7501 or its electronic equivalent with each entry of merchandise for consumption. Merchandise valued over $2,000 requires a formal entry—a surety bond is required and the importer may take possession of the merchandise before duties and taxes are assessed. Currently, merchandise valued below $2,000 may be entered informally, with no bond requirement and duties and taxes are assessed immediately, but may require a formal entry at a Port Director's discretion. If finalized, this regulation will increase the ceiling for which merchandise may qualify for an informal entry from $2,000 to $2,500.

Unless exempt under a free trade agreement and in addition to any duty or tax owed, merchandise requiring a formal entry is subject to a 0.21 percent ad valorem merchandise processing fee, which may be no greater than $485 and no less than $25. Any merchandise currently requiring a formal entry with a value of $2,000 to $2,500 is subject to the minimum $25 merchandise processing fee. Entries considered informal entries as a result of the change in the threshold would now be subject to only a $2 merchandise processing fee (assuming they are filed electronically). In FY 2009, CBP processed 476,081 formal entries that were not subject to free trade agreements and were subject to the $25 merchandise processing fee that were valued between $2,000 and $2,500. Consequently, raising the informal entry limited to $2,500 would result in a loss of approximately $12 million in revenues if the $25 merchandise processing fee were not collected for these entries (476,081 × $25 = $11.9 million). Revenues would now be approximately $1 million (476,081 × $2 = $0.95 million), thus the net loss in fees collected would be approximately $11 million ($12 million − $1 million).

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed regulation, if finalized, will increase the ceiling for informal entries from $2,000 to $2,500. Given the available data, we are not able to estimate the number of small entities potentially affected by this regulation because we are not able to discern whether these informal entries were made by an individual (who would not be considered a small business) or a commercial entity. However, given the number of informal entries filed in FY 2009, the number of entities affected is believed to be significant.

Our analysis, however, demonstrates that this regulation would create a benefit through cost savings to filers of approximately $11 million a year. Thus, to the extent that this rule affects small entities, these entities would experience a small cost savings on a per-transaction basis. The total cost savings per entity would be based on its annual transaction levels. Conversely, brokers may be indirectly affected by this rule if they provide services to affected importers. Again, indirect impacts are driven by the number of transactions. CBP believes that this rule will not have a significant economic impact on a substantial number of small entities. However, CBP welcomes any comments regarding this assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collection of information on the Entry Summary and Informal Entry are approved by OMB under collection 1651–0022.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Customs and Border Protection, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Office of International Trade, U.S Customs and Border Protection, 799 9th Street NW., (Mint Annex), Washington, DC 20229–1179. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 24

Customs duties and inspection, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 102

Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 123

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 128

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 141

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 148

Customs duties and inspection, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 10, 24, 102, 123, 128, 141, 143, 145, and 148 of title 19 of the CFR (19 CFR parts 10, 24, 102, 123, 128, 141, 143, 145, and 148) are proposed to be amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

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

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.1 [Amended]

2. In § 10.1:

a. Introductory paragraph (a) is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

b. Paragraph (a)(1) is amended by removing the first two numerals of the year ''19_____'' and adding in its place the numerals ''20_____'';

c. Paragraph (a)(2) is amended by removing the word ''shall'' and adding in its place the word ''must'';

d. Paragraph (b) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

e. Paragraph (e) is amended by removing the word ''shall'' and adding in its place the word ''will'';

f. Paragraph (f) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

g. Paragraph (g)(1) is amended by:

i. Removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';

ii. Removing the word ''shall'' the first time that it appears and adding in its place the word ''must''; and

iii. Removing the word ''shall'' in the last sentence and adding in its place the word ''will'';

h. Paragraph (g)(2) is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

i. Paragraph (g)(3) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''will'';

j. Paragraph (h)(1) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

k. Paragraph (h)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

l. Paragraph (h)(3) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''must'';

m. Introductory paragraph (h)(4) is amended by removing the word ''shall'' and adding in its place the word ''must'';

n. Paragraph (h)(5) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''will'';

o. Paragraph (h)(5)(i) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must''; and

p. Paragraph (j)(2) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must''.

PART 24—CUSTOMS AND FINANCIAL ACCOUNTING PROCEDURE

3. The general authority citations for part 24 is revised and the specific authority citation for § 24.23 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

§ 24.23 [Amended]

4. In § 24.23:

a. The introductory paragraph (a)(4) is amended by removing the word ''shall'' and adding in its place the word ''must'';

b. Paragraph (b)(1)(i)(A) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

c. Paragraph (b)(1)(i)(B) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

d. Paragraph (b)(1)(ii) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''will'';

e. Paragraph (b)(3) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

f. Paragraph (b)(4) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

g. Paragraph (c)(1) is amended by removing the word ''shall'' and adding in its place the word ''will'';

h. Paragraph (c)(2)(i) and (ii) are amended by removing the word ''shall'' and adding in its place the word ''will'';

i. Paragraph (c)(3) is amended by removing the word ''shall'' each place that it appears and adding in its place the word ''will'';

j. Paragraph (c)(4) is amended by removing the word ''shall'' and adding in its place the word ''will'';

k. Paragraph (c)(5) is amended by:

i. Removing the word ''shall'' and adding in its place the word ''will'';

ii. Removing the word ''Custons'' and adding in its place the word ''Customs'';

l. Paragraph (d)(1) is amended by:

i. Removing the word ''Customs'' and adding in its place the term ''CBP''; and

ii. Removing the word ''shall'' and adding in its place the word ''must'';

m. Paragraph (d)(2) is amended by:

i. Removing the word ''shall'' in the first sentence and adding in its place the word ''must'';

ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and

iii. Removing the word ''shall'' in the last sentence and adding in its place the word ''will'';

n. Paragraph (e)(1) is amended by removing the word ''Customs'', in its heading and in its text, each place that it appears and adding in its place the word ''customs'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''will''; and

o. Paragraph (e)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the word ''customs''.

PART 102—RULES OF ORIGIN

5. The general authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

* * * * *

§ 102.24 [Amended]

6. Section 102.24 is amended by removing paragraph (a), the paragraph designation ''(b)'', and the paragraph (b) subject heading.

* * * * *

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

7. The general authority citation for part 123 and the specific authority citations for § 123.4 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.4 also issued under 19 U.S.C. 1484, 1498;

* * * * *

§ 123.4 [Amended]

8. In § 123.4:

a. The introductory paragraph is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

b. Paragraph (a) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';

c. Paragraph (b) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'', and removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';

d. Paragraph (c) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''; and

e. Paragraph (d) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and removing the word ''shall'' and adding in its place the word ''must''.

§ 123.92 [Amended]

9. In § 123.92:

a. Paragraph (b)(2)(i) is amended by removing the words ''Customs Form (CF)'' and adding in its place the term ''CBP Form'';

b. Paragraph (b)(2)(ii) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'', and by removing the term ''CF'' and adding in its place the words ''CBP Form'';

c. Paragraph (b)(2)(iii) is amended by removing the term ''CF'' and adding in its place the words ''CBP Form''; and

d. Paragraph (c)(2) is amended by removing the term ''Customs'' and adding in its place the word ''customs''.

PART 128—EXPRESS CONSIGNMENTS

10. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

* * * * *

§ 128.24 [Amended]

11. In § 128.24:

a. Paragraph (a) is amended by removing the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500'';

b. Paragraph (b) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'', and by removing the word ''shall'' and adding in its place the word ''must'';

c. Paragraph (c) is amended by removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' each place that it appears and adding in its place the word ''must'';

d. Paragraph (d) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''; and

e. Paragraph (e) is amended by removing, in the text, the word ''shall'' and adding in its place the word ''will''.

PART 141—ENTRY OF MERCHANDISE

12. The general authority citation for part 141 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

* * * * *

§ 141.82 [Amended]

13. In § 141.82:

a. Paragraphs (b) and (c) are amended by removing the word ''shall'' each place that it appears and adding in its place the word ''must''; and

b. Paragraph (d) is amended by:

i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

ii. Removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and''; and

iii. Adding the symbol '')'' after the word ''States''.

PART 143—SPECIAL ENTRY PROCEDURES

14. The general authority citation for part 143 is revised to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

* * * * *

§ 143.21 [Amended]

15. In § 143.21:

a. Paragraphs (a) and (b) are amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

b. Paragraph (a) is further amended by removing the words ''Sections VII, VIII, XI, and XII; Chapter 94 and'';

c. Paragraph (c) is amended by:

i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

ii. Removing the citation ''§ 141.51'' and adding in its place the citation ''§ 141.52''; and

iii. Removing the words ''subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and'';

d. Paragraphs (f) and (g) are amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

e. Paragraph (j) is amended by removing the word ''Customs'' and adding in its place the term ''CBP'';

§ 143.22 [Amended]

16. Section 143.22 is amended by removing the word ''Customs'' and adding in its place the word ''customs'', and by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

§ 143.23 [Amended]

17. In § 143.23:

a. The introductory paragraph is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' each time it appears and adding in its place the term ''CBP'';

b. Paragraphs (b) and (c) are amended by removing the word ''Customs'' and adding in its place the term ''CBP'';

c. Paragraph (d) is amended by:

i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and

iii. Removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and'';

d. Paragraph (e) is amended by removing the word ''can'' and adding in its place the word ''may'';

e. Paragraphs (f), (g), and (h) are amended by removing the word ''Customs'' each time it appears and adding in its place the term ''CBP''; and

f. Paragraph (i) is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

§ 143.26 [Amended]

18. In § 143.26:

a. Paragraph (a) is amended by removing, in its heading and in its text, the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500''; and

b. Paragraph (b) is amended by removing the space between ''appropriatel'' and ''y'' to read ''appropriately'', and by removing the word ''Customs'' and adding in its place the word ''customs''.

PART 145—MAIL IMPORTATIONS

19. The general authority citation for part 145 and the specific authority citations for §§ 145.4, 145.12, 145.31, 145.35, 145.41 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notice 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

* * * * *

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

* * * * *

Section 145.31 also issued under 19 U.S.C. 1321;

Section 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

* * * * *

§ 145.4 [Amended]

20. In § 145.4:

a. Paragraph (a) is amended by removing the word ''Customs'' the first time it appears and adding in its place the term ''CBP'', and by removing the word ''Customs'' the second time it appears and adding in its place the word ''customs''; and

b. Paragraph (c) is amended by:

i. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

ii. Removing the word ''Customs'' and adding in its place the term ''CBP''; and

iii. Removing the word ''shall'' and adding in its place the word ''must''.

§ 145.12 [Amended]

21. In § 145.12:

a. Paragraph (a)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the sum ''$2,000'' and adding in its place the sum ''$2,500'';

b. Paragraph (a)(3) is amended by:

i. Removing the sum ''$2,000'' each place that it appears and adding in its place the sum ''$2,500'';

ii. Removing the word ''Customs'' the first time that it appears and adding in its place the term ''CBP'';

iii. Removing the word ''Customs'' the second time that it appears and adding in its place the word ''customs''; and

iv. Removing the words ''shall not'' and adding in its place the word ''cannot'';

c. Paragraph (a)(4) is amended by:

i. Removing the word ''shall'' in the first and second sentence and adding in its place the word ''will'';

ii. Removing the word ''shall'' in the last sentence and adding in its place the word ''must''; and

iii. Removing the word ''Customs'' and adding in its place the term ''CBP'', and adding the word, ''customs'' before the word, ''station'';

d. Paragraph (b)(1) is amended by:

i. Removing the word ''Customs'' each place that it appears and adding in its place the term ''CBP'';

ii. Removing the word ''shall'' each place that it appears and adding in its place the word ''will'';

iii. Removing the sum ''$2,000'' and adding in its place the sum ''$2,500''; and

iv. Removing the word ''shall'' and adding in its place the word ''will'';

e. Paragraph (b)(2) is amended by removing the word ''shall'' and adding in its place the word ''will'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

f. Paragraph (c) is amended by:

i. Removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum $2,500'';

ii. Removing the word ''Customs'' each place that it appears in the first sentence and adding in its place the term ''CBP'';

iii. Removing the words ''Customs treatment'' in the third sentence and adding in its place the words ''customs treatment'';

iv. Removing the words ''Customs office'' and adding in its place the words ''CBP office''; and

v. Removing the word ''shall'' each place that it appears and adding in its place the term ''will'';

g. Paragraph (e)(1) is amended by removing the word ''Customs'' in each place that it appears and adding in its place the term ''CBP'', and by removing the word ''shall'' and adding in its place the word ''will''; and

h. Paragraph (e)(2) is amended by:

i. Removing the words ''Customs Form'' each place that it appears, in its heading and its text, and adding in its place the words ''CBP Form'';

ii. Removing the words ''Customs officer'' and adding in its place the words ''CBP officer'';

iii. Removing the words ''Customs purposes'' and adding in its place the words ''customs purposes'';

iv. Removing the word ''shall'' in the first sentence and adding in its place the word ''must''; and

v. Removing the word ''shall'' in the second sentence and adding in its place the word ''will''.

§ 145.31 [Amended]

22. Section 145.31 is amended by removing the word ''shall'' and adding in its place the word ''will''.

§ 145.35 [Amended]

23. Section 145.35 is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

§ 145.41 [Amended]

24. Section 145.41 is amended by removing the sum ''$2,000'' and adding in its place the sum ''$2,500''.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

25. The general authority citation for part 148 is revised and the specific authority citations for § 148.51 and 148.64 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States).

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§ 148.23 [Amended]

26. In § 148.23:

a. Paragraph (c)(1) is amended by removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum ''$2,500'';

b. Paragraph (c)(1) is further amended by removing, in the text, the words ''Sections VII, VIII, XI, and XII; Chapter 94; and'';

c. Paragraph (c)(2) is amended by removing, in its heading and in its text, the sum ''$2,000'' and adding in its place the sum ''$2,500''; and

d. Paragraph (c)(2) is further amended by removing the words ''Sections VII, VIII, XI, and XII; Chapter 94; and''.

§ 148.54 [Amended]

27. Section 148.54(b) is amended by removing the sum ''$250'' and replacing it with the sum''$2,500''.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: October 24, 2011.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2011–27879 Filed 10–27–11; 8:45 am]

BILLING CODE 4810–14–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Student Loan Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of establishment of negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations governing the student loan programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the topics proposed for negotiation. We request nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee and we set a schedule for committee meetings.

DATES: We must receive your nominations for negotiators to serve on the committee on or before November 28, 2011. The dates, times, and locations of the committee meetings are set out in the *Schedule for Negotiations* section under **SUPPLEMENTARY INFORMATION,** below.

ADDRESSES: Please send your nominations for negotiators to Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006, or by fax at (202) 502–7874. You may also email your nominations to *Wendy.Macias@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process or the nomination submission process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street, NW., room 8017, Washington, DC 20006. *Telephone:* (202) 502–7526. You may also email your questions about the nomination submission process to: *Wendy.Macias@ed.gov.*

Note: For general information about the negotiated rulemaking process, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On May 5, 2011, we published a notice in the **Federal Register** (76 FR 25650) announcing our intent to establish one or more negotiated rulemaking committees to develop proposed regulations under the HEA. In addition, we announced our intent to develop these proposed regulations by following the negotiated rulemaking procedures in Section 492 of the HEA. The notice also announced a series of three regional hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committees. We also held four public roundtable discussions to complement the regional hearings. The hearings and roundtables were held in: Nashville, Tennessee (roundtable only); Tacoma, Washington; Chicago, Illinois; and Charleston, South Carolina. We invited parties to comment and submit topics for consideration in writing as well. Transcripts from the regional hearings can be found at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2011/hearings.html.* Written comments may be viewed through the Federal eRulemaking Portal at *http://www.regulations.gov.* Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2011–OPE–0003 in the ''Enter Keyword or ID'' search box to locate the appropriate docket.

Regulatory Issues: After consideration of the information received at the regional hearings, the roundtable discussions, and in writing, we have decided at this time to establish a negotiating committee to address student loan program issues. The three programs to be addressed are: The William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Federal Perkins (Perkins) Loan Program.

We list the topics the committee is likely to address under *Committee Topics.*

We intend to select negotiators for the committee who represent the interests significantly affected by the topics proposed for negotiations. In so doing, we will follow the requirement in Section 492(b)(1) of the HEA that the individuals selected must have demonstrated expertise or experience in the relevant subjects under negotiation. We will also select individual negotiators who reflect the diversity

among program participants, in accordance with Section 492(b)(1) of the HEA. Our goal is to establish a committee that will allow significantly affected parties to be represented while keeping the committee size manageable.

The committee may create subgroups on particular topics that may involve additional individuals who are not members of the committee. Individuals who are not selected as members of the committee will be able to attend the meetings, have access to the individuals representing their constituencies, and participate in informal working groups on various issues between the meetings. The committee meetings will be open to the public.

The Department has identified the following constituencies as having interests that are significantly affected by the topics proposed for negotiations. The Department plans to seat as negotiators individuals from organizations or groups representing these constituencies:

- Students.
- Legal assistance organizations that represent students.
- Consumer advocacy organizations.
- Financial aid administrators at postsecondary institutions.
- Business officers and bursars at postsecondary institutions.
- Admissions officers at postsecondary institutions.
- Institutional third-party servicers who perform functions related to the title IV programs (including collection agencies).
- State higher education executive officers.
- State attorneys general and other appropriate State officials.
- Business and industry.
- Institutions of higher education eligible to receive Federal assistance under title III, Parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.
- Two-year public institutions of higher education.
- Four-year public institutions of higher education.
- Private, non-profit institutions of higher education.
- Private, for-profit institutions of higher education.
- Guaranty agencies and guaranty agency servicers (including collection agencies).
- Lenders, secondary markets, and loan servicers.
- Regional accrediting agencies.
- National accrediting agencies.
- Specialized accrediting agencies.
- State approval agencies.
- State student grant agencies.
- State agencies addressing secondary education.

The goal of the committee is to develop proposed regulations that reflect a final consensus of the committee. Consensus means that there is no dissent by any member of the negotiating committee, including the committee member representing the Department. An individual selected as a negotiator will be expected to represent the interests of their organization or group. If consensus is reached, all members of the organization or group represented by a negotiator are bound by the consensus and are prohibited from commenting negatively on the resulting proposed regulations. The Department will not consider any such negative comments that are submitted by members of such an organization or group.

Nominations:

Nominations should include:

- The name of the nominee, the organization or group the nominee represents, and a description of the interests that the nominee represents.
- Evidence of the nominee's expertise or experience in the subject, or subjects, to be negotiated.
- Evidence of support from individuals or groups of the constituency that the nominee will represent.
- The nominee's commitment that he or she will actively participate in good faith in the development of the proposed regulations.
- The nominee's contact information, including address, phone number, fax number, and email address.

For a better understanding of the negotiated rulemaking process, nominees should review *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* prior to committing to serve as a negotiator.

Nominees will be notified whether or not they have been selected as negotiators as soon as the Department's review process is completed.

Committee Topics

The topics the committee is likely to address, for each of the three loan programs unless otherwise indicated, are as follows:

- Loan discharges based on total and permanent disability.
- Single application process.
- Borrower notification of denial.
- Post-discharge monitoring of employment earnings.
- Repeal of unnecessary regulations in the FFEL Program due to statutory changes and incorporation and modification of corresponding requirements in the Direct Loan Program regulations.
- Modifications to the Income-Based Repayment (IBR) Plan and the Income Contingent Repayment (ICR) Plan in the Direct Loan and FFEL Programs.
- New borrower notification for annual IBR evaluation.
- Annual income verification.
- Borrower repayment after leaving IBR.
- Closed school loan discharge 90-day eligibility period for borrowers.
- Loan rehabilitation in the Direct Loan and FFEL Programs.
- Reasonable and affordable payment standard.
- Treatment of borrowers subject to administrative wage garnishment.
- Deadline for FFEL lender 60-day delinquent borrower repayment disclosure.
- Satisfactory repayment arrangements for defaulted borrowers.
- Forbearance.
- Borrowers under Department of Defense repayment plans.
- Process for defaulted borrowers.
- Participation rate index appeal for one-year cohort default rates.
- Perkins Loan only issues, including
- Economic hardship deferment debt-to-income provision.
- Graduate fellowship deferment eligibility.
- Social security number requirement for loan assignment.
- Cancellation rate progression across cancellation categories.
- School enrollment status reporting requirements.
- Minimum loan period for transfer students in non-term programs and certain non-standard term programs.

These topics are tentative. Topics may be added or removed as the process continues.

Schedule for Negotiations

The committee will meet for three sessions on the following dates:

Session 1: January 9–13, 2012.

Session 2: February 13–17, 2012.

Session 3: March 26–30, 2012.

All sessions will begin at 12 p.m. on Monday and end at 12 p.m. on Friday.

The meetings will be held at the U.S. Department of Education at: 1990 K Street, NW., Eighth Floor Conference Center, Washington, DC 20006.

Accessible Format: Individuals with disabilities can obtain this document in

an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the contact person under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: October 25, 2011.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–27982 Filed 10–27–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0825, FRL–9484–4]

Approval and Promulgation of State Implementation Plans; Missouri: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule; New Source Review Reform

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Missouri State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) under Missouri's Prevention of Significant Deterioration (PSD) program, and to two New Source Review (NSR) revisions. The GHG-related SIP revisions incorporate the GHG emission thresholds established in EPA's ''PSD and Title V Greenhouse Gas Tailoring Final Rule,'' which EPA issued by notice dated June 3, 2010. These revisions were submitted by the Missouri Department of Natural Resources (MDNR) to EPA in a letter dated August 8, 2011. The NSR revisions are to the Construction Permits Required Rule and the Emissions Banking and Trading Rule and are intended to address changes to the Federal NSR regulations, which were promulgated by EPA on December 31, 2002. These revisions were submitted by MDNR to EPA in a letter dated November 30, 2009. EPA is proposing to approve the GHG and NSR revisions because the Agency has made the preliminary determination that these SIP revisions, already adopted by Missouri as final effective rules, are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs and NSR.

DATES: Comments must be received on or before November 28, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0825, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: gonzalez.larry@epa.gov.*
3. *Fax:* (913) 551–7844.
4. *Mail:* Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier:* Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2011–0825. 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 through *http://www.regulations.gov* or email, information 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 email comment directly to EPA without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the GHG portion of the Missouri SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551–7041; *email address: gonzalez.larry@epa.gov.* For information regarding the NSR Reform portion of the Missouri SIP, contact Ms. Amy Bhesania, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency,

Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Ms. Bhesania's telephone number is (913) 551–7147; *email address: bhesania.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

Table of Contents

I. What GHG-related action is EPA proposing in today's notice?

In a letter dated August 8, 2011, MDNR submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the Missouri Air Conservation Commission. These adopted rules became effective in the Missouri Code of State Regulations on August 30, 2011. These amendments establish thresholds for GHG emissions in Missouri's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the ''PSD and Title V Greenhouse Gas Tailoring; Final Rule'' (75 FR 31514), hereafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Missouri SIP, address the flaw discussed in the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule,'' 75 FR 82536 (December 30, 2010) (the ''PSD SIP Narrowing Rule''), and incorporate state rule changes adopted at the state level into the Federally approved SIP. In today's notice, pursuant to section 110 of the CAA, EPA is proposing to approve these revisions into the Missouri SIP.[1]

[1] EPA intends to address Missouri's request to approve revisions to the Title V program relating to GHGs in a subsequent rulemaking.

II. What is the background for the GHG-related PSD SIP approval proposed by EPA in today's notice?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's proposed actions. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we called the PSD SIP Narrowing Rule,[2] and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's proposed action on the Missouri SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[3] the ''Johnson Memo Reconsideration,''[4] the ''Light-Duty Vehicle Rule,''[5] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system. In December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).[6] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. Missouri's Actions

On July 27, 2010, Missouri submitted a letter to EPA, in accordance with a request to all states from EPA in the proposed Tailoring Rule, with confirmation that the State of Missouri has the authority to regulate GHGs in its PSD program. The letter also confirmed Missouri's intent to amend its air quality rules for the PSD program for GHGs to match the thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of Missouri's letter.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Missouri's SIP (among other SIPs) to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] As a result, Missouri's current approved SIP provides the State with authority to regulate GHGs, but only at and above

[2] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[3] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[4] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[5] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[6] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. *See, e.g.* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because Missouri's SIP already authorizes Missouri to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, Missouri is not subject to the SIP Call or FIP.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

the Tailoring Rule thresholds; and requires new and modified sources to receive a Federal PSD permit based on GHG emissions only if they emit or have potential to emit at or above the Tailoring Rule thresholds.

The basis for this proposed SIP revision is that limiting PSD applicability to GHG sources with the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that require assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that states provide ''necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].'' In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources, in part, because the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[8] and no state, including Missouri, asserted that it did have adequate resources to do so.[9] In the PSD SIP Narrowing Rule, EPA found that the affected states, including Missouri, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[10] Accordingly, for each affected state, including Missouri, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[11] EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) Assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies only to sources at or above the Tailoring Rule thresholds.[12]

III. What is EPA's analysis of Missouri's proposed GHG-related SIP revision?

In a letter dated August 8, 2011, MDNR submitted a revision of its regulations to EPA for processing and approval into the SIP. This SIP revision puts in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule. EPA's approval of Missouri's GHG-related SIP revision will incorporate the revisions of the Missouri regulations into the Federally-approved SIP. Doing so will clarify the applicable thresholds in the Missouri SIP.

The State of Missouri's August 8, 2011, proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Missouri's PSD program. Specifically, Missouri's August 8, 2011, proposed SIP revision includes changes—which are already effective—to Missouri's Code of State Regulations (CSR), revising rule 10 CSR 10–6.060(8)(A) to incorporate by reference all of the revisions to the Federal PSD rules at 40 CFR 52.21 published in the Tailoring Rule.[13] These revisions specifically define the term ''subject to regulation'' for the PSD program and define ''greenhouse gases (GHGs)'' and ''tpy CO_2 equivalent emissions (CO_2e).'' Additionally, these revisions specify the methodology for calculating an emissions increase for GHGs, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect. *See* 75 FR at 31606–07.

Missouri is currently a SIP-approved State for the PSD program, and has previously incorporated some elements of EPA's 2002 NSR reform revisions for PSD into its SIP. *See* 71 FR 36486 (June 27, 2006).[14] In that rulemaking, at the State's request, EPA did not act on the portions of Missouri's rule which reflected the vacated and remanded provisions in EPA's NSR reform rule.[15] The changes to Missouri's PSD program regulations are substantively the same as the Federal provisions amended in EPA's Tailoring Rule. As part of its review of Missouri's submittal, EPA performed a line-by-line review of Missouri's proposed revision and has preliminarily determined that it is consistent with the Tailoring Rule.[16]

IV. GHG-Related Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve Missouri's August 8, 2011 revisions to the Missouri SIP, relating to PSD requirements for GHG-emitting sources. Specifically, Missouri's August 8, 2011, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

If EPA approves Missouri's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Missouri's SIP, then section 52.1323(n) of 40 CFR part 52, as included in EPA's PSD SIP Narrowing Rule—which codifies EPA's limiting its approval of Missouri's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's proposed action, EPA is also proposing to amend section 52.1323(n) of 40 CFR part 52 to remove this unnecessary regulatory language.

V. What NSR-related action is EPA proposing in today's notice?

In this rulemaking, we are also proposing to approve MDNR's request to include as a revision to Missouri's SIP, amendments to rule 10 CSR 10–6.060 ''Construction Permit Required'' and 10 CSR 10–6.410 ''Emission Banking and Trading.'' These rules were adopted by the Missouri Air Conservation Commission on March 26, 2009, and became effective under state law on July 30, 2009. The rules were submitted to EPA for inclusion into the Missouri SIP in a letter dated November 30, 2009. The submission included comments on the rules made during the State's

[8] Tailoring Rule, 75 FR at 31517.

[9] PSD SIP Narrowing Rule, 75 FR at 82540.

[10] *Id.* at 82542.

[11] *Id.* at 82544.

[12] *Id.* at 82540.

[13] The revised rule states that all of the subsections of 40 CFR 52.21, other than subsections (a), (q), (s), and (u), promulgated as of July 1, 2009, including the revision published at 75 FR 31606–07 (effective August 2, 2010), are incorporated by reference into 10 CSR 10–6.060(8)(A).

[14] In sections V through VIII. of this proposed rulemaking, EPA is proposing to approve several of Missouri's other revisions to its rules for incorporation into the Missouri SIP.

[15] These portions included provisions relating to pollution control projects, the ''clean unit'' exemption, and the recordkeeping requirements for certain sources using the ''actual to projected actual'' test for applicability of PSD (the ''reasonable possibility'' provision in section 52.21(r)(6)). *See,* 71 FR 36487 for a more detailed discussion of EPA's approval of Missouri's NSR reform rule relating to PSD. We are not acting on those provisions, including the recordkeeping aspect of the ''reasonable possibility'' provision, in today's action. (See, section VI. of this preamble for a more detailed discussion of the vacated and remanded provisions.) We are also not acting on Missouri's rule incorporating EPA's 2007 revision of the definition of ''chemical processing plants'' (the ''Ethanol Rule,'' 72 FR 24060 (May 1, 2007)) or EPA's 2008 ''fugitive emissions rule'', 73 FR 77882 (December 19, 2008).

[16] EPA also notes that Missouri's incorporation by reference of EPA's PSD rule includes revisions by EPA made in 2005 (70 FR 71612, November 29, 2005) and 2008 (73 FR 28321, May 16, 2008). We are proposing to approve those updates to the PSD rule in conjunction with the proposal regarding Missouri's incorporation of the Tailoring Rule provisions discussed in this notice.

adoption process and the State's response to comments. Missouri submitted these revisions to adopt EPA's revisions to the Federal NSR program. Pursuant to section 110 of the CAA, EPA is now proposing to approve these SIP revisions with several exceptions. First, in today's proposed rulemaking, EPA is not taking action on Missouri's submittal of changes to the applicability of the PSD program to exclude ethanol production facilities from the definition of ''chemical processing plants'' (the ''Ethanol Rule'').[17] EPA intends to address this revision in a separate rulemaking. Second, because Missouri has not adopted EPA's ''Fugitive Emissions Rule'' (73 FR 77882, Dec. 19, 2008), as it relates to NSR in nonattainment areas, today's action also does not address the Fugitive Emissions Rule.[18] We are presently soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VI. Why is EPA proposing this NSR-related action?

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR programs (''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects''). On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. In that November 7, 2003, final action, EPA added the definition of ''replacement unit,'' and clarified an issue regarding PALs. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the ''2002 NSR Reform Rules.''

In brief, the 2002 NSR Reform Rules made changes to five areas of the NSR programs (concerning both PSD and nonattainment NSR).[19] The 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of ''physical change or change in the method of operation.''

After the 2002 NSR Reform Rules were finalized and effective, industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, *e.g.* 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform Rules.

On February 25, 2005, Missouri submitted a request to include EPA's 2002 NSR Reform Rules in attainment and unclassifiable areas in to the SIP, and EPA approved these revisions through a final rule published on June 27, 2006 (71 FR 36486).[20]

VII. What is EPA's analysis of Missouri's proposed NSR reform-related SIP revisions?

Missouri's SIP submittals consist of several amendments to rule 10 CSR 10–6.060 and one amendment to 10 CSR 10–6.410 that became State-effective on July 30, 2009. Copies of the Missouri revised NSR rules can be obtained from the Docket, as discussed in the **ADDRESSES** section above. A discussion of the specific changes to Missouri's rules comprising the proposed SIP revision follows.

The amendments to 10 CSR 10–6.060 implement EPA's 2002 New Source Review Reform rules in nonattainment areas. These rule amendments create consistency between the attainment and nonattainment area permitting programs in Missouri in three areas: Baseline emissions determinations, actual-to-projected actual emissions calculation methodology, and PALs. The amendment to 10 CSR 10–6.410 will remove a reference to Clean Unit projects. As discussed previously, these provisions were vacated by the DC Circuit Court of Appeals in the New York case in 2005.

EPA's evaluation of Missouri's NSR Reform-related SIP submittal included a line-by-line comparison of the proposed revisions with the Federal requirements. As a general matter, state agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations.

After evaluation of Missouri's proposed SIP revision, EPA has determined that the revised rule language at 10 CSR 10–6.060(7) (Nonattainment Area Permits) is substantially similar to the language in the equivalent Federal regulation (*i.e.,* 40 CFR 51.165). It also employs incorporation by reference to the applicable Federal regulations whenever practical in order to ensure consistency and clarity and to facilitate future required updates to this rule. Furthermore, EPA has previously determined in a Supplemental Environmental Analysis that the implementation of the Federal NSR Reform rules will be environmentally beneficial. *See* 68 FR 44620 (July 30, 2003). EPA has no reason to believe that the environmental impacts of Missouri's proposed SIP revision will be substantially different from those discussed in the Supplemental Environmental Analysis. Therefore, Missouri's revisions do not make Missouri's NSR program less stringent than the current Federally-approved SIP. Accordingly, EPA believes that these changes are consistent with the requirements of CAA sections 110(l) and 193, and are consistent with the Federal program requirements for the preparation, adoption and submittal of implementation plans for NSR set forth at 40 CFR 51.165, and are therefore approvable.

VIII. NSR-Related Proposed Action

EPA is proposing to approve Missouri's changes to its regulations 10 CSR 10–6.060 and 10 CSR 10–6.410, as submitted by Missouri on November 30, 2009, for inclusion in the Missouri SIP. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations

[17] *See* letter from James L. Kavanaugh, Director, MDNR, to EPA, April 10, 2008.

[18] The November 30, 2009 submittal from MDNR also proposed revisions to 10 CSR 10–6.350 ''Emission Limitations and Emissions Trading of Oxides of Nitrogen'' and 10 CSR 10–6.360 ''Control of NO_X Emissions from Electric Generating Units and Non-Electric Generating Boilers.'' In a letter dated April 20, 2011, Missouri withdrew this submission of revisions to these two rules, and therefore today's action does not include them.

[19] For more background information about the 2002 NSR Reform rules, *see* 67 FR 80186.

[20] As stated in section III. above, EPA did not act on the portions of Missouri's rule which related to the vacated and remanded provisions of the EPA rule.

implementing the NSR program, including NSR Reform.

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k), 7661a(d); 40 CFR 52.02(a); 40 CFR 70.1(c). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the State's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the State's law. For that reason, the proposed approvals of Missouri's revision to its SIP:

- Are not ''significant regulatory actions'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and are therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 20, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–27987 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60 and 63

[EPA–HQ–OAR–2010–0505; FRL–9484–3]

RIN 2060–AP76

Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Extension of Comment Period Closing Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the August 23, 2011 proposed rule titled, ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews,'' is being extended to November 30, 2011.

DATES: *Comments.* The public comment period for the proposed rules published on August 23, 2011 (76 FR 52738) closes on November 30, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2010–0505, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the Air and Radiation Docket Web site.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID Number EPA–HQ–OAR–2010–0505 in the subject line of the message.
- *Facsimile:* (202) 566–9744.
- *Mail:* Attention Docket ID Number EPA–HQ–OAR–2010–0505, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for the EPA, 725 17th Street, NW., Washington, DC 20503.
- *Hand Delivery:* United States Environmental Protection Agency, EPA West (Air Docket), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention Docket ID Number EPA–HQ–OAR–2010–0505. 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 Number EPA–HQ–OAR–2010–0505. The 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at

http://www.epa.gov/epahome/dockets.htm.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov,* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Avenue 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. A reasonable fee may be charged for copying.

World Wide Web. The EPA Web site for this rulemaking is located at: *http://www.epa.gov/airquality/oilandgas.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Moore, Fuels and Incineration Group (E143–05), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *Telephone number:* (919) 541–5460; Fax number (919) 541–3470; *Email address: moore.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The EPA has received numerous requests for extending the public comment period for this proposed rule. Based on the information provided in the requests, the EPA has determined that an extension of 30 days is appropriate. Accordingly, the public comment period will now end on November 30, 2011. Note that, on August 23, 2011, the EPA published in the **Federal Register** the proposed rule titled, ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews.'' In that notice, the EPA announced that all comments must be received by October 24, 2011. The EPA conducted three public hearings on this proposed rule, the last of which was held on September 29, 2011, in Arlington, Texas. See 76 FR 53371, August 26, 2011. Under section 307(d) of the Clean Air Act (CAA), the EPA must keep the record open for 30 days after completion of the hearings to provide an opportunity for submission of rebuttal and supplementary information. On October 20, 2011, the EPA published a **Federal Register** notice correcting the comment period closing date to October 31, 2011. See 76 FR 65138, October 20, 2011.

How can I get copies of this document and other related information?

The EPA has established the official public docket No. EPA–HQ–OAR–2010–0505. The EPA has also developed Web sites for the proposed rulemaking at the addresses given above.

Dated: October 24, 2011.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2011–27961 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1226]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 26, 2012.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1226, to 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 (email) *Luis.Rodriguez3@fema.dhs.gov.*

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 (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and 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. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed 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.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Town of Richmond, Vermont					
Vermont	Town of Richmond	Winooski River	Approximately 0.8 mile downstream of I–89.	+300	+303
			Approximately 1,150 feet upstream of Cochran Road.	+325	+326

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Richmond

Maps are available for inspection at the Town Center Building, 203 Bridge Street, Richmond, VT 05477.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Larimer County, Colorado, and Incorporated Areas				
Little Thompson River	At the downstream side of Weld County Road 1	None	+4935	Town of Berthoud, Unincorporated Areas of Larimer County.
	Approximately 0.38 mile upstream of Little Thompson Drive.	None	+5093	
Little Thompson River-Spill Reach.	Approximately 285 feet upstream of the Little Thompson River confluence.	None	+5009	Unincorporated Areas of Larimer County.
	Approximately 1,500 feet upstream of the Little Thompson River confluence.	None	+5015	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Berthoud

Maps are available for inspection at 935 10th Street, Berthoud, CO 80513.

Unincorporated Areas of Larimer County

Maps are available for inspection at 200 West Oak Street, 2nd Floor, Fort Collins, CO 80522.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 17, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–27889 Filed 10–27–11; 8:45 a.m.]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 79

[MB Docket No. 11–154; DA 11–1766]

Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Commission extends the deadline for filing reply comments on the Commission's Notice of Proposed Rulemaking (NPRM) in this proceeding, which was published in the **Federal Register** on September 28, 2011. The extension will facilitate the development of a full record given the importance of the issues in this proceeding.

DATES: The reply comment period for the proposed rule published September 28, 2011 (76 FR 59963) is extended. Submit reply comments on or before November 1, 2011.

ADDRESSES: You may submit reply comments, identified by MB Docket No. 11–154, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS) Web Site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *Mail:* 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of the NPRM.

FOR FURTHER INFORMATION CONTACT: Diana Sokolow, Policy Division, Media Bureau, at (202) 418–2120, or email at *Diana.Sokolow@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MB Docket No. 11–154, DA 11–1766, adopted and released on October 21, 2011, which extends the reply comment filing deadline established in the NPRM published under FCC No. 11–138 at 76 FR 59963, September 28, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Background

1. The NPRM in this proceeding established a comment deadline of October 18, 2011 and a reply comment deadline of October 28, 2011. On October 19, 2011, the National Association of Broadcasters (NAB) requested that the reply comment deadline be extended by one week, due to the volume of substantive material filed in the initial comments and the groundbreaking nature of the issues considered in the proceeding. We grant NAB's request in part.

2. As set forth in Section 1.46(a) of the Commission's Rules, 47 CFR 1.46(a), the Commission's policy is that extensions of time shall not be routinely granted. Given the importance of the issues in this proceeding and in the interest of encouraging thoughtful consideration of these issues, however, we believe that granting in part NAB's request is necessary to facilitate the development of a full record. Due to the Commission's statutory deadline in this proceeding, we find that the requested one week extension is too long, and instead we grant a four day extension of the reply comment deadline.

Ordering Clauses

Pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Sections 0.61, 0.283, and 1.46 of the Commission's rules, 47 CFR 0.61, 0.283, and 1.46, the Motion for Extension of Time filed by NAB is granted in part, and the deadline to file reply comments in this proceeding is extended to November 1, 2011.

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2011–27975 Filed 10–27–11; 8:45 a.m.]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

RIN 0750–AG47

Defense Federal Acquisition Regulation Supplement; Safeguarding Unclassified DoD Information (DFARS Case 2011–D039)

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

ACTION: Notice of meeting.

SUMMARY: DoD is hosting a public meeting to initiate a dialogue with industry and Government agencies regarding the proposed rule for the safeguarding of unclassified information.

DATES: *Public Meeting:* November 15, 2011, from 9:30 a.m. to 12 p.m. EST.

Submission of Comments: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 16, 2011, to be considered in the formation of the final rule.

ADDRESSES: *Public Meeting:* The public meeting will be held in the General Services Administration (GSA), Central Office Auditorium, 1800 F Street NW., Washington, DC 20405. The GSA Auditorium is located on the main floor of the building.

Submission of Comments: You may submit written comments, identified by DFARS Case 2011–D039, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''DFARS Case 2011–D039''

under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D039.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D039'' on your attached document.

- *Email: dfars@osd.mil.* Include DFARS Case 2011–D039 in the subject line of the message.
- *Fax:* (703) 602–0350.
- *Mail:* Defense Acquisition Regulations System, *Attn:* Mr. Julian Thrash, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided. To confirm receipt of your comment, please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian E. Thrash, telephone (703) 602–0310.

SUPPLEMENTARY INFORMATION: The DFARS does not presently address the safeguarding of unclassified DoD information within industry, nor does it address cyber intrusion reporting for that information. DoD published an Advance Notice of Proposed Rulemaking, and notice of public meeting in the **Federal Register** at 75 FR 9563 on March 3, 2010, to provide the public an opportunity for input into the initial rulemaking process. Subsequently, a proposed DFARS rule was published in the **Federal Register** at 76 FR 38089 on June 29, 2011. The proposed rule addresses basic and enhanced safeguarding procedures for the protection of DoD information. An extension of the public comment period to November 30, 2011, was published in the **Federal Register** at 76 FR 52297 on August 22, 2011. This notice further extends the public comment period to December 16, 2011.

Registration: Individuals wishing to attend the public meeting should register by November 4, 2011, to ensure adequate room accommodations and to create an attendee list for secure entry to the GSA building for anyone who is not a Federal Government employee with a Government badge. Interested parties may register at this Web site, *http://www.acq.osd.mil/dpap/dars/safeguarding_unclassified_DoD_information.html,* by providing the following information:

(1) Company or organization name;

(2) Names and email addresses of persons attending;

(3) Last four digits of social security number for each attendee (non-Federal employees only); and

(4) Identify presenter if desiring to speak (limited to a 10-minute presentation per company or organization).

Attendees are encouraged to arrive at least 30 minutes early to ensure they are processed through security in a timely fashion. Prior registrants will be given priority if room constraints require limits on attendance.

Special Accommodations: The public meeting location is physically accessible to persons with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Julian E. Thrash, telephone (703) 602–0310, at least 10 working days prior to the meeting date.

Presentations: If an attendee wishes to present a short oral presentation at the meeting not-to-exceed 10 minutes, please advise during registration so appropriate arrangements can be made for scheduling purposes. If the presenter intends to share a handout to accompany an oral statement, please submit the document to *dfars@osd.mil* for posting no later than November 10, 2011, so that other attendees may download prior to the meeting. When submitting briefing information, provide the presenter's name, organization affiliation, telephone number, and email address on the cover page.

Correspondence and Comments: Please cite ''Public Meeting, DFARS Case 2011–D039'' in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. To have a presentation considered as a public comment for the formation of the final rule, the presentation, or pertinent excerpts, must be submitted separately as a written comment as instructed in the above paragraph titled, ''Submission of Comments.''

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–27931 Filed 10–27–11; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 76, No. 209
Friday, October 28, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting of the Committee on Rulemaking of the Assembly of the Administrative Conference of the United States. The meeting will provide an opportunity for the committee to consider outlines and research plans for two upcoming projects regarding midnight rules and regulatory analysis, respectively. Complete details regarding the committee meeting, the contours of the new projects, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found in the ''About'' section of the Conference's Web site, at *http://www.acus.gov.* Click on ''About'' -> ''The Committees'' -> ''Committee on Rulemaking.''

Comments may be submitted by email to *Comments@acus.gov,* with ''Committee on Rulemaking'' in the subject line, or by postal mail to ''Committee on Rulemaking Comments'' at the address given below. To be guaranteed consideration, comments must be received five calendar days before the meeting.

ADDRESSES: The meeting will be held at 1120 20th Street, NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Schleicher Bremer, Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street, NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION: The Committee on Rulemaking will meet to hear two consultants present their outlines and research plans for two new projects. These projects are the Midnight Rules Project, for which Professor Jack Beermann is the consultant, and the Regulatory Analysis Project, for which Curtis Copeland is the consultant. The Midnight Rules project will examine issues raised by rules promulgated near the end of a presidential administration. The Regulatory Analysis project will examine the numerous analyses (*e.g.,* cost-benefit analysis, regulatory flexibility analysis) that agencies are required to prepare when promulgating rules. The Committee will provide feedback to the consultants based on their outlines and research plans.

DATES: Monday, November 14 from 10 a.m. to 12 p.m.

Designated Federal Officer: Emily Schleicher Bremer.

Dated: October 24, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–27894 Filed 10–27–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Stormready®, Stormready/Tsunamiready™, and Stormready® Supporter Application Forms.

OMB Control Number: 0648–0419.

Form Number(s): NA.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 265.

Average Hours per Response: StormReady, Tsunami-Ready and StormReady/TsunamiReady applications, 2 hours; StormReady Supporter applications, 1 hour.

Burden Hours: 565.

Needs and Uses: This request is for revision of a current information collection. The StormReady, TsunamiReady and and StormReady/TsunamiReady Programs are voluntary programs offered to provide guidance and incentive to officials who wish to improve their hazardous weather operations, *e.g.* community preparedness and local warning dissemination. Applicants fill out a detailed application that demonstrates how they meet certain guidelines that qualify them for StormReady recognition.

The full StormReady recognition is not appropriate for all entities, yet they should still be recognized for their efforts in preparing for hazardous weather. To this end, the National Weather Service has created the StormReady Supporter Program and is the revision to this information collection. StormReady Supporter is a voluntary program offered to provide guidance and incentive to entities, such as local hospitals or businesses, who wish to improve their respective hazardous weather preparations. Entities will use the application to apply for a one-time StormReady Supporter recognition. The government will use the application form to determine whether an entity has met the guidelines for a StormReady Supporter recognition.

Affected Public: Business or other for-profit organizations.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 25, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–27906 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–855]

Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 13, 2011, the U.S. Trade Representative (''USTR'') instructed the Department of Commerce (''Department'') to issue a determination not inconsistent with the World Trade Organization's decision in *United States—Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* regarding the investigation of diamond sawblades and parts thereof (''Diamond Sawblades'') from the Republic of Korea (''Korea''). The Department issued its determination on October 4, 2011. The Department is now implementing this determination.

DATES: *Effective Date:* October 24, 2011.

FOR FURTHER INFORMATION CONTACT: David Layton or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0371, or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 2011, the Department informed interested parties that it was initiating a proceeding under section 129 of the Uruguay Round Agreements Act (''URAA'') to implement the findings of the World Trade Organization (''WTO'') dispute settlement panel in *United States—Use of Zeroing in Anti-Dumping Measures Involving Products from Korea* (WT/DS402/R) (January 18, 2011). On July 20, 2011, the Department issued the memorandum entitled ''Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the Republic of Korea'' (''Preliminary Results'') in which it recalculated the weighted-average dumping margins from the antidumping investigation of Diamond Sawblades from Korea [1] by applying the calculation methodology described in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification,* 71 FR 77722 (December 27, 2006).

The Department invited interested parties to comment on the Preliminary Results. After receiving comments and rebuttal comments from the interested parties, the Department issued its final results for the section 129 determination on October 4, 2011. *See* the October 4, 2011 memorandum entitled, ''Issues and Decision Memorandum for the Final Results of the Proceeding Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Diamond Sawblades and Parts Thereof from the Republic of Korea'' (''Issues and Decision Memorandum'').

In its October 24, 2011 letter, USTR notified the Department that, consistent with section 129(b)(3) of the URAA, consultations with the Department and the appropriate congressional committees with respect to the October 4, 2011 determination have been completed. Thus, USTR directed the Department to implement this determination, in accordance with section 129(b)(4) of the URAA.

Nature of the Proceeding

Section 129 of the URAA governs the nature and effect of determinations issued by the Department to implement findings by WTO dispute settlement panels and the Appellate Body. Specifically, section 129(b)(2) of the URAA provides that, ''notwithstanding any provision of the Tariff Act of 1930,'' within 180 days of a written request from the USTR, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body report. *See* 19 USC 3538(b)(2). The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994) (''SAA''), variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination. *See* SAA at 1025, 1027. After consulting with the Department and the appropriate congressional committees, USTR may direct the Department to implement, in whole or in part, the new determination made under section 129 of the URAA. *See* 19 USC 3538(b)(4). Pursuant to section 129(c) of the URAA, the new determination shall apply with respect to unliquidated entries of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date on which USTR directs the Department to implement the new determination. *See* 19 USC 3538(c). The new determination is subject to judicial review separate and apart from judicial review of the Department's original determination. *See* 19 USC 1516a(a)(2)(B)(vii).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs submitted by interested parties to this proceeding are addressed in the Issues and Decision Memorandum dated October 4, 2011, which is hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Antidumping Duty Margins

The recalculated margins, unchanged from the Preliminary Results, are as follows:

- The margin for Ehwa Diamond Industrial Co., Ltd. decreases from 8.80 percent to zero.
- The margin for Shinhan Diamond Industrial Co. decreases from 16.88 percent to zero.
- The margin for Hyosung Diamond Industrial Co. decreases from 6.43 percent to zero.
- Because the changes to the margin calculations result in no margins for the three mandatory respondents, the All Others rate decreases from 11.10 percent to zero.

Revocation of the Antidumping Duty Order

As a result of the recalculations, all of the dumping margins are now zero. Accordingly, the Department is now

[1] *See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea,* 71 FR 29310 (May 22, 2006), as amended by *Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof From the Republic of Korea,* 75 FR 14126 (March 24, 2010).

revoking this order effective October 24, 2011, the date upon which USTR directed the Department to implement its final results.

We will instruct U.S. Customs and Border Protection to liquidate, without regard to antidumping duties, all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 24, 2011 (the effective date), and to discontinue collection of cash deposits of antidumping duties.[2]

This determination is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: October 24, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issues raised in the Issues and Decision Memorandum.

Comment 1: Whether the Department of Commerce has the authority to revoke the antidumping duty order.

Comment 2: Whether the Department should reset the cash deposit rates to zero in lieu of revocation.

[FR Doc. 2011–27971 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502, A–549–502, and A–489–501]

Certain Circular Welded Carbon Steel Pipes and Tubes From India, Thailand, and Turkey; Final Results of Expedited Five-Year (''Sunset'') Reviews of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department Commerce.

SUMMARY: On July 1, 2011, the Department of Commerce (''the Department'') initiated the third sunset reviews of the antidumping duty orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and inadequate response from respondent interested parties, the Department has conducted expedited sunset reviews of these antidumping duty orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the level indicated in the ''Final Results of Reviews'' section of this notice.

DATES: *Effective Date:* October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, Antidumping/Countervailing Duty Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 736 of the Act, the Department published in the **Federal Register** the antidumping duty orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986); *Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes From Thailand,* 51 FR 8341 (March 11, 1986); and *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey,* 51 FR 17784 (May 15, 1986).

On July 1, 2011, the Department published a notice of initiation of the third sunset reviews of the antidumping duty orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011).

For each of these sunset reviews, the Department received notice of intent to participate from Allied Tube and Conduit, JMC Steel Group, Leavitt Tube, Northwest Pipe Company, TMK IPSCO Tubulars, U.S. Steel Corporation, and Western Tube and Conduit, (collectively, ''the domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). In addition, Wheatland Tube Company (''Wheatland'') filed an entry of appearance and also requested recognition as a domestic interested party. The domestic interested parties claim interested party status under section 771(9)(C) of the Act as U.S. producers of the subject merchandise.

On July 4, 2011, the Government of Turkey filed an entry of appearance as an interested party for the Turkish proceeding. On July 5, 2011, the Government of Turkey requested the Department to extend the 30-day deadline for filing its substantive response as specified in 19 CFR 351.218(d)(3)(i). On July 7, 2011, Saha Thai Steel Pipe (Public) Company, Ltd. (''Saha Thai''), a Thai producer and exporter, entered an appearance as a respondent interested party. On August 10, 2011, the Department extended the deadline to file a substantive response until August 10, 2011.

On July 29, August 1, and 10, 2011, we received complete substantive responses from the domestic interested parties within the extended deadline established by the Department. Wheatland Tube Company did not file a substantive response. Saha Thai did not file a substantive response. On August 9, 2011, the Government of Turkey submitted a substantive response within the extended deadline.[1] On August 17, 2011, we received rebuttal comments to the Government of Turkey's substantive response from U.S. Steel Corporation. We received no other substantive responses from respondent interested parties on the three antidumping duty orders currently under review and, therefore, did not have adequate respondent interested party participation pursuant to 19 CFR 351.218(e)(1)(ii)(A).

Based on these circumstances, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited sunset reviews of these antidumping duty orders.

Scope of the Antidumping Duty Orders

See Appendix 1.

Analysis of Comments Received

All issues raised in these cases are addressed in the Issues and Decision Memorandum for the Final Results of Expedited Five-Year (Sunset) Reviews of the Antidumping Duty Orders on Certain Circular Welded Carbon Steel Pipes and Tubes from India, Thailand, and Turkey from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (''Decision Memo''), dated concurrent with this final notice, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of

[2] Pursuant to a Temporary Restraining Order issued by the U.S. Court of International Trade on October 13, 2011, the Department of Commerce and U.S. Customs and Border Protection are restrained from lifting the suspension of liquidation on unliquidated entries of diamond sawblades and parts thereof from the Republic of Korea. Pursuant to this **Federal Register** notice, future entries of such merchandise are subject to suspension of liquidation at the cash deposit rate of zero. Changes to the suspension of liquidation will be consistent with the Court's final ruling.

[1] The Government of Turkey did not claim to have exported subject merchandise.

continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memo, which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit (''CRU''), Room 7046 of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''November 2011''. The signed version and the electronic versions are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain circular welded carbon steel pipes and tubes from India, Thailand, and Turkey would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-average margin (percent)
India (A–533–502)	
Tata Iron and Steel Company, Ltd	7.08
All Others	7.08
Thailand (A–549–502)	
Saha Thai Steel Pipe Co	15.69
Thai Steel Pipe Industry Co	15.60
All Others	15.67
Turkey (A–489–501)	
Borusan Ithicat ve Dagitim	1.26
Erkboru Profil Sanayi ve Ticaret	23.12
Mannesmann-Sumerbank Boru Industrisi	23.12
All Others	14.74

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305.

Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 24, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix 1

Scope of the Antidumping Duty Orders

India—Welded Carbon Steel Pipe and Tube (A–533–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[2]

Thailand—Welded Carbon Steel Pipe and Tube (A–549–502)

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews,* 56 FR 26650, 26651 (June 10, 1991). As a

[2] *Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review,* 75 FR 69626, 69627 (November 15, 2010).

result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.[3] [4]

Turkey—Welded Carbon Steel Pipe and Tube (A–489–501)

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.[5]

[FR Doc. 2011–27957 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') continues to determine that steel wire garment hangers (''garment hangers'') exported by Angang Clothes Rack Manufacture Co., Ltd. (''Angang'') and Quyky Yanglei International Co., Ltd. (''Quyky'') are circumventing the antidumping duty order [1] on garment hangers from the People's Republic of China (''PRC''), pursuant to section 781(b) of the Tariff Act of 1930, as amended (''the Act'').

DATES: *Effective Date:* October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2011, the Department published in the **Federal Register** the affirmative preliminary determination that garment hangers exported by Angang and Quyky are circumventing the *Order* on garment hangers from the PRC, as provided in section 781(b) of the Act.[2]

On June 13, 2011, Petitioner [3] and Angang filed their case briefs. On June 20, 2011, Petitioner and Angang filed their rebuttal briefs. Quyky did not file either a case brief or rebuttal brief. Based on the timely filed request by Angang, the Department held a public hearing on June 28, 2011.[4] On July 1, 2011, Angang filed a letter requesting the Department to strike portions of Petitioner's rebuttal brief dated June 20, 2011, alleging untimely filed new factual information and arguments were included.

Scope of the Antidumping Duty Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7326.20.0020, 7323.99.9060 and 7323.99.9080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope of the Anti-Circumvention Inquiry

The products covered by this inquiry are garment hangers, as described in the ''Scope of the Antidumping Duty Order'' section above, that are exported from the Socialist Republic of Vietnam (''Vietnam''), but manufactured from

[3] *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 75 FR 64696 (October 20, 2010).

[4] There was one scope ruling in which British Standard light pipe 387/67, Class A–1 was found to be within the scope of the order per remand. *See Scope Rulings,* 58 FR 27542, (May 10, 1993).

[5] *Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Antidumping Duty Administrative Review,* 75 FR 64250.64251 (October 19, 2010).

[1] *See Notice of Antidumping Duty Order: Steel Wire Garment Hangers from the People's Republic of China,* 73 FR 58111 (October 6, 2008) (''*Order*'').

[2] *See Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 76 FR 27007 (May 10, 2011) (''*Preliminary Determination*'').

[3] Petitioner is M&B Metal Products Co.

[4] During the public hearing, the Department noted that Angang provided untimely new factual information within its presentation, which was stricken from the record within the hearing transcript. *See* Memorandum to the File from Irene Gorelik, regarding; ''revised transcript of the public hearing,'' dated July 19, 2011.

PRC-origin, semi-finished hangers and completed in Vietnam with PRC-origin, paper attachments and other direct materials such as latex or glue.

While we acknowledge that Angang has repeatedly stated on the record that it also self-produces garment hangers from steel wire rod,[5] the focus and intent of this proceeding is to determine whether the semi-finished hangers: (1) Are manufactured in the PRC; (2) are exported to Angang's facility in Vietnam for completion (by adding PRC-origin paper attachments, such as tubes, PRC-origin latex or glue); [6] and (3) then are exported by Angang to the United States as Vietnamese-origin garment hangers constitutes circumvention of the *Order* under section 781(b) of the Act.

Analysis of Comments Received

All issues raised in the post-preliminary comments by parties in this proceeding are addressed in the ''Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, re: Steel Wire Garment Hangers from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of the Anti-Circumvention Inquiry'' (''Decision Memorandum''), dated concurrently with notice and hereby adopted by this notice.

A list of the issues which the parties raised and to which the Department responds in the Decision Memorandum is attached to this notice as Appendix I. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Affirmative Final Determination of Circumvention

For the final determination, we continue to rely on the statutory criteria that we considered in making our *Preliminary Determination*.[7] Based on our review of the record evidence and our analysis of the comments received, the Department continues to find that Quyky's and Angang's Vietnamese exports of garment hangers produced from PRC-origin, semi-finished hangers constitute circumvention of the *Order* and are properly considered to be within the same class or kind of merchandise subject to the *Order* on garment hangers from the PRC. For a complete discussion of the Department's analysis, *see* the Decision Memorandum.

Quyky

Facts Available

Section 776(a) of the Act requires the Department to rely on facts otherwise available if necessary information is not available on the record or an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides requested information, but the information cannot be verified as provided in section 782(i) of the Act.

As we stated in the *Preliminary Determination,* because Quyky failed to respond to any of the Department's requests for information, we found that it failed to cooperate to the best of its ability pursuant to sections 776(a)(2)(A) and (B) of the Act, and, that an adverse inference is warranted pursuant to section 776(b) of the Act.[8] Further, as an adverse inference, the Department found that all of the garment hangers produced and/or exported by Quyky to the United States are circumventing the *Order*.[9] Because no party has contested the substantial evidence on the record supporting the Department's preliminary determination for Quyky, we continue to find, using the stated adverse inference, that all of the garment hangers produced and/or exported by Quyky to the United States are circumventing the *Order.*

Angang

Statutory Provisions Regarding Circumvention

Section 781 of the Act addresses circumvention of antidumping or countervailing duty orders. With respect to merchandise assembled or completed in a third country, section 781(b)(1) of the Act provides that if: (A) The merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in a third country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the Department determines that action is appropriate to prevent evasion of an order, then the Department, after taking into account any advice provided by the United States International Trade Commission, under section 781(e) of the Act, may include such imported merchandise within the scope of an order at any time an order is in effect.

In determining whether the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs the Department to consider: (A) The level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, none of these five factors, by itself, is controlling on the Department's determination of whether the process of assembly or completion in a third country is minor or insignificant.[10] Accordingly, it is the Department's practice to evaluate each of these factors as they exist in the third

[5] *See Preliminary Determination,* 76 FR at 27008. *See also* Angang's Questionnaire Response dated January 19, 2011, at 5; Angang's Questionnaire Response dated February 1, 2011, at Exhibit 9; and Angang's Comments dated December 22, 2010, at 2–5.

[6] Angang has reported that the direct materials applied to the PRC-origin, semi-finished hangers are also manufactured in, and supplied from, the PRC. *See, e.g.,* Angang's Questionnaire Response dated November 19, 2010, at Exhibit 5; Angang's Questionnaire Response dated March 21, 2011, at 4.

[7] *See Preliminary Determination,* 76 FR at 27007.

[8] *See Preliminary Determination,* 76 FR at 27008.

[9] *See id.*

[10] *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 893 (1994).

country depending on the particular anti-circumvention inquiry.[11]

Further, another step in the circumvention inquiry asks the Department, under section 781(b)(1)(D) of the Act, to discern whether the value of the merchandise produced in the foreign country to which an antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States. The Department must answer affirmatively to find circumvention.

Finally, section 781(b)(3) of the Act sets forth the factors to consider in determining whether to include merchandise assembled or completed in a third country in an antidumping duty order. Specifically, the Department shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) Whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the investigation which resulted in the issuance of an order.

In making a final determination in accordance with the criteria enumerated in section 781(b) of the Act as outlined above,[12] we have continued to rely on the information obtained from Angang as well as the information placed on the record by the Department at the *Preliminary Determination.* Consequently, for the final determination, we continue to find that, based on the statutory factors above, Angang's process of converting the PRC-origin, semi-finished hangers in Vietnam and exporting them to the United States constitutes circumvention of the *Order.*

Summary of Analysis of Statutory Provisions

We considered all of the comments submitted by Angang and Petitioner, and find that, pursuant to section 781(b) of the Act, exports to the United States of garment hangers produced by Angang using PRC-origin, semi-finished hangers constitute circumvention of the *Order.*

(A) Whether Merchandise Imported Into the United States Is of the Same Class or Kind as Other Merchandise That Is Subject to the Order

As we stated in the *Preliminary Determination,* we reviewed the information provided by Angang in its questionnaire responses and found that the record evidence indicates that Angang's garment hangers, produced from PRC-origin, semi-finished hangers and exported to the United States meet the written description of the products subject to the *Order.*[13] Further, we preliminarily found that the products identified and described in the product list are no different than those identified in the scope of the *Order.*[14] Finally, we noted that Angang itself admitted that, from September 2008 through August 2010, it sold garment hangers that meet the scope of the *Order.*[15] As the facts have not changed from the *Preliminary Determination,* we continue to find that the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the *Order,* pursuant to section 781(b)(1)(A) of the Act. The Department also preliminarily determined that, based on record evidence, Angang's affiliates in the PRC were the sole suppliers of the PRC-origin, semi-finished hangers, to which Angang added either PRC-origin powder coating or paint and paper attachments such as tubes and then exported this merchandise to the United States.[16] The record clearly shows that Angang purchased semi-finished hangers from its PRC affiliates, further processed the unfinished hangers in Vietnam, packed, and exported the finished garment hangers to the United States as Vietnamese-origin.[17] As the facts have not changed from the *Preliminary Determination,* we continue to find that the merchandise subject to this anti-circumvention inquiry was completed or assembled in Vietnam from PRC-origin merchandise which is subject to the *Order,* pursuant to section 781(b)(1)(B) of the Act.

(B) Whether, Before Importation Into the United States, Such Imported Merchandise Is Completed or Assembled in a Third Country From Merchandise Which Is Subject to the Order or Produced in the Foreign Country That Is Subject to the Order

Pursuant to section 781(b)(1)(C) of the Act, we preliminarily determined that the record evidence of this proceeding supported a finding that the process or completion of the PRC-origin, semi-finished hangers to finished garment hangers in Vietnam is minor or insignificant.[18] Under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directed us to address other criteria, which we found to have supported our preliminary finding that the processing or completion in Vietnam was minor or insignificant.[19] First, pursuant to section 781(b)(2)(A) of the Act, we found that Angang's level of investment in Vietnam was minimal in terms of converting PRC-origin, semi-finished hangers into finished garment hangers.[20] Second, pursuant to section 781(b)(2)(B) of the Act, we found that the lack of evidence of research and development (''R&D'') initiatives by Angang in the production of garment hangers shows that R&D is not a significant factor in Angang's completion of PRC-origin, semi-finished garment hangers in Vietnam.[21] Third, pursuant to section 781(b)(2)(C) of the Act, we found that the portion of the overall production process of garment hangers in Vietnam conducted by Angang in assembling or completing the PRC-origin, semi-finished garment hangers into finished garment hangers is limited and minor compared to the PRC affiliates' share of the overall production process in the production of the semi-finished garment hangers and the other direct materials they supply to Angang to finish the semi-finished hangers in Vietnam.[22] Fourth, pursuant to section 781(b)(2)(D) of the Act, we found that the extent of Angang's production facilities in Vietnam is minor with respect to completing PRC-origin, semi-finished hangers to finished garment hangers because the energy, labor, and capital equipment used by Angang in converting the PRC-origin, semi-finished hangers into finished garment hangers is not substantial in comparison to the materials, labor, energy, and capital equipment used by its PRC affiliates to produce the semi-finished

[11] *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 73 FR 57591, 57592 (October 3, 2008) (''*Tissue Paper Anti-Circ 2008*'').

[12] *See Preliminary Determination,* 76 FR at 27008–27015. Furthermore, Angang has not opposed the Department's preliminary finding that it has circumvented the *Order,* as noted in its case brief, where Angang stated that it ''has not challenged the merits of the Department's affirmative preliminary determination with respect to wires formed in China.'' *See* Angang's Case Brief, dated June 13, 2011 at 22.

[13] *See Preliminary Determination,* 76 FR at 27009.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See id.* at 27010.

[19] *See id.* at 27009–27012.

[20] *See id.* at 27010.

[21] *See id.*

[22] *See id.* at 27011.

garment hangers.[23] Finally, pursuant to section 781(b)(2)(E) of the Act, we found that the value of the processing performed by Angang to convert the PRC-origin, semi-finished hangers into finished garment hangers represents a small proportion of the total value of the finished merchandise imported into the United States.[24]

Therefore, we preliminarily found that, pursuant to sections 781(b)(2)(A)–(E) of the Act, Angang's processing operation to convert PRC-origin, semi-finished hangers into finished garment hangers in Vietnam is minor or insignificant.[25] We based our preliminary decision as to whether the processing operation to convert PRC-origin, semi-finished hangers into finished garment hangers is minor or insignificant on the totality of the record evidence of this anti-circumvention inquiry and compared the relative information regarding the production processes for Angang and its PRC affiliates. For the final determination, we continue to find that, based on the totality of the record, each statutory criterion under section 781(b)(2) of the Act and all other factors point to the conclusion that Angang's process of converting the PRC-origin, semi-finished hangers in Vietnam was minor or insignificant and, consistent with our analysis in prior anti-circumvention inquiries.[26]

(C) Whether the Value of the Merchandise Produced in the Foreign Country To Which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which an antidumping duty order applies must be a significant portion of the total value of the merchandise exported to the United States in order to find circumvention. As discussed above, we found that the production process in the PRC manufactures the main inputs, that all the direct materials are sourced from the PRC, and that there exists only limited production processes in Vietnam, thereby evincing that a great majority of the value of the finished merchandise is based on the PRC-production of the semi-finished hangers and the other direct materials which are applied to those PRC-origin, semi-finished hangers in Vietnam.[27] Based on our analysis and record evidence, we found that the value of the PRC-origin, semi-finished hangers taken as a whole constitutes a significant portion of the total value of the finished product ultimately exported to the United States.

(D) Other Factors To Consider

As previously noted, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, such factors as: pattern of trade, including sourcing patterns; affiliations between manufacturers or exporters of merchandise in the country subject to the order and the person who uses the merchandise to assemble or complete in the third country the merchandise that is exported to the United States; and whether imports into the third country of the merchandise described in section 781(b)(1)(B) of the Act have increased after the initiation of the investigation.

We preliminarily determined that: (1) The data related to patterns of trade in this case show that PRC exports have decreased significantly whereas Vietnamese exports have increased exponentially since the initiation of the less than fair value (''LTFV'') investigation; (2) Angang maintained an affiliation with two PRC companies; [28] and (3) Angang's imports of PRC-origin, semi-finished hangers increased after the initiation of the LTFV investigation and PRC exports of the same to Vietnam similarly increased after the initiation of the LTFV investigation.[29] We found at that time,[30] and continue to find in this final determination, that these facts and the related record evidence all support the conclusion that circumvention of the *Order* has occurred.

Affirmative Final Determination Summary

With respect to Quyky, we preliminarily found that Quyky circumvented the *Order* because it failed to provide the Department with any information at all, thus we are unable to distinguish between its imports or purchase of semi-finished hangers from the PRC for purposes other than assembly into merchandise covered by the *Order.* Consequently, because Quyky refused to comply with the Department's request for information, we continue to find that it failed to cooperate to the best of its ability and, therefore, that an adverse inference is warranted pursuant to section 776(b) of the Act. Accordingly, as stated above, as an adverse inference the Department preliminarily found that all of the garment hangers produced and/or exported by Quyky to the United States are circumventing the *Order.* Therefore, in light of our uncontested *Preliminary Determination* and the substantial record evidence supporting that decision, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation on all entries of garment hangers produced and/or exported by Quyky that were entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the anti-circumvention inquiry.

Further, with respect to Angang, we preliminarily found that Angang has circumvented the *Order* in accordance with section 781(b)(1) and (2) of the Act. Pursuant to section 781(b)(1) of the Act, we found that the merchandise sold in the United States is within the same class or kind of merchandise that is subject to the *Order* and was completed or assembled in a third country. Additionally, pursuant to section 781(b)(2), we found that the process or assembly of the PRC-origin semi-finished hangers into finished garment hangers by Angang is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we found that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States.

The record evidence continues to support an affirmative finding of circumvention in accordance with section 781(b)(1) and (2) of the Act. Moreover, we continue to find the factors required by section 781(b)(3) of

[23] *See id.* at 27011–12.

[24] *See id.* at 27012.

[25] *See id.* at 27012–13.

[26] *See, e.g., Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 46571, 46574–75 (August 6, 2003), unchanged in *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 54888 (September 19, 2003); and *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom; Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 64 FR 40336, 40338–40 (July 26, 1999).

[27] *See Preliminary Determination,* 76 FR at 27013.

[28] *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Irene Gorelik, Senior Analyst, re; Circumvention Inquiry on Steel Wire Garment Hangers from the People's Republic of China: Proprietary Analysis of Certain Statutory Factors for Angang Clothes Rack Manufacture Co., Ltd. for the Preliminary Determination,'' (''Angang Prelim Analysis Memo''), dated May 3, 2011. For the final determination, we continue to find that affiliation exists between Angang and these two PRC entities referenced in Angang Prelim Analysis Memorandum, pursuant to section 771(33) of the Act.

[29] *See Preliminary Determination,* 76 FR at 27013–14.

[30] *See id.* at 27014–15.

the Act indicate that there is circumvention of the *Order.* Consequently, our statutory analysis leads us to find that there was circumvention of the *Order* as a result of Angang's assembly of the PRC-origin, semi-finished hangers into finished garment hangers in Vietnam for export to the United States, as discussed above. Therefore, in light of our final determination, the Department will instruct CBP to suspend liquidation on all entries of garment hangers produced and/or exported by Angang that were entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the anti-circumvention inquiry. Should the Department conduct an administrative review of the *Order* in the future, both Quyky and Angang will have the opportunity to provide information related to their use of PRC-origin or self-produced garment hangers so that the Department may determine the appropriate assessment rate.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate of 187.25 percent, on all unliquidated entries of garment hangers produced and/or exported by Angang and Quyky that were entered, or withdrawn from warehouse, for consumption on or after July 16, 2010, the date of initiation of the anti-circumvention inquiry.

In comments to the Department, Angang asked the Department (1) to revisit its determination to suspend liquidation of all of Angang's entries and (2) to allow certifications for Angang's future entries. Angang has provided conflicting statements on whether it could segregate PRC-origin, semi-finished hangers from the self-produced, semi-finished hangers in Vietnam,[31] and record evidence supports the conclusion that Angang commingles the two groups of merchandise in a work-in-progress warehouse. Therefore, the Department declines to grant Angang's requests. For further discussion of this issue, *see* the Decision Memorandum.[32]

As stated above, if requested, should the Department conduct an administrative review in the future, and determine in the context of that review that either Quyky or Angang have not produced for export garment hangers using PRC-origin, semi-finished hangers, the Department will consider a changed circumstances review pursuant to section 751(b) of the Act to determine if the continued suspension of all garment hangers produced by Quyky or Angang is warranted.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Dated: October 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Discussion of the Issues

Comment 1: Affirmative Preliminary Determination of Circumvention Regarding Quyky

Comment 2: Affirmative Preliminary Determination of Circumvention Regarding Angang

Comment 3: Appropriate Suspension of Liquidation of Angang's Exports

Comment 4: Whether To Require a Certification Process for Angang's Exports

Comment 5: Appropriate Rate To Assign to Angang

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[31] *See, e.g.,* Angang's Questionnaire Responses dated October 8, 2010, at Exhibit 1B; November 19, 2010, at 13; March 21, 2011, at 2; Angang's Case Brief dated June 13, 2011 at 4–9; *see also* Decision Memorandum at Comment 3.

[32] *See* Decision Memorandum at Comments 3, 4, and 5.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–809, A–201–805, A–580–809, A–583–814, A–583–008]

Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2011 the Department of Commerce (Department) initiated the third five-year (sunset) reviews of the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and certain circular welded carbon steel pipes and tubes from Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews of these antidumping duty orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice, *infra.*

FOR FURTHER INFORMATION: Steve Bezirganian, Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–1131, (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department published in the **Federal Register** the notice of initiation of the sunset reviews of the antidumping duty orders on certain circular welded non-alloy steel pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and certain circular welded carbon steel pipes and tubes from Taiwan, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011) (*Notice of Initiation*).

The Department received a notice of intent to participate from the following

domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i): Allied Tube and Conduit, TMK IPSCO Tubulars, Leavitt Tube, Northwest Pipe Company, Western Tube and Conduit, and JMC Steel Group (collectively ''certain domestic interested parties'') [1] and United States Steel Corporation (U.S. Steel). Certain domestic interested parties, U.S. Steel, and Wheatland Tube Company (Wheatland) claimed interested party status under section 771(9)(C) of the Act.

The Department received adequate substantive responses to the *Notice of Initiation* from certain domestic interested parties and U.S. Steel within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from Wheatland or respondent interested parties with respect to the antidumping duty orders.

As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined that it would conduct expedited (120-day) sunset reviews of the antidumping duty orders and notified the U.S. International Trade Commission. *See* Letter to Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from Barbara E. Tillman, Director, Office 6, AD/CVD Operations, entitled ''Sunset Reviews Initiated on July 1, 2011,'' dated August 22, 2011.

Scope of the Orders

Certain Circular Welded Non-Alloy Steel Pipe From Brazil, Mexico, and the Republic of Korea

The products covered by the orders are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meets ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for farming and support members for reconstruction or load bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in the orders.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the orders, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in the orders.

Imports of the products covered by the orders are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 73.06.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the orders is dispositive.

Certain Circular Welded Non-Alloy Steel Pipe From Taiwan

The products covered by the order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in the order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in the scope of the order.

Imports of the products covered by the order are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings, 7306.30.10.00, 7306.30.50.85, 7306.30.50.90.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Circular Welded Carbon Steel Pipes and Tubes From Taiwan

The products covered by the order are certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, and 7306.30.50.55. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Final Results of Expedited Five-Year (Sunset) Reviews of the Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe from Brazil, Mexico, the Republic of Korea, and Taiwan; and Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan,'' from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memorandum), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked.

[1] Note that for certain orders, not all of these companies were identified as interested parties. However, because they were each identified as interested parties for some of the orders and in no instances filed individual substantive responses, they are referenced collectively.

Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit in room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/*. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

We determine that revocation of the antidumping duty orders on certain circular welded non-alloy steel pipes from Brazil, Mexico, the Republic of Korea, and Taiwan; and certain circular welded carbon steel pipes and tubes from Taiwan would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters	Weighted-average margin (percent)
Certain Circular Welded Non-Alloy Steel Pipe	
Brazil:	
Persico Pizzamiglio S.A.	103.38
All Others	103.38
Mexico:	
HYLSA S.A. de C.V.[2]	32.62
All Others	32.62
The Republic of Korea:	
Hyundai Steel Pipe Co., Ltd	6.86
Korea Steel Pipe Co., Ltd	6.21
Masan Steel Tube Works Co., Ltd	11.63
Pusan Steel Pipe Co., Ltd	4.91
All Others	6.37
Taiwan:	
Kao Hsing Chang Iron & Steel Corp	19.46
Yieh Hsing Enterprise Co., Ltd.	27.65
All Others	23.56
Circular Welded Carbon Steel Pipes and Tubes	
Taiwan:	
Kao Hsing Chang Iron & Steel Corporation	9.70
Tai Feng Industries, Inc.	43.70
Yieh Phui Enterprise Co, Ltd.[3]	38.50
All Others	9.70

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27980 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] The Department found that Ternium Mexico S.A. de C.V. is the successor-in-interest to HYLSA S.A. de C.V. *See Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 74 FR 41681 (August 18, 2009).

[3] The Department found that Yieh Phui Enterprise Co., Ltd. is the successor-in-interest to Yieh Hsing Enterprise Co., Ltd. *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Changed Circumstance Review,* 70 FR 71802 (November 30, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* of the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (''hot-rolled'') from the People's Republic of China (''PRC'').[1] This administrative review covers Baosteel Group Corporation, Shanghai Baosteel International Economic & Trading Co., Ltd., and Baoshan Iron and Steel Co., Ltd. (collectively ''Baosteel'') for the November 1, 2009, through October 31, 2010, period of review (''POR''). In the *Preliminary Results,* the Department indicated its preliminary intent to rescind this review and gave interested parties an opportunity to comment. We did not receive comments on the *Preliminary Results.*

[1] *See Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China: Preliminary Intent To Rescind the Review,* 76 FR 48143 (August 8, 2011) (''*Preliminary Results*'').

DATES: *Effective Date:* October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Steven Hampton or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0116 or (202) 482–0413, respectively.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on August 8, 2011, the Department published in the **Federal Register** the *Preliminary Results* of the administrative review of the antidumping duty order on hot-rolled from the PRC. The Department did not receive comments from interested parties on our *Preliminary Results.*

Scope of the Order

The products covered by the order are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order. Specifically included within the scope of the order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and, (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded. The following products, for example, are outside or specifically excluded from the scope of the order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500). All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by the order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of the Review

Based on its analysis of the record information, the Department preliminarily determined that the merchandise in the Customs and Border Protection (''CBP'') data and the entry documentation on the record was not subject to the scope of the antidumping duty order on hot-rolled carbon steel flat products from the PRC.[2] Accordingly, in the *Preliminary Results,* the Department indicated that it intended to rescind this administrative review because there was no information on the record which indicated that Baosteel made sales, shipments, or entries to the United States of subject merchandise during the POR. We did not receive comments concerning the *Preliminary Results.* Therefore, the Department continues to find that the merchandise reflected in the CBP data and entry documentation on the record is not subject to the scope of the antidumping duty order on hot-rolled from the PRC. Furthermore, because Baosteel is the only company subject to this administrative review, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice [3], we are rescinding this review of the antidumping duty order on hot-rolled from the PRC for the period of

[2] *Id.* at 48145.

[3] *See Pure Magnesium from the People's Republic of China: Rescission of Antidumping Duty Administrative Review,* 76 FR 53408 (August 26, 2011).

November 1, 2009, through October 31, 2010. The Department intends to instruct CBP fifteen days after the publication of this notice to liquidate such entries with respect to the PRC-wide entity. With respect other entries, as indicated in the *Preliminary Results,* the Department will refer this matter to CBP to determine the appropriate Customs classification for the merchandise in question.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Tariff Act of 1930, as amended and 19 CFR 351.213(d)(4).

Dated: October 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–28012 Filed 10–27–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–918]

Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the second administrative review of steel wire garment hangers from the People's Republic of China (''PRC'') for the period October 1, 2009, through September 30, 2010. The Department has preliminarily determined that sales have been made below normal value (''NV'') by the respondent. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review (''POR''). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* October 28, 2011.

FOR FURTHER INFORMATION CONTACT: Bob Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

The Department received a timely request from Petitioner [1] in accordance with 19 CFR 351.213(b), during the anniversary month of October, to conduct a review of steel wire garment hanger exporters from the PRC. On November 29, 2010, the Department initiated this review with respect to 102 producers/exporters of subject merchandise from the PRC.[2]

On December 23, 2010, Petitioner withdrew its request for an administrative review of 87 companies out of the 102 companies under review. On March 18, 2011, the Department published a notice of rescission in the **Federal Register** for those 87 companies for which the request for review was withdrawn.[3] Fifteen companies remain subject to this review.[4] Between January 28, 2011, and May 26, 2011, the Department received no-shipment certifications from eight of these companies. For a detailed discussion of the companies that certified they had no shipments during the POR, *see* the ''Preliminary Partial Rescission of Administrative Review'' section below. For a detailed discussion of the remaining seven companies subject to this review, *see* the ''Respondent Selection'' and ''Separate Rates'' sections below.

On May 19, 2011, the Department published a notice in the **Federal Register** extending the deadline for issuing the preliminary results by 120 days to October 31, 2011.[5]

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (''the Act''), directs the Department to calculate individual dumping margins for each known exporter or producer of the subject merchandise.[6] However, section 777A(c)(2) of the Act gives the Department the discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in an administrative review.

On December 6, 2010, the Department released CBP data for entries of subject merchandise during the POR under administrative protective order (''APO'') to all interested parties having an APO as of five days after publication of the *Initiation Notice,* and invited comments regarding the CBP data and respondent selection. On December 20, 2010, the Department received comments from Petitioner regarding respondent selection for this review. No other

[1] M&B Metal Products Co., Inc.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 73036 (November 29, 2010) (''*Initiation Notice*'').

[3] *See Steel Wire Garment Hangers From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 14918 (March 18, 2011).

[4] These companies are: Jiaxing Boyi Medical Device Co., Ningbo Dasheng Hanger Ind. Co., Ltd., Pu Jiang County Command Metal Products Co., Ltd., Shanghai Wells Hanger Co., Ltd., Shangyu Baoxiang Metal Manufactured Co., Ltd., Shaoxing Andrew Metal Manufactured, Shaoxing Gangyuan Metal Manufacture, Shaoxing Guochao Metallic Products Co., Ltd., Shaoxing Liangbao Metal Manufactured Co., Ltd., Shaoxing Meideli Metal Hanger Co., Ltd., Shaoxing Shunji Metal Clotheshorse Co., Ltd., Shaoxing Tongzhou Metal Manufactured Co., Ltd., Shaoxing Zhongbao Metal Manufactured Co., Ltd., Yiwu Ao-si Metal Products Co., Ltd., Zhejiang Lucky Cloud Hanger Co., Ltd.

[5] *See Steel Wire Hangers From the People's Republic of China: Extension of Time Limits for the Preliminary Results of the Second Antidumping Duty Administrative Review,* 76 FR 28953 (May 19, 2011).

[6] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

interested parties submitted comments for respondent selection and no interested parties rebutted Petitioner's respondent selection comments.

On January 21, 2011, the Department issued the respondent selection memorandum after assessing its resources and determining that it could only reasonably examine two exporters subject to this review. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected Shanghai Wells Hanger Co., Ltd. (''Shanghai Wells) and Jiaxing Boyi Medical Device Co. (''Jiaxing Boyi'') as mandatory respondents.[7] The Department sent the non-market economy (''NME'') antidumping questionnaire to Shanghai Wells and Jiaxing Boyi on January 24, 2011. As stated in the cover letter of our questionnaire, the deadlines for Section A was February 10, 2011, and for Sections C & D were February 26, 2011.[8] Jiaxing Boyi did not respond to the Department's Section A questionnaire by the stated deadline and did not request an extension.

On February 24, 2011, we selected an additional mandatory respondent, Shaoxing Liangbao Metal Manufactured Co., Ltd. (''Shaoxing Liangbao'') as a replacement for Jiaxing Boyi.[9] Shaoxing Liangbao's response to Section A was due on March 26, 2011.[10] However, Shaoxing Liangbao did not submit a response by the stated deadline or request an extension.

On March 28, 2011, as a replacement for Shaoxing Liangbao, we selected another additional mandatory respondent, Pu Jiang County Command Metal Products Co., Ltd. (''Command Metal Products'').[11] However, Command Metal Products did not submit a response, or request an extension, to the Department's Section A questionnaire by the deadline, April 18, 2011.[12]

On April 29, 2011, we selected an additional two mandatory respondents, Shaoxing Guochao Metal Products Co., Ltd. (''Guochao Metal Products'') and Yiwu Ao-Si Metal Products Co., Ltd. (''Yiwu'') as replacements for Command Metal Products.[13] On May 23, 2011, Guochao Metal Products and Yiwu filed a letter with the Department stating that they would not participate as mandatory respondents in this administrative review.[14]

On June 13, 2011, we selected Shaoxing Meideli Metal Hanger Co., Ltd. (''Meideli''), the sole remaining company in the CBP entry data that had not been selected by the Department for individual examination.[15] However, Meideli did not submit a response, or request an extension, to the Department's Section A questionnaire by the deadline, July 5, 2011.[16]

Period of Review

The POR is October 1, 2009, to September 30, 2010.

Scope of the Order

The merchandise that is subject to the order is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers. Specifically excluded from the scope of the order are wooden, plastic, and other garment hangers that are not made of steel wire. Also excluded from the scope of the order are chrome-plated steel wire garment hangers with a diameter of 3.4 mm or greater. The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020, 7323.99.9060, and 7323.99.9080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Preliminary Partial Rescission of Administrative Review

Shaoxing Zhongbao Metal Manufactured Co., Ltd. (''Zhongbao'')

On January 28 2011, the Department received a separate rate certification from Zhongbao indicating that it had made one U.S. sale during the POR.[17] On April 6, 2011, the Department issued a supplemental questionnaire to Zhongbao regarding its claim.[18] On April 18, 2011, Zhongbao provided its sales documentation upon which it based its claim of a U.S. sale during the POR.[19] In the same response, Zhongbao stated that the importer was responsible for the CBP paperwork and did not respond to Zhongbao's requests for the entry documentation.[20] On May 19, 2011, the Department issued a letter to Zhongbao requesting entry documentation and disclosing that we may rescind the review with respect to Zhongbao should it be found to have no entries during the POR.[21] On May 26, 2011, Zhongbao submitted a no shipment certification.[22] On June15,

[7] *See* ''Memorandum to James Doyle, Director, AD/CVD Operations, Office 9, from Irene Gorelik, Senior International Trade Analyst, Office 9; Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Respondents for Individual Review,'' dated January 21, 2011.

[8] *See* Letters to Shanghai Wells and Jiaxing Boyi from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (January 21, 2011).

[9] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (February 24, 2011).

[10] *See* Letter to Shaoxing Liangbao from Catherine Bertrand, Program Manager, Office 9, Import Administration; regarding the Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (February 24, 2011).

[11] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (March 28, 2011).

[12] *See* Letter to Command Metal Products from Catherine Bertrand, Program Manager, Office 9, Import Administration re: Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (March 28, 2011).

[13] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Analyst, Office 9, regarding the Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (April 29, 2011).

[14] *See* Letter to from Guochao Metal Products and Yiwu, re: Steel Wire Garment Hangers from the People's Republic of China: Participation of Yiwu Ao-si Metal Products Co., Ltd. and Shaoxing Guochao Metallic Products Co., Ltd., dated May 23, 2011.

[15] *See* Memorandum to Jim Doyle, Director, Office 9, Import Administration, from Jamie Blair-Walker, International Trade Analyst, Office 9, re: Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Selection of Additional Mandatory Respondent (June 13, 2011).

[16] *See* Letter to Meideli from Catherine Bertrand, Program Manager, Office 9, Import Administration, re: Antidumping Duty Administrative Review of Steel Garment Wire Hangers from the People's Republic of China: Non-Market Economy Questionnaire (June 13, 2011).

[17] *See* Letter from Zhongbao, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification, dated January 28, 2011.

[18] *See* Letter from the Department to Zhongbao, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification of Shaoxing Zhongbao Metal Manufactured Co., Ltd., dated April 6, 2011.

[19] *See* Letter from Zhongbao, re: Steel Wire Garment Hangers from the People's Republic of China: First Supplemental Response, dated April 18, 2011 at 1 and Exhibit 1.

[20] *Id.*

[21] *See* Letter to Zhongbao, re; Steel Wire Garment Hangers from the People's Republic of China: Request for Proof of Suspended Entry, dated May 19, 2011.

[22] *See* Letter from Zhongbao, re; Steel Wire Garment Hangers from the People's Republic of

2011, Petitioner submitted comments regarding Zhongbao's no shipment certification. On June 22, 2011, Zhongbao responded to Petitioner's comments.

The Department has considered Petitioner's comments and Zhongbao's submissions and determined to accept Zhongbao's no shipment certification. Zhongbao's no shipment certification, although untimely, relates to its timely separate rate certification and to its inability to obtain entry documentation from its unaffiliated importer for the sale and entry Zhongbao believed was made during the POR. In addition, the CBP data on the record does not contradict Zhongbao's claims. Further, the record indicates that Zhongbao has attempted to cooperate with the Department's requests for information to the best of its abilities. Additionally, we intend to refer this matter to CBP to investigate whether this entry was entered properly.

Shaoxing Shunji Metal Clotheshorse Co., Ltd. (''Shunji'')

On January 28 2011, the Department received a separate rate certification from Shunji which indicated that it had made one U.S. sale during the POR.[23] On April 6, 2011, the Department issued a supplemental questionnaire to Shunji regarding its claim that it made a sale to the United States during the POR.[24] On April 15, 2011, Shunji responded to the Department's questionnaire and stated that it did not have sales or exports to the United States during the POR. Consequently, Shunji now certifies that it made no shipments of subject merchandise to the United States during the POR.[25] Shunji clarifies, and provides supporting documentation, that its administrative staff mistakenly identified the U.S. consignee as the destination of the sale, when in fact the destination of this sale was Canada.[26]

Additionally, between January 28, 2011, and May 26, 2011, the following companies filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR: Ningbo Dasheng Hanger Ind. Co., Ltd.; Shangyu Baoxiang Metal Manufactured Co., Ltd.; Shaoxing Andrew Metal Manufactured; Shaoxing Gangyuan Metal Manufacture; Shaoxing Tongzhou Metal Manufactured Co., Ltd.; and Zhejiang Lucky Cloud Hanger Co., Ltd. In order to examine these claims, we sent an inquiry to CBP requesting that if any CBP office had any information contrary to the no shipments claims, to alert the Department within ten days of receiving our inquiry. CBP received our inquiries on February 23, 2011, and April 29, 2011. We have not received a response from CBP with regard to our inquiries which indicates that CBP did not have information that was contrary to the claims.

Therefore, pursuant to 19 CFR 351.213(d)(3), we preliminarily determine that the above companies made no shipments of subject merchandise during the POR. Consequently, we preliminary determine that none of the above-named companies had shipments of subject merchandise to the United States during the POR, and we are preliminarily rescinding the review with respect to the above-named companies.[27]

Surrogate Country and Surrogate Value Data

On February 25, 2011, the Department sent interested parties a letter inviting comments on surrogate country selection and information regarding valuing factors of production (''FOPs''). On April 4, 2011, Petitioner filed comments on surrogate country selection, stating India and Thailand may be appropriate surrogates if their data is publicly available, reliable and contemporaneous. On May 4, 2010, the Department received information to value FOPs from Petitioner. Petitioner provided surrogate values (''SV'') from sources in India and Thailand.

Surrogate Country

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to sections 773(c)(1) and 773(c)(4) of the Act, the Department bases NV on an NME producer's FOPs, to the extent possible, in one or more market-economy countries that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. Regarding the ''level of economic development,'' the Department relied on per capita gross national income (''GNI'') data to measure economic comparability.[28] Using per capita GNI, the Department determined that India, Indonesia, Philippines, Peru, Ukraine and Thailand are countries comparable to the PRC in terms of economic development.[29] Once we have identified the countries that are economically comparable to the PRC, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs are both available and reliable.

The Department has determined that India is the appropriate surrogate country for use in this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. Although Petitioner provided SV data for both Thailand and India, India's data is the best available data on the record for selection as the primary surrogate country, because the record contains Indian SV data for all FOPs used by Shanghai Wells. Therefore, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the respondent's FOPs, when available and

China: Shaoxing Zhongbao Response to the Department's Letter of May 19, 2011.

[23] *See* Letter from Shunji, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification, dated January 28, 2011.

[24] *See* Letter from the Department to Shunji, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification of Shaoxing Shunji Metal Clotheshorse Co., Ltd., dated April 6, 2011.

[25] *See* Letter from Shunji, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification, dated April 15, 2011 at Exhibit 3.

[26] *See* Letter from Shunji, re: Steel Wire Garment Hangers from the People's Republic of China: Separate Rate Certification, dated April 15, 2011 at 1 and Exhibit 1–2.

[27] *See, e.g., Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part,* 75 FR 11855, 11856–57 (March 12, 2010), unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49462 (August 13, 2010).

[28] Although 19 CFR 351.408(b) instructs the Department to rely on gross domestic product (''GDP'') data in such comparisons, it is Departmental practice to use ''per capita GNI, rather than per capita GDP, because while the two measures are very similar, per capita GNI is reported across almost all countries by an authoritative source (the World Bank), and because the Department finds that the per capita GNI represents the single best measure of a country's level of total income and thus level of economic development.'' *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716 (October 19, 2006).

[29] The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See* the Department's letter to ''All Interested Parties; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments,'' dated February 25, 2011 at 1 and Attachment I.

appropriate. We have obtained and relied upon publicly available information wherever possible.

Non-Market Economy Country Status

In every proceeding conducted by the Department involving the PRC, we have treated it as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.[30] However, a company in the NME applying for separate rate status may rebut that presumption by demonstrating an absence of both *de jure* and *de facto* government control over its export activities.[31]

The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[32] Importantly, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME'') country, then the Department need not conduct a separate rate analysis to determine whether the company is independent from government control.[33]

The Department received a complete response to the Section A portion of the NME questionnaire from Shanghai Wells, which contained information pertaining to the companies' eligibility for a separate rate. As noted above, Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Guochao Metal Products, Yiwu, and Meideli, have terminated participation in this administrative review. Therefore, these six companies have failed to demonstrate their eligibility for a separate rate.

Separate Rate Recipients

Wholly Foreign-Owned

Shanghai Wells reported that it is a wholly foreign-owned entity.[34] Additionally, there is no evidence that the Wells Group [35] is under the control of the PRC government, and we have determined that further separate rate analysis is not necessary to determine whether this entity is independent from government control.[36] Thus, we have preliminarily granted separate rate status to Shanghai Wells and/or HK Wells.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act provide that, if necessary information is not available on the record, or if an interested party (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, then the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party ''promptly after receiving a request from {the Department} * * * for information, notifies {the Department} * * * that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,'' the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, then the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

However, section 776(b) of the Act states that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department ''in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' [37] Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' [38] An adverse inference may include reliance

[30] *See Separate Rates and Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* 70 FR 17233, 17233 (April 5, 2005) (''*Policy Bulletin 05.1''*), also available at: *http://ia.ita.doc.gov/policy/index.html; see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079, 53082 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[31] *See Policy Bulletin 05.1.*

[32] *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers''*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide''*).

[33] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[34] *See* Shanghai Wells' Section A Questionnaire Response, dated February 17, 2011, at 2.

[35] In *AR1 Hangers,* the Department found that Shanghai Wells, Hong Kong Wells Limited (''HK Wells'') and Hong Kong Wells Limited (USA) (''USA Wells'') (collectively, ''Wells Group'') are affiliated and that Shanghai Wells and HK Wells comprise a single entity. Because there were no changes from the previous review, we continue to find Shanghai Wells, HK Wells, and USA Wells are affiliated and that Shanghai Wells and HK Wells comprise a single entity. *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review,* 75 FR 68758, 68761 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994, 27996 (May 13, 2011) (''*AR 1 Hangers''*).

[36] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[37] *See also* Uruguay Round Agreements Act *Statement of Administrative Action,* H.R. Rep. No. 103–316, Vol. 1, at 870 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99 (''*SAA''*).

[38] *Id.* at 870, 1994 U.S.C.C.A.N. at 4198–99.

on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[39]

Non-Responsive Companies

As stated in the ''Respondent Selection'' section above, the Department issued the NME questionnaire to Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, and Meideli and did not receive a request for an extension of time or a response to Sections A, C or D of the Department's questionnaire on the established deadlines. Additionally, as stated above, counsel to Guochao Metal Products and Yiwu filed a letter stating that they would not participate as mandatory respondents in this administrative review. Therefore, the Department finds it appropriate to rely on the facts otherwise available in order to determine a margin for Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Meideli, Guochao Metal Products and Yiwu for purposes of these preliminary results, pursuant to section 776(a)(2) of the Act.[40]

As stated above, section 776(b) of the Act provides that, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. As a result of these six companies' decision to terminate participation in this review, the Department will not grant these six companies a separate rate and considers them part of the PRC-wide entity. *See* ''PRC-Wide Entity and Selection of Adverse Facts Available Rate'' section below. *See also* the ''Corroboration'' section below for a discussion of the probative value of the PRC-wide rate of 187.25 percent rate.

PRC-Wide Entity and Selection of Adverse Facts Available (''AFA'') Rate

The Department finds that the PRC-wide entity, including Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Meideli, Guochao Metal Products, and Yiwu withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding. Moreover, by refusing to answer the Department's questionnaire, these six companies failed to cooperate to the best of their ability. Therefore, the Department must rely on adverse facts otherwise available in order to determine a margin for the PRC-wide entity, pursuant to sections 776(a)(2)(A), (B), (C) and 776(b) of the Act.[41] By so doing, the Department avoids the concern that the PRC-wide entity might obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

As previously stated, the Department may rely on information derived from any of the following sources in deciding which facts to use as AFA: (1) The petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' [42] In reviews, the Department normally selects as AFA the highest rate on the record of any segment of the proceeding.[43] The U.S. Court of International Trade (''CIT'') and the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') consistently have upheld the Department's practice in this regard.[44] In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' [45] Therefore, consistent with the statute, court precedent, and its normal agency practice, the Department will use AFA to assign the rate of 187.25 percent, the highest rate on the record of any segment of the proceeding, to the PRC-wide entity (including Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Guochao Metal Products, Yiwu, and Meideli).[46] *See* ''Corroboration of Information'' section below.

Corroboration of Information

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information on which it relies as facts available. The SAA defines secondary information as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [47] The SAA also explains that the Department sufficiently corroborates secondary information when it determines that such information has probative value.[48] The Department previously has reasoned that ''corroborated information'' amounts to information it finds both reliable and relevant.[49]

[39] *See* section 776(b) of the Act; *see also* 19 CFR 351.308(c).

[40] *See, e.g., Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of the Sixth Administrative Review,* 71 FR 11183, 11185–86 (March 6, 2006) (unchanged in final results); *Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 18369, 18371 (April 11, 2005) (unchanged in final results).

[41] *See, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 71 FR 69546, 69548 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review,* 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review,* 72 FR 52052 (September 12, 2007).

[42] *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[43] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3987, 3989 (January 22, 2009).

[44] *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190–91 (Fed. Circ. 1990) (''*Rhone Poulenc*''); *see also, Shanghai Taoen Int'l Trading Co.* v. *United States,* 360 F. Supp. 2d 1339, 1346–48 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335–36 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 683 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent).

[45] *Rhone Poulenc,* 899 F.2d at 1190 (emphasis omitted).

[46] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049, 52051 (September 12, 2007).

[47] *See* SAA at 870, 1994 U.S.C.C.A.N. at 4199.

[48] *Id.*

[49] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392

Continued

In this case, the Department selected the highest rate assigned in any segment of this proceeding (*i.e.,* 187.25 percent) as the AFA rate for the current review. For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The Department continues to find the information reliable, given that it corroborated the AFA rate used in the current review during the LTFV investigation.[50] No information has been presented in the current review that calls into question the reliability of this information. The Department considers information reasonably at its disposal to determine whether a margin continues to have relevance.[51] A selected margin remains relevant when it accurately reflects commercial practices in the industry.[52] For example, in *Flowers,* because the highest margin in that case was based on another company's uncharacteristic business expense resulting in an unusually high margin, the Department disregarded the margin as irrelevant.[53] Turning to the present case, the Department relied on credible information within the realm of actual selling practices to calculate the AFA rate during the LTFV investigation. In that proceeding, the Department took a simple average of the following: (1) The weighted-average of the calculated rates for the two mandatory respondents, and (2) a simple average of petition rates based on U.S. prices and normal values within the range of U.S. prices and normal values calculated for the two mandatory respondents.[54] Furthermore, the calculation of this margin in the investigation was subject to comment from interested parties in the proceeding.[55] Therefore, because the record does not contain information on the record of this review that demonstrates that this rate is not appropriate to use as AFA, the Department determines that this rate has relevance.

As the 187.25 percent rate is both reliable and relevant, the Department determines that it has probative value. Accordingly, the Department determines that the calculated rate of 187.25 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) of the Act that secondary information be corroborated to the extent practicable (*i.e.,* that it have probative value). The Department has assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity, which includes Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Guochao Metal Products, Yiwu, and Meideli.

Date of Sale

The Wells Group reported the invoice date as the date of sale because they claim that, for their U.S. sales of subject merchandise made during the POR, the material terms of sale were established based on the invoice date. The Department preliminarily determines that the invoice date is the most appropriate date to use as the Wells Group date of sale in accordance with 19 CFR 351.401(i) and the Department's long-standing practice of determining the date of sale.[56]

Fair Value Comparisons

To determine whether sales of steel wire garment hangers to the United States by the Wells Group were made at less than NV, the Department compared either export price (''EP'') or constructed export price (''CEP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections below.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, the Department calculated EP for a portion of sales to the United States for the Wells Group because the first sale to an unaffiliated party was made before the date of importation and the use of CEP was not otherwise warranted. The Department calculated EP based on the sales price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, as appropriate, the Department deducted from the sales price certain foreign inland freight, brokerage and handling (''B&H''), and international movement costs. Because the inland freight and B&H services were either provided by a NME vendor or paid for using a NME currency, the Department based the deduction of these charges on surrogate values. *See* ''Memorandum to the File from Bob Palmer, Analyst, through Catherine Bertrand, Program Manager; Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results,'' dated concurrently with these preliminary results, (''Prelim Surrogate Value Memo'') for details regarding the SVs for movement expenses. For international freight provided by a ME provider and paid in U.S. dollars, the Department used the actual cost per kilogram (''kg'') of the freight.

Constructed Export Price

For some of the Wells Group's sales, the Department based U.S. price on CEP in accordance with section 772(b) of the Act, because sales were made on behalf of the Chinese-based company by a U.S. affiliate to unaffiliated purchasers in the United States. For these sales, the Department based CEP on prices to the first unaffiliated purchaser in the United States. Where appropriate, the Department made deductions from the starting price (gross unit price) for foreign movement expenses, international movement expenses, U.S. movement expenses, and appropriate selling adjustments, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, the Department also deducted those selling expenses associated with economic activities occurring in the United States. The Department deducted, where appropriate, commissions, inventory carrying costs, interest revenue, credit expenses, warranty expenses, and indirect selling expenses. Where foreign movement expenses, international movement expenses, or U.S. movement expenses were provided by PRC service providers or paid for in renminbi, the Department valued these services using SVs (*see* ''Factor Valuations'' section below for further discussion). For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary

(November 6, 1996) unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[50] *See Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587, 47591 (August 14, 2008), as amended, *Steel Wire Garment Hangers From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 53188, 53189 (September 15, 2008) (''*Hangers LTFV*'').

[51] *See* section 776(c) of the Act.

[52] *See Universal Polybag Co.* v. *United States,* 577 F. Supp. 2d 1284, 1300 (CIT 2008).

[53] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812, 6814 (February 22, 1996) (''*Flowers*'').

[54] *See Hangers LTFV,* 73 FR at 53189; *Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR at 47591.

[55] *Steel Wire Garment Hangers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR at 47588.

[56] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* the company specific analysis memoranda, dated concurrently with these preliminary results.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Further, pursuant to section 773(c)(1) of the Act, the valuation of an NME respondent's FOPs shall be based on the best available information regarding the value of such factors in an ME country or countries considered to be appropriate by the Department. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

The Department used Indian import statistics to value the raw material and packing material inputs that the Wells Group used to produce the subject merchandise during the POR, except where listed below. With respect to the SVs based on Indian import statistics, in according with the Omnibus Trade and Competitiveness Act of 1988 (''OTCA'') and long-standing agency practice, the Department has disregarded prices that the Department has reason to believe or suspect may be subsidized.[57] The Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea, and Thailand because we have determined that these countries maintain broadly available, non-industry specific, export subsidies.[58] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it has reason to believe or suspect that all exporters from Indonesia, South Korea, and Thailand may have benefitted from these subsidies and that we should therefore disregard any data from these countries contained in the Indian import statistics used to calculate SVs. The Department similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, since the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[59] For further discussion regarding all SV calculations using Indian Import Statistics, *see* Prelim Surrogate Value Memo.

Factor Valuations

In accordance with section 773(c)(1) of the Act, for subject merchandise produced by the Wells Group, the Department calculated NV based on the FOPs reported by the Wells Group for the POR. The Department used data from the Indian import statistics and other publicly available Indian sources in order to calculate SVs for the Wells Group's FOPs (direct materials, energy, and packing materials) and certain movement expenses. To calculate NV, the Department multiplied the reported per-unit factor quantities by publicly available Indian SVs (except as noted below). Because the statute is silent concerning what constitutes the ''best available information'' for a particular SV, the courts have recognized that on this topic the Department enjoys ''broad discretion to determine the best available information for an antidumping review.'' [60] The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[61]

In this case, the Department adjusted the SVs as necessary to ensure a fair calculation of the production costs. First, the Department made adjustments to the SVs for exchange rates and taxes, and converted all applicable items to measurement on a per kg basis. Second, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, to accord with the decision of the Federal Circuit in *Sigma Corp. v. United States,* 117 F.3d 1401, 1408 (Fed. Cir. 1997), the Department added to the Indian import SVs a surrogate freight cost using the shorter of the reported distance between (1) The domestic supplier and the factory or (2) the nearest seaport and the factory. For a detailed description of all SVs used for the Wells Group, *see* Prelim Surrogate Value Memo.

The Department valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate or otherwise alter this value because utility rates remain contemporaneous with the POR, as indicated by the effective dates listed for each of the rates provided. *See* Prelim Surrogate Value Memo.

The Department valued water using publicly available data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because these data include a wide range of industrial water tariffs. This source provides industrial water rates within the Maharashtra province for ''inside industrial areas'' and ''outside industrial areas'' from October 2009 through August 2010. Because the average of these values is contemporaneous with the POR, we did not adjust it for inflation. *See* Prelim Surrogate Value Memo.

As previously stated, the Department values FOPs in NME cases using the best available information for such factors in a ME country or countries considered appropriate by the administering authority. In so doing, the

[57] *See* Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[58] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

[59] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008) (''*PET Film*'').

[60] *See Ad Hoc Shrimp Trade Action Comm. v. United States,* 618 F.3d 1316, 1322 (Fed. Cir. 2010).

[61] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

Department utilizes, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, to value the respondent's cost of labor, the Department used regression-based wages that captured the worldwide relationship between per capita Gross National Income (''GNI'') and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). However, on May 14, 2010, the Federal Circuit in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372–73 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the Federal Circuit's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology and the data sources.[62] On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[63] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In these preliminary results, the Department calculated the labor input using the Labor method described in *Labor Methodologies.* To value the Wells Group's labor input, the Department relied on data reported by India to the ILO in Chapter 6A of the Yearbook. The Department further finds the two-digit description under Division 28 (Manufacture of Fabricated Metal Products, Except Machinery and Equipment) of the ISIC–Revision 3 to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor data reported by India to the ILO under Division 28 of ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. A more detailed description of the labor rate calculation methodology is provided in the Prelim Surrogate Value Memo.

As stated above, the Department used Indian ILO data reported under Chapter 6A of Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Because the financial statements used to calculate the surrogate financial ratios include itemized detail of indirect labor costs, the Department made adjustments to the surrogate financial ratios. *See Labor Methodologies,* 76 FR at 36093. For further information on the calculation of the labor rate, *see* Prelim Surrogate Values Memo.

The Department valued truck freight expenses using an Indian per-unit average rate calculated from publicly available data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR. *See* Prelim Surrogate Value Memo.

To value B&H, the Department used a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is publicly available and compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India as published in *Doing Business 2011: India* (published by the World Bank). *See* Prelim Surrogate Value Memo.

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, the Department is using the 2009–2010 audited financial statement of Sterling Tools Ltd. (''Sterling''), which is an Indian fastener manufacturer.

Petitioner placed on the record five financial statements for consideration: Three financial statements from Indian companies, Lakshmi Precision Screws Ltd. (''Lakshmi''), Sterling, and Usha Martin Ltd. (''Usha Martin''), and two from Thai companies, Kato Spring (Thailand) Co. Ltd. (''Kato''), and Capital Engineering Network Public Company Limited (''Capital Engineering'').[64] With respect to the financial statements of Lakshmi and Usha Martin, these companies may have benefitted from subsidies found to be countervailable by the Department, namely the DEPB subsidy program,[65] which we have found actionable in the past.[66] With regard to the two Thai financial statements, we note that these financial statements are not from the primary surrogate country and that we have a financial statement from the primary surrogate country which we find to be the best available information as discussed below. Further, we note our preference is to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.[67]

With regard to Sterling, we note that we have previously disregarded Sterling's financial statement because it apparently indicated a raw material consumption quantity and value which did not include steel wire rod.[68] However, the Department has further examined Sterling's financial statement and concluded that Sterling's description of its raw materials, ''Cold Head Quality Steel/Wire Rods Straight Length Bar,'' does not definitively exclude the consumption of steel wire rod.[69] Therefore, for these preliminary results, the Department will include the statement from Sterling for use in calculating the surrogate financial ratios. *See* Prelim Surrogate Value Memo.

Therefore, the Department has used Sterling's 2009–2010 financial statement

[62] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment,* 76 FR 9544, 9544–47 (February 18, 2011).

[63] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092, 36093–94 (June 21, 2011) (''*Labor Methodologies*'').

[64] *See* Letter from Petitioner, re: SV submission, dated May 4, 2011, at Exhibit 3, 4, 5, 7, and 8 respectively.

[65] *See* Letter from Petitioner, re: SV submission, dated May 4, 2011, at Exhibit 3, page 42 and Exhibit 5, page 71.

[66] *See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994 (May 13, 2011) and accompany Issues and Decisions Memorandum at Comment 2.

[67] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review,* 76 FR 15941 (March 22, 2011) (''*Fish Fillets AR6*'') and accompanying Issues and Decisions Memorandum at Comment IV.I.i; *see also, Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China,* 69 FR 67313 (November 17, 2004) (''*Bedroom Furniture LTFV*'') and accompanying Issues and Decisions Memorandum at Comment 3.

[68] *See First Administrative Review of Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 27994 (May 13, 2011) and accompany Issues and Decisions Memorandum at Comment 2.

[69] *See* Letter from Petitioner, re: SV submission, dated May 4, 2011, at Exhibit 4, page 54.

to value factory overhead, SG&A, and profit, for these preliminary results. For a detailed discussion regarding our selection of Sterling's 2009–2010 financial statement to calculate the surrogate financial ratios, *see* Prelim Surrogate Value Memo.

Company Specific Issues

The Wells Group

In its questionnaire responses and sales databases, the Wells Group reported certain expenses incurred, and corresponding revenues earned, related to the transportation or movement of the subject merchandise sales during the POR. For a full discussion of the adjustments to the gross unit price, *see* ''Memorandum to the File from Bob Palmer, Analyst: Program Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Shanghai Wells Hanger Co., Ltd.,'' dated concurrently with these preliminary results.

Currency Conversion

The Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Weighted average margin (percent)
Shanghai Wells Hanger Co., Ltd.	16.64
PRC–Wide Entity[70]	187.25

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[71] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for filing case briefs.[72] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[73]

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1).[74]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which

[70] The PRC-Wide entity includes Jiaxing Boyi, Shaoxing Liangbao, Command Metal Products, Guochao Metal Products, Yiwu, and Meideli.

[71] *See* 19 CFR 351.309(c)(ii).

[72] *See* 19 CFR 351.309(d).

[73] *See* 19 CFR 351.309(c)(2), (d).

[74] *See Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 187.25 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: October 21, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27976 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, DOC.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Environmental Technologies Trade Advisory Committee (ETTAC).

DATES: The teleconference meeting is scheduled for Wednesday, November 16, 2011, at 3 p.m. Eastern Standard Time (EST). Please register by 5 p.m. EST on Thursday, November 10, 2011 to listen in on the teleconference meeting.

ADDRESSES: The meeting will take place via teleconference. For logistical reasons, all participants are required to register in advance by the date specified above. Please contact Mr. Todd DeLelle at the contact information below to register and obtain call-in information.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries (OEEI), International Trade Administration, Room 4053, 1401 Constitution Avenue NW., Washington, DC 20230. *Phone:* (202) 482–4877; Fax: (202) 482–5665; *email: todd.delelle@trade.gov.*

SUPPLEMENTARY INFORMATION: The meeting will take place from 3 p.m. to 4 p.m. EST. This meeting is open to the public. Written comments concerning ETTAC affairs are welcome any time before or after the meeting. Minutes will be available within 30 days of this meeting.

Topics to be considered: The agenda for the November 16, 2011 ETTAC meeting has only one item as follows: 3 p.m.–4 p.m. Presentation of, and deliberation on, an ETTAC Trade Liberalization Subcommittee draft recommendation letter regarding the possible inclusion of ''Buy American'' provisions in pending Congressional legislation and the impact this language may have on international trade in environmental goods and services.

Background: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was originally chartered in May of 1994. It was most recently re-chartered until October 2012.

The teleconference will be accessible to people with disabilities. Please specify any requests for reasonable accommodation when registering to participate in the teleconference. Last minute requests will be accepted, but may be impossible to fill.

No time will be available for oral comments from members of the public during this meeting. As noted above, any member of the public may submit pertinent written comments concerning the Committee's affairs at any time before or after the meeting. Comments may be submitted to Mr. Todd DeLelle at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5 p.m. Eastern Standard Time on Thursday, November 10, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2011–27959 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in New Orleans, Louisiana.

DATES: The meeting will be held Tuesday, November 15, 2011, from 8:30 a.m. to 5:45 p.m., and Thursday, November 17, from 8:30 a.m. to 4:30 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Ritz Carlton Hotel, 921 Canal Street, New Orleans, 70112.

FOR FURTHER INFORMATION CONTACT: Kara Yeager, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: (301) 713–3100 x162, Fax: (301) 713–3110); email: *kara.yeager@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158, which calls for the development of a National System of MPAs. The National System aims to strengthen existing MPAs and MPA programs through national and regional coordination, capacity building, science and analysis. The meeting is open to the public, and public comment will be accepted from 4:30 p.m. to 5:30 p.m. on Tuesday, November 15, 2011. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they

should be submitted to the Designated Federal Official by November 10, 2011.

Matters to be Considered: The focus of the Committee's meeting will be the completion and approval of recommendations from the Land, Sea and Communities Subcommittee and the Cultural Heritage Workgroup by the full MPA FAC. The Committee will receive an update on the Administration's National Ocean Policy and Coastal and Marine Spatial Planning initiatives, and their linkages to the national system of MPAs. The agenda is subject to change. The latest version will be posted at *http://www.mpa.gov.*

Dated: October 21, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2011–27914 Filed 10–27–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA796

Caribbean Fishery Management Council; Catch Share Panel Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Catch Share Panel of the Caribbean Fishery Management Council will hold a public meeting to discuss the issues contained in the enclosed agenda.

Dates and Addresses: The meeting will be held on November 30, 2011, from 7 p.m. to 9 p.m., at the Rincon Beach Hotel, Rd. 115, km 5.5, Añasco, Puerto Rico 00610.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Catch Share Panel of the Caribbean Fishery Management Council will hold a public meeting to discuss the following agenda items:

—Call To Order
—Trap Reduction Program Discussion
—Other Issues

Special Accommodations

The meeting is physically accessible to people with disabilities. Simultaneous interpretation will be provided (English-Spanish). For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: October 24, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–27861 Filed 10–27–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: 11/28/2011.

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 OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, *Telephone:* (703) 603–7740, *Fax:* (703) 603–0655, or email *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 service 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 service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and 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 products and service 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 service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 5340–00–602–4977—Bracket, Mounting, Hercules M88A2 Recovery Vehicle
NSN: 5340–00–627–5411—Bracket, Mounting, Stratofortress B–52 Aircraft
NSN: 5340–01–078–7642—Bracket, Mounting, Abrams M–1 Tank
NSN: 5340–01–084–1232—Bracket, Mounting, Cargo Truck
NSN: 5340–01–098–5119—Bracket, Mounting, Howitzer M–109
NSN: 5340–01–102–3483—Bracket, Angle, Abrams M–1 Tank
NSN: 5340–01–112–9693—Bracket, Angle, Bradley Fighting Vehicle System
NSN: 5340–01–162–7040—Bracket, Angle, Personnel M113A1, M113–A2, M–113A3 Armored Carrier
NSN: 5340–01–163–4245—Bracket, Double Angle, Hercules M88A2 Recovery Vehicle
NSN: 5340–01–167–1810—Bracket, Mounting, Personnel M113A1, M113–A2, M–113A3 Armored Carrier
NSN: 5340–01–218–8346—Bracket, Angle, Aviation
NSN: 5340–01–230–0219—Bracket, Angle, Abrams M–1 Tank
NSN: 5340–01–272–6634—Bracket, Mounting, Truck 1¼ Ton HMMWV Vehicle System
NSN: 5340–01–288–5231—Bracket, Double Angle, Bradley Fighting Vehicle System
NSN: 5340–01–329–8589—Bracket, Mounting, Bradley Fighting Vehicle

System
NSN: 5340–01–347–9608—Bracket, Mounting, F–16 Aircraft
NSN: 5340–01–386–2917—Bracket, Angle, Command AAVC–7A1 Amphibious Assault Vehicle
NSN: 5340–01–458–0473—Bracket, Mounting, M–16 Rifle 5.56MM
NSN: 5340–01–500–4197—Bracket, Mounting, Mine Resistant Ambush Protected Fighting Vehicle
NSN: 5340–01–519–7318—Bracket, Angle, Truck 1¼ Ton HMMWV Vehicle System
NSN: 5340–01–521–0196—Bracket, Mounting, Non-Weapons System
NSN: 5340–01–525–0574—Bracket, Angle, Medium Tactical Vehicles
NSN: 5340–01–525–0579—Bracket, Angle, Medium Tactical Vehicles
NPA: Herkimer County Chapter, NYSARC, Herkimer, NY
Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT, HARDWARE L&M, PHILADELPHIA, PA
COVERAGE: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Hardware L&M, Philadelphia, PA.

Service

Service Type/Location: Industrial Laundry Service, Bureau of Engraving and Printing, (Offsite: 880 Mustang Dr., Grapevine, TX), 9000 Blue Mound Road, Fort Worth, TX
NPA: Goodwill Industrial Services of Fort Worth, Inc., Fort Worth, TX
Contracting Activity: DEPT OF TREASURY, BUREAU OF ENGRAVING AND PRINTING, WASHINGTON, DC

Deletions

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 furnish the products 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 proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

NSN: 7490–01–483–8984—Paper Shredder, Cross Cut
NSN: 7490–01–483–8985—Paper Shredder, Strip Cut
NSN: 7490–01–483–8990—Paper Shredder, Strip Cut
NSN: 7490–01–483–8991—Paper Shredder, Cross Cut
NPA: L.C. Industries for the Blind, Inc., Durham, NC
Contracting Activity: GENERAL SERVICES ADMINISTRATION, NEW YORK, NY

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2011–27925 Filed 10–27–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries From Regional Country Fabric

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 12-Month Cap on Duty and Quota Free Benefits.

DATES: *Effective Date:* October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002, Pub. L. 107–210; Presidential Proclamation 7616 of October 31, 2002, 67 FR 67283 (November 5, 2002); Executive Order 13277, 67 FR 70305 (November 19, 2002); and the Office of the United States Trade Representative's Notice of Authority and Further Assignment of Functions, 67 FR 71606 (November 25, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components, subject to quantitative limitation. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

Title VII of the Tax Relief and Health Care Act (TRHCA) of 2006, Public Law 107–432, extended the expiration of the ATPA to June 30, 2007. See Section 7002(a) of the TRHCA 2006. H.R. 1830, 110th Cong. (2007), further extended the expiration of the ATPA to February 29, 2008. H.R. 5264, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2008. H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. H.R. 4284, 111th Cong. (2009), further extended the expiration of the ATPA to December 31, 2010. H.R. 6517, 111th Cong. (2010), further extended the expiration of the ATPA to February 12, 2011. H.R. 3078, 112th Cong. (2011), further extended the expiration of the ATPA to July 31, 2013.

The purpose of this notice is to extend the period of the quantitative limitation for preferential tariff treatment under the regional fabric provision for imports of qualifying apparel articles from Colombia and Ecuador through September 30, 2012. For the period beginning on October 1, 2011 and extending through September 30, 2012 the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,341,021,673 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–27950 Filed 10–27–11; 8:45 am]

BILLING CODE P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Limitation of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries From Regional Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending the 12-Month Cap on Duty and Quota Free Benefits.

DATES: *Effective Date:* February 13, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002, Pub. L. 107–210; Presidential Proclamation 7616 of October 31, 2002, 67 FR 67283 (November 5, 2002); Executive Order 13277, 67 FR 70305 (November 19, 2002); and the Office of the United States Trade Representative's Notice of Authority and Further Assignment of Functions, 67 FR 71606 (November 25, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty- and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the amended ATPA provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components, subject to quantitative limitation. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

Title VII of the Tax Relief and Health Care Act (TRHCA) of 2006, Public Law 107–432, extended the expiration of the ATPA to June 30, 2007. See Section 7002(a) of the TRHCA 2006. H.R. 1830, 110th Cong. (2007), further extended the expiration of the ATPA to February 29, 2008. H.R. 5264, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2008. H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. H.R. 4284, 111th Cong. (2009), further extended the expiration of the ATPA to December 31, 2010. H.R. 6517, 111th Cong. (2010), further extended the expiration of the ATPA to February 12, 2011. H.R. 3078, 112th Cong. (2011), further extended the expiration of the ATPA to July 31, 2013.

The purpose of this notice is to extend the period of the quantitative limitation for preferential tariff treatment under the regional fabric provision for imports of qualifying apparel articles from Colombia and Ecuador through September 30, 2011. For the period beginning on October 1, 2010 and extending through September 30, 2011 the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,238,203,339 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2011–27955 Filed 10–27–11; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday, November 4, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–28078 Filed 10–26–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday November 18, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–28080 Filed 10–26–11; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday November 11, 2011.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, (202) 418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2011–28079 Filed 10–26–11; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0118]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice to Amend a System of Records.

SUMMARY: The Office of the Secretary of Defense is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on November 28, 2011 unless comments are received that would 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, East Tower, 2nd Floor, 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 (571) 372–0461.

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 specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 25, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E05

SYSTEM NAME:

Mandatory Declassification Review Files (October 14, 2010, 75 FR 63160).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.

Written requests should include the individual's name and address of the individual at the time the record would have been created.''

* * * * *

DWHS E05

SYSTEM NAME:

Mandatory Declassification Review Files.

SYSTEM LOCATION:

Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request Mandatory Declassification Review (MDR) or appeal a Mandatory Declassification Review determination. These include DoD, Executive Branch Agencies, public or contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and organization of person making MDR request or appeal, identification of records requested, dates and summaries of action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13526, Classified National Security Information; DoD Instruction 5200.01, DoD Information Security Program and Protection of Sensitive Compartmented Information.

PURPOSE(S):

To process requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records to ensure consistency in subsequent actions. Data developed from this system is used for the annual reported required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records required; and the average processing time.

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 may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's 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 records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name of requester and other pertinent information, such as organization or address, subject material describing the MDR item (including date), MDR request number using computer indices, referring agency, or any combination of fields.

SAFEGUARDS:

Paper records are maintained in Defense Security vault, with all physical security requirements to ensure the protection of special compartmented information. Within the vault, the paper files are stored in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require

Common Access Card (CAC) and passwords. Users are limited according to their assigned duties to appropriate access on a need-to-know basis.

RETENTION AND DISPOSAL:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed. Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Chief, Records and Declassification Division, Executive Services Directorate, 4800 Mark Center Drive, Suite 02F09, Alexandria, VA 20350–3200.

Written requests should include the individual's name and address of the individual at the time the record would have been created.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the name and number of this system of records notice along with the individual's name and address of the individual at the time the record would have been created and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published 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:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–27913 Filed 10–27–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, November 14, 2011; 8 a.m.–5: p.m.

Opportunities for public participation will be from 11:45 a.m. to 12 p.m. and from 2:15 p.m. to 2:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or *email: pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement and Outreach
- Advanced Mixed Waste Treatment Project (AMWTP) Contract
- Idaho Cleanup Project (ICP) Contract Extension
- Idaho-EM Funding
- Status of Greater-Than-Class C Draft Environmental Impact Statement
- Fiscal Year 2012 Planning
- Accelerated Retrieval Project Status
- Tribal Agreements
- Calcine and Sodium Bearing Waste Status
- Remote-Handled Low-Level Waste Disposal Project Environmental Assessment

Public Participation: The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC on October 24, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–27921 Filed 10–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Notice To Amend an Existing System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Circular A–130, the Department of Energy (DOE) is publishing notice of a proposed amendment to an existing system of records. DOE proposes to amend the system of records DOE–43 ''Personnel Security Files.'' This notice will create a new routine use to permit the disclosure of certain information to federal agencies for studies and analyses in support of evaluating and improving the effectiveness and efficiency of the agencies' investigative and adjudicative methodologies.

DATES: The proposed amendment to this existing system of records will become effective without further notice on

December 12, 2011 unless DOE receives adverse comments and determines that this amendment should not become effective on that date. Comments regarding this amendment must be received on or before November 28, 2011.

ADDRESSES: Written comments should be directed to Mr. James L. Packett, Field Assistance Program Manager, Office of Departmental Personnel Security (HS–53), Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. James L. Packett, Field Assistance Program Manager, Office of Departmental Personnel Security (HS–53), Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3249 or Isiah Smith, Deputy Assistant General Counsel for Administrative Litigation and Information Law (GC–77), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1522.

SUPPLEMENTARY INFORMATION: This notice proposes one amendment to DOE–43 Personnel Security Files. This amendment creates a new Routine Use # 9, which will permit DOE to disclose to the Department of Defense (DOD) and other Federal agencies certain Privacy Act information contained in an employee's personnel security file (PSF). DOE will analyze the information in the PSFs and use the results to decide whether to adopt DOD's Case Adjudication Tracking System (CATS).

The CATS is an electronic adjudicative case management and tracking system developed jointly by the U.S. Army Central Clearance Facility (CCF) and the Department of Defense Business Transformation Agency (BTA). Sharing the aforementioned files with DOD would permit the DOE to evaluate whether the CATS provides accurate analyses. If so, it may be more efficient to replace DOE's manual system for evaluating the information the Department gathers during Personnel Security Investigations (PSIs). Because the CATS analyses are potentially more efficient in analyzing data, the DOE may adopt the electronic adjudication system for personnel security investigations for all future PSF analyses.

DOE is submitting the report required by OMB Circular A–130 concurrently with the publication of this notice. The text of this notice contains information required by the Privacy Act, 5 U.S.C. 552a(e)(4).

Issued in Washington, DC, on September 30, 2011.

William A. Eckroade,

Principal Deputy Chief for Mission Support Operations, Office of Health, Safety and Security.

DOE–43

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

U.S. Department of Energy, Headquarters, 1000 Independence Avenue SW., Washington, DC 20585. U.S. Department of Energy, NNSA Service Center Albuquerque, P.O. Box 5400, Albuquerque, NM 87185–5400. U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109. U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301. U.S. Department of Energy, Office of Science, Chicago Office, 9800 South Cass Avenue, Argonne, IL 60439. U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415. U.S. Department of Energy, NNSA Nevada Site Office, P.O. Box 98518, Las Vegas, NV 89193–8518. U.S. Department of Energy, Office of Science, Oak Ridge Office, P.O. Box 2001, Oak Ridge, TN 37831. U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352. U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for DOE including National Nuclear Security Administration (NNSA) employment; DOE employees including assignees and detailees, agents and consultants with the DOE, DOE contractors and subcontractors, and DOE access permittees processed for DOE access authorizations for access to classified matter or special nuclear materials; other Federal agency contractor and subcontractor applicants for employment, and their employees, detailees, agents, and consultants processed for DOE access authorizations; and other individuals processed for DOE access authorizations as determined by the Secretary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date and place of birth, social security number, citizenship status, grade, organization, employer(s), initial investigation and reinvestigation history; and access authorization history; the formal request(s) and justification(s) for access authorization processing; security forms, fingerprint cards, and acknowledgments completed by the individual for both the initial investigation and reinvestigation; results of pre-employment checks (if required); request(s) and approval(s) for issuance of a security badge(s); report of investigation provided by an agency which has previously conducted an investigation of the individual for employment or security clearance purposes; approvals for classified visits; photographs; security infraction reports; security termination statement(s), foreign travel document; letters of interrogatory, personnel security interview transcripts or summaries, and/or audio tapes of the interviews, and evaluations of the interviews; reports of hospitalization or treatment for a mental condition or substance abuse, including information provided by an Employee Assistance Program provider; reports of DOE-sponsored mental evaluations conducted by competent medical authorities; reports of security violations; public record information to include law enforcement, financial, divorce, bankruptcy, name change and other court information or reports and copies of information appearing in the media; security advisory letters; information concerning citizenship status, foreign contacts, and spouse and/or individual(s) with whom the individual resides; administrative review processing data; justifications for participation in sensitive DOE activities and/or for Sensitive Compartmented Information access approval; results of required testing for participation in sensitive DOE activities; documents concerning Interim Access Authorization processing or processing under Section 145b of the Atomic Energy Act of 1954, as amended; written evaluations of reported derogatory information; credit check results; copies of correspondence to and from the individual concerning the items above and copies of inter- and intra-agency correspondence concerning the items above; and any other material relevant to the individual's DOE access authorization or special authorization eligibility or processing and, for DOE employees, suitability for Federal employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 10 CFR Part 710, Subpart A; Executive Orders 10450 and 12968; 5 CFR Part 732; DOE O 474.4 Safeguards

and Security Program of 8–26–05; DOE M 470.4–5, Personnel Security, of 08–26–05 and Director of Central Intelligence Directive 6/14 of 6–20–00.

RETRIEVABILITY:

Records are retrieved by name and/or assigned DOE file number (alphanumeric code).

PURPOSE(S):

For those records described in *Categories of Records in the System,* such records are maintained and used by the Department as an official record of all information gathered and evaluated to determine an individual's initial and continued DOE access authorization eligibility and, if applicable, an individual's eligibility for participation in DOE sensitive activities or for access to Sensitive Compartmented Information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES USERS AND THE PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to competent medical authority who, under a formal agreement for payment of services with the local DOE personnel security element, conducts evaluations under Title 10, Code of Federal Regulations, Part 710, to determine whether an individual has an illness or mental condition of a nature which causes, or may cause, a significant defect in judgment or reliability, or is alcohol dependent or suffering from alcohol abuse.

2. A record from the system may be disclosed as a routine use to a federal, state, or local agency to obtain information relevant to a Departmental decision concerning the hiring or of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed to a federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

4. A record from the system may be disclosed as a routine use to the appropriate local, state or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

5. A record from this system of records may be disclosed to a member of Congress submitting a request involving the constituent when the constituent has requested assistance from the member with respect to the subject matter of the record. The member of Congress must provide a copy of the constituent's request for assistance.

6. A record from this system of records may be disclosed to foreign governments or international organizations in accordance with treaties, international conventions, or executive agreements.

7. A record from the system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

8. A record from this system may be disclosed as a routine use when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

9. A record from this system may be disclosed to a federal agency for studies and analyses in support of evaluating and improving the effectiveness and efficiency of the investigative and adjudicative methodologies. The findings of any such studies or analyses shall not be released to the general public until all personal identifiers such as name, social security number, and date and place of birth have been deleted from them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record may be stored as paper records, microfiche, and electronic media.

RETRIEVABILITY:

Records are retrieved by name and/or assigned DOE file number (alphanumeric code).

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established DOE computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the National Archives and Records Administration (NARA) General Records Schedule and DOE record schedules that have been approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Director, Office of Security Operations, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Field Offices: The Security Officers of the ''System Locations'' listed above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, at Title 10, Code of Federal Regulations, Part 1008, a request by an individual to determine if a system of records contains information about him/her should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer, or the Privacy Act Officer at the appropriate address identified above under ''System Locations.'' For records maintained by Laboratories or Field Site Offices, the request should be directed to the Privacy Act Officer for the site that has jurisdiction over the ''System Location'' as listed in the *Correlation.* The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORDS ACCESS PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with DOE's Privacy Act regulation, proper identification is required before a request is processed.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Documents completed and/or furnished by subject; Department of Energy; Office of Personnel Management; Federal Bureau of Investigation; Defense Security Service; medical professionals; and confidential sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under subsection (k)(1), (k)(2), and (k)(5) of the Privacy Act to the extent that information within the System meets the criteria of those subsections of the Act. Such information has been exempted from the provisions of subsections (c)(3), (d), and (e)(1) of the Act. See the Department's Privacy Act regulation at Title 10, Code of Federal Regulations, Part 1008.

[FR Doc. 2011–27920 Filed 10–27–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–549–001]

Commission Information Collection Activities (FERC–549); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (76 FR 46783, 08/3/2011) requesting public comments. FERC received no comments on the FERC–549 and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by November 28, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira__submission@omb.eop.gov* and include OMB Control Number 1902–0086 for reference. The Desk Officer may be reached by telephone at (202) 395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–549–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's email address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–549–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–549 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of *FERC–549, ''Gas Pipeline Rates: NGPA Title III and NGA Blanket Certificate Transactions''* (OMB Control No. 1902–0086), is used by the Commission to implement the statutory provisions of sections 311 and 312 of the Natural Gas Policy Act (NGPA) and section 7 of the Natural Gas Act (NGA). The Commission implements these statues in 18 CFR 284.

Semi-Annual Storage Report for Interstate Pipelines [1]

18 CFR 284.13(e) requires each interstate pipeline to file with the Commission a report of storage activity. The Commission adopted the existing semi-annual storage reporting requirements for interstate pipelines in their current form in 1992 as part of Order No. 636, and there have been only minor modifications in the semi-annual storage reporting requirements since that date.

Natural gas production is relatively constant throughout the year, while many uses of natural gas, residential space heating for example, are seasonal. Natural gas storage plays a critical role in balancing the seasonal demand with relatively constant supply, and the data collected in the semi-annual storage report provides important information about natural gas pipelines' ability to affect the prices shippers can obtain from consumers.

Improved storage technology and the increased use of natural gas in industry and electric generation have helped transform the storage market since 1992. There has been a sharp increase in demand for natural gas outside of the traditional winter months. Withdrawals and injections, instead of occurring on a uniform annual schedule based on heating needs, now occur dynamically year-round in response to market forces.

Transportation by Interstate Pipelines

In 18 CFR 284.102(e) the Commission requires interstate pipelines to obtain proper certification in order to ship natural gas on behalf of intrastate pipelines and local distribution

[1] On September 15, 2011 the Commission issued a Notice of Proposed Rulemaking in docket no. RM11–4 proposing to delete the semi-annual storage report for interstate and intrastate pipelines. OMB has reviewed the proposal and is withholding final approval until the final rule. Because the FERC–549 collection (including the semi-annual storage report for interstate pipelines) has an expiration date of 12/31/2011 the Commission seeking for renewal of the collection expecting that this collection will likely be modified by a final rule at a later date.

companies (LDC). This certification consists of a letter from the intrastate pipeline or LDC authorizing the intrastate pipeline to ship gas on its behalf. In addition, interstate pipelines must obtain from its shippers certifications including sufficient information to verify that their services qualify under this section.

Rates and Charges for Intrastate Pipelines

18 CFR 284.123(b) provides that intrastate gas pipeline companies file for Commission approval of rates for services performed in the interstate transportation of gas. An intrastate gas pipeline company may elect to use rates contained in one of its then effective transportation rate schedules on file with an appropriate state regulatory agency for intrastate service comparable to the interstate service OR file proposed rates and supporting information showing the rates are cost based and are fair and equitable. 150 days after the application is filed the rate is deemed to be fair and equitable unless the Commission either extends the time for action, institutes a proceeding or issues an order providing for rates it deems to be fair and equitable.

18 CFR 284.123(e) requires that within 30 days of commencement of new service any intrastate pipeline engaging in the transportation of gas in interstate commerce must file a statement that includes the interstate rates and a description of how the pipeline will engage in the transportation services, including operating conditions. If an intrastate gas pipeline company changes its operations or rates it must amend the statement on file with the Commission. Such amendment is to be filed not later than 30 days after commencement of the change operations or change in rate election.

Code of Conduct [2]

The Commission's regulations at 18 CFR 284.288 and 284.403 provide that applicable sellers of natural gas adhere to a code of conduct when making gas sales in order to protect the integrity of the market. Related to the code of conduct, the Commission imposes a record retention requirement on applicable sellers to ''retain, for a period of five years, all data and information upon which it billed the prices it charged for natural gas it sold pursuant to its market based sales certificate or the prices it reported for use in price indices.'' FERC uses these records to monitor the jurisdictional transportation activities and unbundled sales activities of interstate natural gas pipelines and blanket marketing certificate holders.

The record retention period of five years is necessary due to the importance of records related to any investigation of possible wrongdoing and related to assuring compliance with the codes of conduct and the integrity of the market. The requirement is necessary to ensure consistency with the rule prohibiting market manipulation (regulations adopted in Order No. 670, implementing the EPAct 2005 anti-manipulation provisions [3]) and the generally applicable five-year statute of limitations where the Commission seeks civil penalties for violations of the anti-manipulation rules or other rules, regulations, or orders to which the price data may be relevant.

Failure to have this information available would mean the Commission is unable to perform its regulatory functions and to monitor and evaluate transactions and operations of interstate pipelines and blanket marketing certificate holders.

Market-Based Rates for Storage

In 2006 the Commission amended its regulations to establish criteria for obtaining market-based rates for storage services offered under 18 CFR 284.501–505. First, the Commission modified its market-power analysis to better reflect the competitive alternatives to storage. Second, pursuant to the Energy Policy Act of 2005, the Commission promulgated rules to implement section 4(f) of the Natural Gas Act, to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates in circumstances where market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and where customers are adequately protected. These revisions are intended to facilitate the development of new natural gas storage capacity while protecting customers.

Action: The Commission is requesting a three-year extension of the FERC–549 reporting requirements, with no changes.

Burden Statement: The estimated annual public reporting burden is shown in the following table:

FERC–549 requirements & 18 CFR cite	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
Semi-Annual Storage Reports for Interstates 284.13(e)	[4] 155	2	[5] 12	3,720
Transportation by Interstate Pipelines 284.102(e)	[6] 75	2	[7] 3	450
Rates and Charges for Intrastate Pipelines 284.123(b), (e)	[8] 67	1	[9] 12	804
Code of Conduct [10] (recordkeeping) 284.288, 403	222	1	1	222
Market-Based Rates [11] 284.501–505	2	1	350	700
Total				5,846

[2] These code of conduct requirements were approved by OMB originally in FERC–916 (OMB Control No. 224, current expiration date is 9/30/2012) because there was another package related to the FERC–549 under review at the time. These requirements are being moved to the FERC–549 in an effort to decrease the administrative effort involved in renewing data collections.

[3] 18 CFR 1c.1 and 1c.2, 71 FR 4,244 (2006).

[4] The number of pipelines in eTariff that are subject to the Natural Gas Act.

[5] This figure is based on the burden hours estimated in Docket No. RM09–2 (quarterly transportation and storage reports).

[6] The number of respondents annually is assumed to be approximately half of the number of interstate pipelines as estimated under the semi-annual storage report category.

[7] This is an estimate for the amount of time it requires to complete a one page document, which is what is essentially required by this part (one page from the shippers and one page from the intrastate or LDC, equaling an estimated 2 times a year).

[8] This figure is based on the number of filings under 18 CFR part 284.123 filings over the past three years.

[9] This figure is based on the assumption that the effort required to make this revision to a tariff is approximately half of the effort required to make a baseline tariff filing (as computed in the Final Rule in Docket No. RM01–5) .

[10] The estimates for this category come from the Commission's most recent renewal pertaining to this requirement.

[11] The estimates for this category are the same as were submitted to OMB when these requirements were last modified (in the Final Rule in Docket No. RM05–23).

The total estimated annual cost burden to respondents is $339,068 (5,846 hours times $58/hour [12]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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.

Dated: October 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27953 Filed 10–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF11–9–000]

Dominion Transmission, Incorporated; Notice of Intent To Prepare an Environmental Assessment for the Planned Allegheny Storage Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Allegheny Storage Project involving construction and operation of facilities by Dominion Transmission, Incorporated (DTI) in Lewis County, West Virginia; Tioga County, Pennsylvania; Frederick County, Maryland; and Monroe County, Ohio. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on November 23, 2011.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings scheduled as follows:

FERC PUBLIC SCOPING MEETINGS

Myersville Compressor Station, 7:00 p.m.—Monday, November 7, 2011, Myersville Volunteer Fire Company, 301 Main Street, Myersville, MD 21773.	*Mullett Compressor Station*, 7:00 p.m.—Tuesday, November 8, 2011, St. John's United Church of Christ, 51736 German Ridge Road, Powhatan Point, OH 43942.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

DTI plans to construct and operate one new compressor station in both Frederick County, Maryland and Monroe County, Ohio. In addition, DTI plans to replace about 3 miles of pipeline in Tioga County, Pennsylvania and install additional hydration at an existing compressor station in Lewis County, West Virginia. According to DTI, the Allegheny Storage Project would provide a total of 125,000 dekatherms per day of both natural gas storage and transportation service to its customers: Baltimore Gas and Electric, TW Philips, and Washington Gas and

[12] The per hour figures were obtained from the Bureau of Labor Statistics National Industry-Specific Occupational and Employment Wage Estimates (*http://www.bls.gov/oes/current/naics4_221200.htm*), and are based on the mean wage statistics for staff in the areas of management, business and financial, legal and administrative. The mean wage was then increased by 20% to account for benefits/overhead.

Electric. The planned project would meet a mid-atlantic need for natural gas.

The planned Allegheny Storage Project would consist of the following facilities:

- A new 16,000-horsepower (hp) Myersville Compressor Station, 0.6-mile suction and discharge pipelines, and upgrades at the existing Tuscarora Meter Station in Frederick County, Maryland;
- A new 3,550-hp Mullett Compressor Station, upgrades at the existing Mullett Meter Station, and installation of 0.5-mile suction and discharge pipelines in Monroe County, Ohio;
- Replacement of 1.7 miles of 10- and 12-inch-diameter pipelines and 1.2 miles of 8- and 12-inch-diameter pipelines with 16- and 20-inch-diameter pipelines, respectively, and the installation of ancillary equipment at the Sabinsville Storage Station in Tioga County, Pennsylvania; and
- Installation of additional hydration at the existing Wolf Run Compressor Station in Lewis County, West Virginia.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb a total of about 58 acres of land. Following construction, about 14.9 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Endangered and threatened species;
- Cultural resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Offices, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before November 23, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF11–9–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://*

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

www.ferc.gov under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may mail a paper copy of your comments to the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once DTI files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the project docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF11–9). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27952 Filed 10–27–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings.

Westin Buckhead Atlanta, 3391 Peachtree Road, NE., Atlanta, GA 30326.

November 2 (1 p.m.–5 p.m.) and 3 (8 a.m.–1 p.m.), 2011.

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–5, North American Electric Reliability Corporation.

Docket No. RC11–1, North American Electric Reliability Corporation.

Docket No. RC11–2, North American Electric Reliability Corporation.

Docket No. RC11–5, North American Electric Reliability Corporation.

Docket No. RC11–6, North American Electric Reliability Corporation.

Docket No. RR08–4, North American Electric Reliability Corporation.

Docket No. RR10–11, North American Electric Reliability Corporation.

Docket No. RR11–1, North American Electric Reliability Corporation.

Docket No. RR11–2, North American Electric Reliability Corporation.

Docket No. RR11–3, North American Electric Reliability Corporation.

Docket No. RR11–4, North American Electric Reliability Corporation.

Docket No. RR11–5, North American Electric Reliability Corporation.

Docket No. RR11–7, North American Electric Reliability Corporation.

Docket No. RD09–11, North American Electric Reliability Corporation.

Docket No. RD10–2, North American Electric Reliability Corporation.

Docket No. RD11–3, North American Electric Reliability Corporation.

Docket No. RD11–5, North American Electric Reliability Corporation.

Docket No. RD11–8, North American Electric Reliability Corporation.

Docket No. RD11–9, North American Electric Reliability Corporation.

Docket No. RD11–10, North American Electric Reliability Corporation.

Docket No. RD11–11, North American Electric Reliability Corporation.

Docket No. NP10–160, North American Electric Reliability Corporation.

Docket No. NP11–238, North American Electric Reliability Corporation.

For further information, please contact Jonathan First, (202) 502–8529, or *jonathan.first@ferc.gov.*

Dated: October 24, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–27954 Filed 10–27–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9484–2]

Children's Health Protection Advisory Committee (CHPAC); Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Children's Health Protection Advisory Committee (CHPAC) is a necessary committee which is in the public interest. Accordingly, CHPAC will be renewed for an additional two-year period. The purpose of CHPAC is to provide advice and recommendations to the Administrator of EPA on issues associated with development of regulations, guidance and policies to address children's health risks.

Inquiries may be directed to Martha Berger, Designated Federal Officer, CHPAC, U.S. EPA, OCHP MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. *berger.martha@epa.gov,* Telephone (202) 564–2191.

Dated: October 7, 2011.

Peter Grevatt,

Director, Office of Children's Health Protection.

[FR Doc. 2011–27965 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–7)

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 10/17/2011 Through 10/21/2011.

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.ht*ml.

EIS No. 20110357, Draft EIS, BLM, NV, Phoenix Copper Leach Project, Proposed Construction and Operation of a New Copper Benfication Facility, Lander County, NV, Comment Period Ends: 12/12/2011, Contact: Dave Davis (775) 635–4000.

EIS No. 20110358, Draft EIS, USFS, ID, Mill Creek—Council Mountain Landscape Restoration Project, Proposed Landscape Restoration Treatment Activities on 51,975 Acres, Council Ranger District, Payette National Forest, Adams County, ID, Comment Period Ends: 12/12/2011, Contact: Steve Penny (208) 253–0164.

EIS No. 20110359, Final EIS, BLM, AZ, Northern Arizona Proposed Withdrawal Project, Proposed 20–Year Withdrawal of Approximately 1 Million Acres of Federal Mineral Estate, Coconino and Mohave Counties, AZ, Review Period Ends: 11/28/2011, Contact: Scott Florence (435) 688–3200.

EIS No. 20110360, Draft EIS, USFS, AK, Tonka Timber Sale Project, Proposed Timber Harvesting, Petersburg Ranger District, Tongass National Forest, Petersburg, AK, Comment Period Ends: 12/12/2011, Contact: Carey Case (907) 772–3871.

EIS No. 20110361, Draft EIS, BLM, 00, Programmatic—Solar Energy Development in Six Southwestern States, To Identifying and Prioritizing Specific Location Best Suited for Utility-Scale Solar Energy Development on Public Land, AZ, CA, NV, CO, UT and NM, Comment Period Ends: 01/27/2012, Contact: Shannon Stewart (202) 912–7219.

EIS No. 20110362, Final EIS, NOAA, 00, Generic—Annual Catch Limits/Accountability Measures Amendment for the Gulf of Mexico Fishery Management Council's Red Drum, Reef Fish, Shrimp, Coral and Coral Reefs, Fishery Management Plans, Implementing the National Standard 1 Guidelines, Review Period Ends: 11/28/2011, Contact: Roy E. Crabtree (727) 824–5305.

EIS No. 20110363, Final EIS, NOAA, 00, Amendment 2 to the Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands, Implementation of Annual Catch Limits (ACLs) and Accountability Measures (AMs) for Reef Fish and Queen Conch in the U.S. Caribbean, Review Period Ends: 11/28/2011, Contact: Roy E. Crabtree (727) 824–5308.

EIS No. 20110364, Draft EIS, NRC, MI, Enrico Fermi Unit 3 Combined License (COL) Application, Construction and Operation of a Power Reactor, U.S. Corp of Engineer 10 and 404 Permits, NUREG–2105, Monroe County, MI, Comment Period Ends: 01/10/2012, Contact: Bruce Olson (301) 415–3731.

EIS No. 20110365, Final EIS, FHWA, UT, Provo Westside Connector Project, Improvements to Interstate 15/University Avenue/1860 South Interchange to 3110 West Street in Provo, UT, Review Period Ends: 11/28/2011, Contact: Edward Woolford (801) 955–3500.

EIS No. 20110366, Final EIS, USFS, 00, Nationwide Aerial Application of Fire Retardant Project, Proposing to Continue the Aerial Application of Fire on National Forest System Lands, Implementation, Review Period Ends: 11/28/2011, Contact: Glen Stein (202) 205–1588.

Amended Notices

EIS No. 20110355, Final EIS, FHWA, CA, Northwest Corridor Improvements, I–75/I–575 Construction, New Alternative, USACE Section 404 Permit, NPDES Permit, Cobb and Cherokee Counties, GA, Review Period Ends: 11/21/2011, Contact: Rodney N. Barry (404) 562–3630.

Revision to FR Notice Published 10/21/2011: Correction to the State from CA to GA.

Dated: October 25,2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–27934 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–1059; FRL–9484–6]

Guidance for 1-Hour SO_2 SIP Submissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Comment Period.

SUMMARY: The EPA is announcing an extension of the public comment period for its draft non-binding guidance titled, ''Guidance for 1-Hour SO_2 SIP Submissions.'' The draft of the guidance document is currently on the EPA's Web site. The EPA is extending the comment period for an additional 30-day period and invites public comments on this guidance during this period. The EPA plans to issue an updated version of the

guidance after reviewing timely submitted comments.

DATES: Comments must be received on or before December 2, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–1059, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Attention Docket ID No. EPA–HQ–OAR–2010–1059.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2010–1059.
- *Mail:* Air Docket, Attention Docket ID No. EPA–HQ–OAR–2010–1059, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket Center'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–OAR–2010–1059. The 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 *regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA is unable to read your comment and contact you for clarification due to technical difficulties, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, please contact Larry D. Wallace, Ph.D., U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504–03, Research Triangle Park, NC 27711, telephone (919) 541–0906, email at *wallace.larry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *http://www.regulations.gov* or email. 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 the 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. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–1059.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

II. Background

The purpose of this notice is to extend the public comment period on the EPA's recently posted draft non-binding guidance titled, ''Guidance for 1-Hour SO_2 SIP Submissions.'' The comment period notice published in the **Federal Register** on October 3, 2011 at 76 FR 61098. The original comment period is scheduled to expire on November 2, 2011. By this notice, the EPA is extending the comment period for an additional 30 days resulting in the comment period ending on December 2, 2011. The EPA is extending the comment period due to public requests that have been made stating that additional time is required in order to fully evaluate the guidance and provide substantive comment.

While the EPA is providing additional time for the public to submit comments on the draft guidance, we are also taking into consideration that there is a need to finalize the guidance as quickly as possible so that states, tribes, and air agencies have the necessary information to begin work on their State Implementation Plans submittals to address 1-hour SO_2 NAAQS. We are therefore working to assure that the delays that result from this extension of the comment period on the draft guidance are kept to a minimum. In

addition, as stated in the draft guidance, the EPA is also currently drafting a proposed rulemaking on specific elements of the draft guidance concerning the elements necessary for the section 110(a)(1) maintenance plan submittal. Since these two documents are linked in terms of issues involved, the EPA will be taking into consideration the comments that will be received on the draft guidance in making decisions concerning each document.

The draft of the guidance document is available online at *http://www.epa.gov/airquality/sulfurdioxide/implement.html* or within the associated docket, EPA–HQ–OAR–2010–1059.

Dated: October 25, 2011.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011–27964 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9484–1]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held November 16 and 17 at 2660 Woodley Road NW., Washington, DC 20008. The CHPAC advises the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet from 9 a.m. to 5:30 p.m. on November 16 and from 8:30 a.m. to Noon on November 17, 2011.

ADDRESSES: 2660 Woodley Road NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564–2191, *berger.martha@epa.gov*.

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. Preliminary agenda includes finalization of two letters of advice to the Administrator, update on school guidance documents, presentation and discussion on the use of electronic medical records for asthma screening, presentation and discussion on the IOM Sustainability Report and a panel on natural gas extraction. The final agenda will be posted at *http://www.epa.gov/children*.

Access: For information on access or services for individuals with disabilities, please contact Martha Berger at (202) 564–2191 or *berger.martha@epa.gov*.

Dated: October 7, 2011.

Martha Berger,

Designated Federal Official.

[FR Doc. 2011–27984 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9484–7]

New York State Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: Notice is hereby given that, pursuant to Clean Water Act Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State of New York has determined that the protection and enhancement of the quality of Jamaica Bay (the Bay) in the New York City metropolitan area requires greater environmental protection, and has petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

The New York State Department of Conservation (NYSDEC) on behalf of the New York City Department of Environmental Protection (NYCDEP) has proposed to establish a Vessel Waste No Discharge Zone (NDZ) for the Bay that covers an area of approximately 20,000 acres (17,177 acres of open water and 2,695 acres of upland islands and salt marshes). It is bounded on the west and northwest by Brooklyn, and on the north and northeast by Queens. The northeastern and southeastern corners of the Bay are bordered by Nassau County. The northern shore of the Rockaway Peninsula, a part of Queens, forms the southern boundary. The Bay is connected to the Atlantic Ocean through the Rockaway Inlet and has a tidal range of approximately 5 to 6 feet. The NYSDEC certified the need for greater protection of the water quality. EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Bay.

EPA published a tentative affirmative determination on August 3, 2011 in the **Federal Register**. Public comments were solicited for 30 days and the comment period ended on September 2, 2011. EPA received a total of twenty (25) comments via letter and email. The comment tally was twenty-three (23) in favor of, and two (2) questioning or opposing, the No Discharge Zone designation. All the relevant comments received have been considered in the final affirmative determination. This **Federal Register** document will address all comments submitted in response to the August 3, 2011 (Volume 76 Issue 149) **Federal Register** document.

Response to Comments

1. *Comment:* Twenty-three commenters including boaters, paddlers, kayakers, non-governmental organizations, and community advocates expressed strong support for EPA's action to establish a vessel waste no discharge zone for the Bay. Some commenters pointed out that this action will reduce pathogens and chemicals, improve water quality and further protect and restore the Bay.

EPA Response: EPA is in full agreement that designating the Bay is an important step to further protect this valuable natural resource, water quality, wetlands and habitats throughout the entire the Bay area.

2. *Comment:* One commenter stated that discharges from several small tugs with the required Marine Sanitation Devices (MSDs) are a relatively small source of pollution compared to the pollution caused by 1,200 to 1,500 of recreational vessels that utilized the Bay.

EPA Response: These comments go beyond the scope of EPA's authority in this action. Because EPA's authority here is limited to determining whether adequate pumpout facilities exist, it cannot base its determination on whether commercial vessel sewage is comparable in quantity or impact to other sources of pollution, or whether banning such discharges is otherwise unfair to commercial boaters. However, it is noted that the sewage discharged from MSDs is treated with chlorine, quaternary ammonia and formaldehyde, which can all pose threats to the marine environment, especially if present in

substantial, concentrated amounts. EPA agrees with the NYSDEC, which certifies that the protection and enhancement of the waters of the Bay require greater environmental protection than the applicable federal regulations. Moreover, as noted above, the prohibition of sewage discharges pursuant to Clean Water Act Section 312(f)(3) applies to all vessels.

3. *Comment:* One commenter stated that the pumpout facilities that serve recreational vessels may not be reasonably available to commercial towboats and barges that service two oil terminals and two sand and gravel handling facilities located near Inwood at the head of the Bay, because some of those commercial vessels are too large to dock where the recreational vessel pumpout facilities are located. The commenter also stated that the type II flow-through MSD systems installed on the majority of their tugs have no storage capacity to retain effluent onboard.

EPA Response: EPA and NYCDEP gathered additional information about the location and accessibility of pumpout trucks in relation to commercial vessels that service the oil terminal and sand and gravel facilities. Pumpout trucks are readily available for hire and are able to reach commercial vessels on commercial docks at the head of the Bay. Therefore, commercial vessel operators can make arrangements to hire pumpout trucks and have their vessels pumped out at the accessible commercial docks. Alternatively, the tugs and barges could discharge sewage while at their home port(s). In order to achieve the storage capacity needed to hold sewage on board, a Type II MSD can be converted to a Type III MSD, commonly called a holding tank, which can be equipped with the valve, usually called a Y-valve, needed to discharge to a pumpout truck.

FOR FURTHER INFORMATION CONTACT: Moses Chang (212) 637–3867, *email address: chang.moses@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, (EPA) pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the open waters and tributaries of the Bay, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters. Adequate pumpout facilities are defined as one pumpout station for 300–600 boats under the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

The Bay is the largest estuarine water body in the New York City metropolitan area and one of the largest coastal wetland ecosystems in New York State. The open waters and tributaries within the Bay provide important natural and recreational resources for boating and recreational activities that contribute significantly to the local and regional economy. In 2005, the Jamaica Bay Watershed Protection Plan (JBWPP) was put into motion by the City Council of New York City under Local Law 71 (LL 71). The objective of LL 71 is to ensure a holistic watershed approach toward restoring and maintaining the water quality and ecological integrity of the Bay. The JBWPP recommends management actions for protecting and improving the health of the Bay, e.g., adoption of appropriate regulations to mitigate the impacts of boat vessel waste discharges.

The Bay is a component of the National Park Service's (NPS) Gateway National Recreation Area (GNRA). A significant portion of the Bay, approximately 9,100 acres, has also been designated by the NPS as the Jamaica Bay Wildlife Refuge and is designated by the New York State Department of State (NYSDOS) as a Significant Coastal Fish and Wildlife Habitat. The diversity of bird species and breeding habitats within the Bay were important factors in these designations. The Jamaica Bay Wildlife Refuge was also the first site to be designated by the National Audubon Society as an ''Important Bird Area.'' It is clear that the Bay is currently functioning as a regional habitat for many different species of wildlife. In combination with other water quality improvement initiatives, the NDZ designation will further enhance the recreational and ecological benefits of the Bay, potentially attracting more visitors to the Bay.

In order for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of the Bay, the State must demonstrate that the pumpout-to-vessel ratio does not exceed 1:600.

In its petition, the State described the recreational vessels that use the Bay, and the pumpout facilities that are available for their use. Based on a review of NYS Department of Motor Vehicle boat registrations, site visits to marinas and reviewing high resolution orthoimagery of the Bay, NYCDEP has determined that there are approximately 1,200 to 1,500 boats that utilize the Bay throughout the boating season. This number may include a significant number of transient vessels and not only boats that are permanently moored in the Bay.

The Bay is primarily used for recreational boating with very little commercial traffic. The few commercial vessels that do enter the Bay are primarily sightseeing and fishing vessels which, pursuant to New York City regulations, must use private boat pumpout services to unload sewage within the Bay. Therefore, the boat pumpouts provided by NYCDEP within the Bay are utilized for recreational vessels only.

There are four vessel pumpout facilities available in the Bay. Three of those are land-based pumpout facilities operated by NYCDEP, and the fourth is a 24-foot sewage pumpout vessel operated by New York/New Jersey Baykeeper, that serves vessels docked or anchored throughout the Bay. All four facilities provide the pumpout services free of charge. Given that approximately 1,500 recreational vessels use the Bay, the pumpout-to-vessel ratio for those vessels is 1:375 (i.e., 4 facilities for 1,500 boats). Therefore, the pumpout facilities in the Bay satisfy the Clean Vessel Act criterion of 1 pumpout per 300–600 vessels.

A list of the facilities, phone numbers, locations, hours of operation, water depth and fee is provided as follows:

LIST OF PUMPOUTS IN THE BAY NDZ PROPOSED AREA AVAILABLE FOR RECREATIONAL VESSELS

Number	Name	Location	Contact information	Dates/days/hours of operation	Water depth (feet)	Cost
1	Hudson River Yacht Club	Paerdegat Basin	718–251–9791; Channel 71.	May 1–Oct 31; daily, 10 a.m.–5 p.m.	10–14	Free.

LIST OF PUMPOUTS IN THE BAY NDZ PROPOSED AREA AVAILABLE FOR RECREATIONAL VESSELS—Continued

Number	Name	Location	Contact information	Dates/days/hours of operation	Water depth (feet)	Cost
2	Coney Island WWTP	Shellbank Creek	718–743–0990; Channel 13.	May 1–Oct 31; 24 hrs	8–10	Free.
3	Rockaway WWTP	Jamaica Bay	718–474–3663; Channel 68.	May 1–Oct 31; 24 hrs	10–14	Free.
4	NY/NJ Baykeeper's 24 foot sewage-pumpout vessel.	Jamaica Bay	732–337–9262; Channel 9.	Memorial Day to Labor Day; Sunrise to sunset.	N/A	Free.

Based on the above, EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the open waters and tributaries of the Bay of the New York City metropolitan area.

Dated: September 30, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–27990 Filed 10–27–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–2901–PN]

Medicare and Medicaid Programs; The American Association for Accreditation of Ambulatory Surgery Facilities for Approval of Deeming Authority for Rural Health Clinics

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice with comment period acknowledges the receipt of a deeming application from the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) for recognition as a national accrediting organization for rural health clinics (RHCs) that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 28, 2011.

ADDRESSES: In commenting, please refer to file code CMS–2901–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (Fax) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on this notice to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

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–2901–PN, 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–2901–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments *only* to the following addresses prior to the close of the comment period:

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, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: L. Tyler Whitaker, (410) 786–5236. Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–(800) 743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from an rural health clinic (RHC) provided certain requirements are met. Sections 1861(aa) of the Social Security Act (the Act) establish distinct criteria for facilities seeking designation as RHCs. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification

of facilities are at 42 CFR part 488. The regulations at 42 CFR part 491, subpart A, specify the conditions that an RHC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for RHCs.

Generally, in order to enter into a provider agreement with the Medicare program, an RHC must first be certified by a State survey agency as complying with the conditions or requirements set forth in part 42 CFR part 491, subpart A, of our regulations. Thereafter, the RHC is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we would deem those provider entities as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national accrediting organization applying for deeming authority under part 488, subpart A must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. The regulations at § 488.8(d)(3) require accrediting organizations to reapply for continued deeming authority every 6 years or as we determine.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's: requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish a notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF's) request for deeming authority for RHCs. This notice also solicits public comment on whether AAAASF's requirements meet or exceed the Medicare conditions for coverage for RHCs.

III. Evaluation of Deeming Authority Request

AAAASF submitted all the necessary materials to enable us to make a determination concerning its request for approval as a deeming organization for RHCs. This application was determined to be complete on August 29, 2011. Under Section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of the AAAASF would be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of AAAASF's standards for RHCs as compared with CMS' RHC conditions for coverage.
- AAAASF's survey process to determine the following:

—The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

—The comparability of the AAAASF's processes to those of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

—The processes and procedures AAAASF uses for monitoring RHCs found out of compliance with AAAASF's program requirements. These monitoring procedures are used only when AAAASF identifies noncompliance. If noncompliance is identified through validation reviews, the State survey agency monitors corrections as specified at § 488.7(d).

—The capacity AAAASF uses to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—The capacity AAAASF uses to provide us with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

—The adequacy of AAAASF's staff and other resources, and its financial viability.

—The capacity AAAASF uses to adequately fund required surveys.

—The policies AAAASF uses with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

—The agreement AAAASF uses to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Public Comments and Notice Upon Completion of Evaluation

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments received by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a final notice in the **Federal Register** announcing the result of our evaluation.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 13, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–27962 Filed 10–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1585–N]

Medicare Program: Notice of Two Membership Appointments to the Advisory Panel on Ambulatory Payment Classification Groups

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces two new membership appointments to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). The two appointments are for 4-year periods through January 31, 2016. The purpose of the Panel is to review the APC groups and their associated weights, and to advise the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (the Administrator) concerning the clinical integrity of the APC groups and their weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital outpatient prospective payment system (OPPS).

FOR FURTHER INFORMATION CONTACT: Paula Smith, the Designated Federal Officer. CMS, Center for Medicare Mail Stop C4–05–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, Phone (410) 786–4709.

Web site: For additional information on the APC meeting dates, agenda topics, copy of the charter, as well as updates to the Panel's activities, search the CMS Web site at: *https://www.cms.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage.* (**Note:** There is an UNDERSCORE after FACA/05_; there is no space.)

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotlines are 1–(877) 449–5659 (toll free) and (410) 786–9379 (local).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) (42 U.S.C. 1395l(t)(9)(A)) to consult with an expert outside advisory panel on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights. The Advisory Panel on APC Groups (the Panel) meets up to three times annually. We will consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS) for the next calendar year.

The Panel shall consist of up to 15 representatives of Medicare providers that are subject to the OPPS, plus a Chair. The Secretary or a designee selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations. The Panel presently consists of the following members and a Chair: (The asterisk [*] indicates a Panel member whose term expires on September 30, 2011.)

- Edith Hambrick, M.D., J.D., Chair, CMS Medical Officer.
- Ruth L. Bush, M.D., M.P.H.
- Kari S. Cornicelli, C.P.A., FHFMA.
- Dawn L. Francis, M.D., M.H.S.
- Kathleen Graham, R.N., M.S.H.A.
- Patrick A. Grusenmeyer, Sc.D., FACHE.*
- David A. Halsey, M.D.
- Brian D. Kavanagh, M.D., MPH.
- Judith T. Kelly, R.H.I.T., R.H.I.A., C.C.S.
- Scott Manaker, M.D., Ph.D.
- John Marshall, CRA, RCC, CIRCC, RT(R), FAHRA.
- Agatha Nolan, D.Ph., M.S., FASHP.*
- Randall A. Oyer, M.D.
- Daniel J. Pothen, M.S., RHIA, CHPS.
- Gregory Przybylski, M.D.
- Neville B. Sarkari, M.D., FACP.

II. Provisions of This Notice

On March 25, 2011, a notice appeared in the **Federal Register** (76 FR 16788), entitled ''Medicare Program; Solicitation of Two Nominations to the Advisory Panel on Ambulatory Payment Classification Groups'' requesting nominations to the Panel replacing Panel members whose terms would expire on September 30, 2011. As a result of that **Federal Register** notice, we are announcing two new members to the Panel. Both appointments are for 4-year terms commencing on February 1, 2012.

New Appointments/Reappointments to the Panel—The following are the two new Panel members:

- *Marianna V. Spanaki-Varelas, M.D., Ph.D., M.B.A.*
- *Jacqueline Phillips.*

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 15, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–27963 Filed 10–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5502–N3]

Medicare Program; Accountable Care Organization Accelerated Development Learning Sessions; Center for Medicare and Medicaid Innovation

November 17 and 18, 2011.

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date and location of the third and last in a series of public educational sessions hosted by the Centers for Medicare & Medicaid Services (CMS). This two-day training session is the third and final Accelerated Development Learning Session (ADLS) hosted by CMS to help Accountable Care Organizations (ACOs) deliver better care and reduce costs. We invite all new or existing ACO entities to register a team of senior executives to attend the in-person ADLS. The ADLS will provide executives with the opportunity to learn about core functions of an ACO and ways to build their organization's capacity to succeed as an ACO.

DATES: *Meeting Date:* Thursday, November 17, 2011, 8 a.m. to 5:45 p.m., eastern standard time (E.S.T.) Friday, November 18, 2011, 8 a.m. to 4 p.m. (E.S.T.)

Deadline for Meeting Registration: Registration for the second ADLS will remain open until capacity has been reached for the November 17 through 18 in-person meeting. Space is limited and participants are encouraged to register as soon as possible.

ADDRESSES:

Meeting Location: The third and final ADLS will be held at the Centers for

Medicare & Medicaid Services (CMS) at 7500 Security Boulevard, Baltimore, MD. Participants are responsible for their own travel, parking, meals, and overnight stay expenses. More information about the venue and accommodations can be found at *https://acoregister.rti.org/.* Potential participants are also strongly encouraged to complete the comprehensive planning tool discussed in section II. of this notice before arriving to the meeting.

Meeting Registration, Presentations, and Written Comments: Registration information and documents can be accessed online at *https://acoregister.rti.org/.*

Registration: Eligible organizations interested in registering for the ADLS should visit *https://acoregister.rti.org/* for information about registration.

FOR FURTHER INFORMATION CONTACT: Additional information is available on the registration Web site at *https://acoregister.rti.org/.* Click on ''contact us'' to send questions or comments via email. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1115A of the Social Security Act (the Act), as added by section 3021 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively, the Affordable Care Act), established the Center for Medicare and Medicaid Innovation (Innovation Center) for the purpose of examining new ways of delivering health care and paying health care providers in ways that can save money for Medicare, Medicaid and CHIP while improving the quality of care for beneficiaries. Through Accelerated Development Learning Sessions (ADLS), the Innovation Center will test whether intensive shared learning activities will expand and improve the capabilities of provider organizations to coordinate the care of a population of Medicare beneficiaries more effectively than organizations that do not participate in the ADLS. Well coordinated care can improve beneficiaries' quality outcomes and reduce the growth of Medicare expenditures.

Completion of the ADLS will not be a factor for selection or participation in a CMS ACO program. It is intended to provide ACOs with the opportunity to learn from their peers about essential ACO functions and various ways to build capacity needed to achieve better care for individuals, better population health, and lower growth in health care expenditures.

The ADLSs were first announced in the May 19, 2011 **Federal Register** (76 FR 28988). This third and final ADLS will combine the third and fourth sessions called for in the original notice. By holding the meeting at the CMS complex in Baltimore, Maryland, CMS hopes to enhance the dialogue between healthcare providers working to form ACOs and CMS staff developing ACO programs.

Each participating team should consist of two to four senior-level leaders (including at least one executive with financial/management responsibility and one with clinical responsibility). Participants are also asked to attend future web based seminars and complete a full ACO implementation plan as part of the broader ADLS initiative to facilitate on-going learning and evaluation.

II. Completion of Planning Tool and Session Registration Information

Registrants need to complete the registration form in order to participate in an ACO ADLS. Potential participants are also strongly encouraged to complete a comprehensive planning tool, which will allow them to take full advantage of the hands-on learning activities during the ADLS. The registration form and comprehensive planning tool are available on the ADLS Web site at *https://acoregister.rti.org.*

Authority: Section 1115A of the Social Security Act.

Dated: *October 20, 2011.*

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–27958 Filed 10–27–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Cancer Institute (NCI) Announces the Initiation of a Public Private Industry Partnership on Translation of Nanotechnology in Cancer (TONIC) To Promote Translational Research and Development Opportunities of Nanotechnology-Based Cancer Solutions

AGENCY: National Cancer Institute (NCI), Office of Cancer Nanotechnology Research (OCNR), National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Alliance for Nanotechnology in Cancer of the National Cancer Institute (NCI) is initiating a public private industry partnership called TONIC (Translation Of Nanotechnology In Cancer) to promote translational research and development opportunities of nanotechnology-based cancer solutions. An immediate consequence of this effort will be the formation of a consortium involving government and pharmaceutical, and biotechnology companies. This consortium will evaluate promising nanotechnology platforms and facilitate their successful translation from academic research to clinical environment, resulting in safe, timely, effective and novel diagnosis and treatment options for cancer patients.

The purpose of this notice is to inform the community about the Alliance for Nanotechnology in Cancer of NCI's intention to form the consortium and to invite eligible companies (as defined in last paragraph) to participate.

DATES: Interested parties should contact Ms. Sonia Calcagno (*calcagnosl@mail.nih.gov*) and inform her of their intention to participate. This notice will remain open to accept the inquiries and letters of intent.

FOR FURTHER INFORMATION CONTACT: Ms. Sonia Calcagno (*calcagnosl@mail.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background: The National Cancer Institute established the Alliance for Nanotechnology in Cancer (ANC) program in September 2004 to facilitate the discovery and development of innovative nanotechnologies for applications in cancer prevention, diagnosis, and treatment and to address different stages of the developmental pipeline ranging from discovery, applied research through translation. The program has been providing funding to academic groups to support large multi-disciplinary projects—Centers for Cancer Nanotechnology Excellence (CCNEs) along with smaller Cancer Nanotechnology Platform Partnerships (CNPPs) and training programs. NCI also formed an intramural laboratory, the Nanotechnology Characterization Laboratory (NCL), to serve as a centralized facility to characterize nanomaterials.

A proposed TONIC consortium will operate in parallel with the Alliance program and will bring together individuals from sufficiently capitalized pharmaceutical, biotechnology and

other healthcare-related companies and start-ups, which either have ongoing internal efforts within their organization or have strategic interest in evaluating the nanotechnology platforms for oncology care solutions, through participating in a academic-private partnership aimed at promoting translational opportunities.

Consortium Goals: Specifically, the TONIC consortium will undertake the key tasks of:

1. Creating a *Discussion Forum* for opportunities in the nanotechnology platform drug delivery, monitoring and imaging specifically in cancer, but may extend it to other therapeutic indications if an opportunity arises;

2. Developing a *Roadmap* for the development of nanotechnology-based cancer products;

3. Developing a robust translational model to move promising opportunities based on nanotechnology from academic research to the clinical environment;

4. Evaluating the most promising technology candidates within existing R&D developments and generating *Case Studies* based on them;

5. Recognizing and promoting translational efforts at every stage of development through appropriate partnerships among industry, academia, government, and philanthropy.

Consortium Membership: Membership to the TONIC consortium will be limited to companies which (1) Have a successful track record of translating diagnostics and drug formulations and reaching their regulatory approval and, (2) are engaged in the development of nanotechnology-based formulations with application to imaging, diagnostics and therapy.

In addition, these companies should have (1) A corporate structure with centralized operations and, (2) the capability and resources to move along the translational efforts effectively and to provide feedback to the academic researchers on industry technological needs.

Consortia members will be expected to attend regular meetings and participate in the project evaluation funded through TONIC consortium.

The following information must be provided by parties interested in participating in the consortium:

(1) The company profile;

(2) The name and specific function of the company representative for the TONIC consortium; and

(3) A brief rationale and/or statement of intent for participating in the consortium.

Dated: October 21, 2011.

Piotr Grodzinski,

Director, Office of Cancer Nanotechnology Research, Center for Strategic and Scientific Initiatives, National Cancer Institute.

[FR Doc. 2011–27939 Filed 10–27–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0072]

Privacy Act of 1974; Department of Homeland Security U.S. Coast Guard DHS/USCG—014 Military Pay and Personnel System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records titled, ''Department of Homeland Security U.S. Coast Guard—014 Military Pay and Personnel System of Records.'' This system of records allows the Department of Homeland Security U.S. Coast Guard to collect and maintain records regarding pay and personnel. As a result of a biennial review of this system, records have been updated in the categories of individuals, categories of records, purpose, and routine uses. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 28, 2011. This new system will be effective November 28, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0072 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1 (703) 483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Marilyn Scott-Perez ((202) 475–3515), Privacy Officer, U.S. Coast Guard, 2100 2nd Street SW., Mail Stop 7101, Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan ((703) 235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Coast Guard (USCG) proposes to update and reissue an existing DHS/USCG system of records titled, ''DHS/USCG–014 Military Pay and Personnel System of Records'' 73 FR 77743, December 19, 2008. This system of records notice allows the USCG to collect and maintain records regarding pay and personnel. As a result of the biennial review of this system, categories of individuals covered by the system have been updated to include active and reserve service applicants and prospective applicants, civilian personnel, USCG Auxiliary members, USCG exchange employees, and contractor personnel. Records in the categories of records in the system have been updated to include other Health Insurance Portability and Accountability Act (HIPAA) related/protected data, background investigation and security clearance information, government credit card status, data related to information technology (IT) training, and information technology system accounts, roles, and permissions. The purpose category has been updated to include active and reserve service applicants and prospective applicants, and separated military personnel, USCG civilian personnel, USCG Auxiliary members, USCG exchange employees, and USCG contractor personnel in addition to the continuity of operations (COOP)/personnel accountability function. Lastly, routine uses of records maintained in the system, including categories of users and the purposes of such uses have been updated to include relevant insurance companies for the purpose of health and life insurance requests and eligibility and to the Department of Defense (DoD) for the purpose of preparing for and during actual emergencies, exercises or continuity of operations tests for the purpose of responding to emergency situations or to allow emergency service personnel to locate the individual(s).

Consistent with DHS's information sharing mission, information stored in the DHS/USCG–014 Military Pay and Personnel System may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is stored and retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–014 Military Pay and Personnel System of Records.

III. Health Insurance Portability and Accountability Act

This system of records contains individually identifiable health information. The HIPAA of 1996 applies to most of such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/USCG–014

SYSTEM NAME:

DHS/USCG–014 Military Pay and Personnel System

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at USCG Headquarters in Washington, DC and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include active and reserve service applicants and prospective applicants, civilian personnel, active duty, reserve, retired active duty and retired reserve USCG military personnel and their annuitants and dependents, separated military personnel, USCG auxiliary members, USCG exchange workers, and contractor personnel. Also included are active duty and retired National Oceanic and Atmospheric Administration (NOAA) Officers and their annuitants and dependents, as well as Officers of the Commissioned Corps of the U.S. Public Health Service (PHS) and their annuitants and dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social security number;
- Employee identification number;
- Date and place of birth;
- Gender;
- Minority designation and nationality;
- Marital status;
- Limited medical related information to include dates of physical examinations, color blindness, immunizations, weight and body mass index (and compliance to standards);
- Other HIPAA related/protected data;
- Addresses;
- Total current monetary earnings, including overtime, computed to the nearest dollar;
- Number of hours worked;
- Leave accrual rate;
- Leave requests and balances;
- Health and life insurance requests and eligibility;
- Payroll deduction requests;
- Information for the purpose of validating legal requirements for garnishment of wages;
- Salary rate;
- Cash awards;
- Retirement withholdings;
- Background information to include work experience;
- Education records, including: highest level achieved; specialized education or training obtained in and outside of military service; non-traditional education support records; achievement and aptitude test results; academic performance records; correspondence course rate advancement records; military performance records; admissions processing records; grade reporting records; academic status records; and transcript maintenance records;
- Military duty assignments;
- Ranks held;
- Allowances;
- Personnel actions such as promotions, demotions, or separations;
- Record of instances of Uniform Code of Military Justice infractions;
- Performance evaluations;
- Background investigation, and security clearance information;
- Government credit card status;
- Individual's desires for future assignments, training requested, and notations by assignment officers;
- Information for determinations of waivers and remissions of indebtedness to the U.S. government;
- Travel claims, transportation claims, government bills of lading, and applications for shipment of household effects;
- USCG housing records, including: housing surveys, computer data summaries, and correspondence from the individual seeking housing;
- Information regarding IT training, IT system accounts, roles, permissions; and
- Names, dates of birth, addresses, social security numbers, and gender of annuitants and dependents of active duty, reserve, and retired active duty and reserve military members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; 5 U.S.C. 5501–5597; 10 U.S.C. 1043, 1147; 14 U.S.C. 92(I) 92(r), 93(g), 475, 512, 620, 632, 645, 681, 687; 37 U.S.C. 406; 42 U.S.C. 213, 253; 49 CFR 1.45, 1.46.

PURPOSE(S):

The purpose of this system is to administer the USCG active duty, reserve, and retired active duty and retired reserve military pay and personnel system. To accomplish personnel accountability for USCG affiliated personnel in a natural or man-made disaster or when directed by the USCG Commandant. The USCG may also collect information about Service members and their dependents and civilian employees and their dependents as well as all personnel

assigned to USCG for regular performance of duties including Officers of the Commissioned Corps of the U.S. PHS and personnel in exchange or reimbursable positions (per COOP requirements for personnel accountability), and for needs assessment as a result of the natural or man-made disaster.

The USCG may also use this accountability data for accountability and assessment reporting exercises. The system is also used to administer USCG civilian personnel formal USCG training course management, security clearance data, competency, and accomplishment data as well as tracking IT training, IT system accounts, roles, and permissions for military, civilian, and contractor personnel. Additionally, the system is used to provide necessary information to the Department of Commerce (DOC) for NOAA Officers and to Department of Health and Human Services (HHS) for Officers of the Commissioned Corps of the U.S. PHS to administer their respective pay and personnel system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: This system of records contains individually identifiable health information. The HIPAA of 1996, applies to most of such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such health information.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. the U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the Department of Treasury (DOT) for the purpose of disbursement of salary, U.S. Savings Bonds, allotments, or travel claim payments.

I. To appropriate insurance agencies/companies for the purpose of health and life insurance requests and eligibility.

J. To the DOC and HHS to administer their respective pay and personnel systems for NOAA Officers and Officers of the Commissioned Corps of the PHS, respectively.

K. To Federal, State, and local government agencies to disclose earnings and tax information, including the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

L. To DoD and Veterans Administration (VA) for determinations of benefit eligibility for military members and their dependents.

M. To DoD for manpower and readiness planning.

N. To the Comptroller General for the purpose of processing waivers and remissions.

O. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill, or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive.

P. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service.

Q. To other government agencies for the purpose of earnings garnishment.

R. To DoD for the purpose of preparing the Register of Officers and Register of Reserve Officers, which is provided to all USCG officers.

S. To education institutions or training facilities for purposes of enrollment and verification of employee attendance and performance.

T. To DoD for the purpose of preparing for and during actual emergencies, exercises or COOP tests for the purpose of responding to emergency situations or to allow emergency service.

U. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is

necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, CD–ROM, and DVD.

RETRIEVABILITY:

Records may be retrieved by name, social security number, or employee identification number.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies as well as those of the USCG. A defense in depth strategy has been employed. Overlapping and complimentary management, operational and technical security controls have been implemented and followed to minimize the risk of compromising the confidentiality or adversely impacting the integrity of the information that is being stored, processed, and/or transmitted. Access to the computer system(s) containing the records in this system is limited to those individuals who have a verified need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule (GRS) 9, Item 1c and 3, travel and transportation of household effects records are temporary and are destroyed seven years after the period covered by account.

In accordance with NC1–26–76–2, item 359 and NC1–26–80–4, item 151, PHS Commissioned Officer Corps staffing and recruiting records are temporary and are transferred to the PHS Commission Personnel Operation Division upon completion of the USCG assignment.

In accordance with NC1–26–76–2, items 559 and 561 and NC1–26–80–4, item 338b, military training and education records are temporary, including training courses and related material, school and training files containing correspondence, reports and related paper on USCG and Navy schools and trainee index cards. These records are destroyed when five years old. In accordance with GRS 2, item 29 b, civilian training education records are destroyed after five years.

In accordance with NC1–26–80–4, items 338b, 338c, 338d and 338e, class folders containing military personal and service history, muster card files, and recruit training record cards are destroyed when one year old.

In accordance with N1–330–04–1, item 1, military personnel system (Official Military Personnel File (OMPF)) records are permanent and folders are transferred to the National Personnel Records Center (NPRC) six months after separation. OMPF records are transferred to NARA 62 years after the date of retirement or separation.

In accordance with NC1–26–76–2, items 583a and 584a and N1–330–04–1, item 1, officer selection and appointment system records, officer candidates and direct commission program application for selected applicants are filed in the OMPF.

In accordance with NC1–26–76–2, item 583b, non-selected officer candidate applicant's records are destroyed six months after deadline dates for class which application is made.

In accordance with NC1–26–79–2, item 584b, non-selected direct commission program applicants records are destroyed one year from date of board by which considered.

In accordance with NC1–26–80–4, item 337b, Officer Candidates School and direct commission officer applicant files containing copies of applications for appointment in the USCG reserve, interviews, reports, and medical examination are destroyed when one year after period covered by account.

In accordance with NC1–26–76–2, item 587, applicant files are destroyed one year after the period covered by account.

In accordance with GAO–SCHED/5/1 and NC1–26–80–4, item 99d, military pay records are destroyed 56 years after the period covered by account.

In accordance with SSIC 7400, item 1 and NC1–26–76–2, items 184 and 99s, military personnel FICA wage credit, federal income tax listings, leave and earnings statements and pay records are microfilmed and retained onsite for four years, then archived at the Federal Record Center, and destroyed 50 years after the period covered by account.

In accordance with GRS 15, item 3, USCG family housing records are temporary and destroyed two years after the period covered by account.

In accordance with GRS 25, item 1a, outside employment of active duty USCG personnel records are temporary and destroyed when three years old or when superseded or obsolete, whichever is later.

Duplicate magnetic copies of the pay and personnel record are retained at an offsite facility for a useful life of seven years.

In accordance with GRS 24, item 61, information regarding IT training, IT system accounts, roles, permissions, Automatic Identification System user access authorization/revocation, and password files are destroyed one year after user account is terminated, password altered, or when no longer needed for investigative or security purposes.

Paper records for waivers and remissions are retained on site and destroyed six years three months after the determination.

In accordance with GRS 2, item 18, paper records to determine legal sufficiency for garnishment are destroyed six years three months after the period covered by account when the member separates from service or garnishment is terminated. Federal employee records are destroyed three years after garnishment is terminated.

Records concerning congressional correspondence are maintained indefinitely because they have been determined to be of historical value.

SYSTEM MANAGER AND ADDRESS:

For active duty military personnel, civilian personnel, and separated personnel of the USCG: Chief, Office of Personnel, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For USCG reserve military personnel and retired USCG reserve military personnel waiting pay at age 60: Chief, Office of Reserve Affairs, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For USCG waivers and remissions: Chief, Personnel Services Division, Office of Military Personnel, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, USCG, Personnel Services Center, 444 SE., Quincy Street, Topeka, KS 66683–3591. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the military

personnel's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by USCG Headquarters 2100 2nd Street, SW., Washington, DC 20593–0001.

For active and reserve service applicants and prospective applicants: Commanding Officer, USCG Recruiting Command, STOP 7500, 2300 Wilson Blvd. Suite 500, Arlington, VA 20598–7500.

For retired active USCG military personnel and their annuitants and dependents: Commanding Officer, USCG, Personnel Services Center, 444 SE., Quincy Street, Topeka, KS 66683–3591.

For USCG auxiliary members: Director of Auxiliary, USCG, 2100 2ND ST, SW., STOP 7581, Washington, DC 20593–7581.

For USCG exchange workers: Commandant (G–WPX), USCG Exchange System, CGES & MWR Headquarters, 870 Greenbrier Circle, Greenbrier Tower II, Suite 502, Chesapeake, VA 23320–2681.

For contractor personnel: Commandant (USCG–9), USCG Headquarters, 1900 Half Street, SW., Washington, DC 20593.

For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

For Officers of the Commissioned Corps: U.S. Public Health Service Office of Commissioned Corps Operations, 1100 Wootton Parkway, Suite 100, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to: For active duty military personnel of the USCG: Chief, Office of Personnel, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For USCG reserve military personnel and retired USCG reserve military personnel awaiting pay at age 60: Chief, Office of Reserve Affairs, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For USCG waivers and remissions: Chief, Personnel Services Division, Office of Military Personnel, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, USCG, Personnel Services Center, 444 SE., Quincy Street, Topeka, KS 66683–3591. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

For Officers of the Commissioned Corps: U.S. Public Health Service, Office of Commissioned Corps Operations, 1100 Wootton Parkway, Suite 100, Rockville, MD 20852. If an individual believes more than one component maintains Privacy Act records, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–(866) 431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals, USCG personnel officials, NOAA personnel officials, DoD, PHS personnel officials, previous employers, educational institutions, court records, and test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 22, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–27881 Filed 10–27–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0082]

Privacy Act of 1974; Department of Homeland Security/United States Secret Service—003 Non-Criminal Investigation Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's biennial review of system of record notices, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Secret Service—003 Non-Criminal Investigation Information System.'' As a result of biennial review of this system, records have been updated within the categories of individuals covered in this system and categories of records in this system in order to further define and narrow categories. One routine use was revised to further define the purposes of disclosure, and retention and disposal procedures were updated to reflect current retention practices. The notification procedures were updated to clarify the reason for exemption and the method for access. Additionally, the Department of Homeland Security previously published a Final Rule in the

Federal Register to exempt this system of records from certain provisions of the Privacy Act. The current updates to this system of records do not impact the nature of the exemptions claimed; the exemptions continue to apply to this updated system. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before November 28, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0082, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–(866) 466–5370.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne ((202) 406–6370), Privacy Officer, United States Secret Service, 245 Murray Lane SW., Building T–5, Washington, DC 20223. For privacy issues please contact: Mary Ellen Callahan ((703) 235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a and as part the Department of Homeland Security's (DHS) biennial review of system of record notices, DHS/United States Secret Service (USSS) proposes to update and reissue a current DHS system of records titled, DHS/USSS–003 Non-Criminal Investigation Information System of Records. As a result of biennial review of this system, records have been updated within the categories of individuals covered in this system and categories of records in this system in order to further define, narrow, and eliminate duplicative categories. Routine Use H was revised to further define the purposes of disclosure, and retention and disposal procedures were updated to reflect current retention practices. The notification procedures were updated to clarify the reason for exemption and the method for access. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description on the DHS/USSS–003 Non-Criminal Investigation Information System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records

Department of Homeland Security (DHS)/United States Secret Service (USSS)–003

SYSTEM NAME:

DHS/USSS—003 Non-Criminal Investigation Information System

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the United States Secret Service Headquarters, 950 H St. NW., Washington, DC 20223 and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Individuals who are applicants for employment or are currently employed with the USSS or other federal or state entities and have taken a polygraph; and
- Qualified USSS law enforcement officers and qualified USSS retired law enforcement officers who carry concealed firearms.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- Social Security number;
- Address;
- Date of birth;
- Case number;
- Polygraph examination reports and files;
- Records containing investigatory material compiled solely for the purpose of determining suitability, eligibility, and/or qualifications for federal civilian employment or access to classified information; and
- Any group of records which have been created by the Law Enforcement Officer Safety Act of 2004, Public Law 108–277, 1, codified at 18 U.S.C. 926 B and C, as amended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296; 5 U.S.C. 301; Federal Records Act, 44 U.S.C. 3101; 18 U.S.C. 3056; 18 U.S.C. 3056A; 42 U.S.C. 13031; Executive Order 10450; and 6 CFR part 5.

PURPOSE(S):

The purpose of this system is to record and maintain files related to applicants for employment or current employees of the USSS or other federal or state entities who have taken a polygraph; and current and retired USSS employees who are qualified to carry a concealed weapon.

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, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security (DHS) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other federal agency conducting litigation or in proceedings before any

court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation, and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To Federal, State, or local government agencies for the purpose of developing a relevant ongoing civil, administrative, or background investigation.

I. To private institutions and individuals for the purpose of confirming and/or determining suitability, eligibility, or qualification for federal civilian employment or access to classified information, and for the purposes of furthering the efforts of the USSS to investigate the activities of individuals related to or involved in non-criminal civil and administrative investigations.

J. To another federal agency or to an instrumentality of any government jurisdiction within or under the control of the United States for the purpose of determining suitability, eligibility, or qualifications for employment with or access to classified information in such other agency instrumentality.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

L. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the letting of a contract, or the issuance of a license, grant or other benefit when disclosure is appropriate to the proper performance of the official duties of the person making the request.

M. To state and local school boards, private and public schools, daycare facilities, children's camps, and childcare transportation providers, if information concerns one of their employees, or applicants for employment, when such an individual has admitted to the USSS that they viewed, have taken an interest in, or have engaged in prior activity regarding child pornography, the touching of a child for sexual gratification, or child abuse.

N. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records in this system are stored in secure facilities and/or behind locked doors. Electronic records media, such as magnetic tape, magnetic disk, digital media, and CD–ROM are stored in proper environmental controls.

RETRIEVABILITY:

Records are indexed by name on file at USSS Headquarters, and in field offices and are retrieved through a manual search of index cards and/or through computer search of magnetic media. Access to the physical files is by case number obtained from the name indices.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS and USSS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored, processed, and transmitted. Access to the records in this system is limited to those individuals who have a USSS approved need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Applicant security and background investigation records of retired or separated USSS employees are retained for 20 years after the date of last action. All judicial case records are retained for 30 years from the date of case closure, unless otherwise required to be held permanently for transfer to the National Archives and Records Administration. Non-judicial and non-criminal case files generally are retained for a period of between 5 years and 30 years from the date of case closure, depending upon the nature or subject of the investigation. All other records, the disposition of which is not otherwise specified, are retained until destruction is authorized.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Human Resources and Training and Assistant Director, Office of Investigation, U.S. Secret Service, 245 Murray Lane SW., Building T–5, Washington, DC 20223.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/USSS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USSS FOIA Officer, 245 Murray Drive, SW., Building T–5, Washington, DC 20223. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief FOIA Officer, Department of Homeland Security, whose contact information can be found at *http://www.dhs.gov/foia.*

When seeking records about yourself from this system of records or any other USSS system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–(866) 431–0486. In addition, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Specify when you believe the records would have been created; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information USSS may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from employees, former employees, and applicants for employment with the USSS; federal, state, and local governmental agencies; court systems; executive entities, both foreign and domestic; educational institutions; private businesses; and members of the general public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act and the limitations therein, this system is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), (k)(3), (k)(5), and (k)(6), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). In addition, to the extent a record contains information from other exempt systems of records, USSS will rely on the exemptions claimed for those systems.

Dated: September 22, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–27882 Filed 10–27–11; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0083]

Privacy Act of 1974; Department of Homeland Security/United States Secret Service—004 Protection Information System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, and as part of the Department of Homeland Security's biennial review of system of record notices, DHS/United States Secret Service proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Secret Service—004 Protection Information System of Records.'' As a result of biennial review of this system, information has been updated within the categories of individuals covered in this system and categories of records in this system in order to further define and narrow categories. Routine Use I and J were merged for the purpose of narrowing scope and clarifying why information would be shared. The notification procedures were updated to clarify the reason for exemption and the method for access. Additionally, the Department of Homeland Security previously published a Final Rule in the **Federal Register** to exempt this system of records from certain provisions of the Privacy Act. The current updates to this system of records do not impact the nature of the exemptions claimed; the exemptions continue to apply to this update. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before November 28, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0083, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–(866) 466–5370.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name

and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

• *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Latita Payne (202) 406–6370), Privacy Officer, United States Secret Service, 245 Murray Lane, SW., Building T–5, Washington, DC 20223. For privacy issues please contact: Mary Ellen Callahan (703) 235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and as part of the Department of Homeland Security's (DHS) biennial review of system of record notices, DHS/United States Secret Service (USSS) proposes to update and reissue a current DHS system of records titled, DHS/USSS–004 Protection Information System of Records. As a result of biennial review of this system, records have been updated within the categories of individuals covered in this system and categories of records in this system in order to further define, narrow, and eliminate duplicative categories. Routine Use I and J were merged for the purpose of narrowing scope and clarification. The notification procedures were updated to clarify the reason for exemption and the method for access. This updated system will be included in DHS's inventory of record systems.

Additionally, DHS previously published a Final Rule in the **Federal Register** to exempt this system of records from certain provisions of the Privacy Act. The current updates to this system of records do not impact the nature of the exemptions claimed; the exemptions continue to apply to this update. This updated system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the Protection Information System.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

System of Records

Department of Homeland Security (DHS)/United States Secret Service (USSS)–004

SYSTEM NAME:

DHS/USSS–004 Protection Information System

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Records are maintained at the United States Secret Service Headquarters, 950 H St., NW., Washington, DC 20223, other locations in Washington, DC, and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

• Individuals who have been or are currently the subject of a criminal investigation by USSS or another law enforcement agency for the violation of certain criminal statutes relating to the safety of persons or security of properties, facilities, and areas protected by USSS;

• Individuals who are the subjects of investigative records and reports supplied to USSS by Federal, State, and local law enforcement agencies, foreign or domestic, other non-law enforcement governmental agencies, or private institutions and individuals, in conjunction with the protective function of USSS;

• Individuals who are the subjects of non-criminal protective and background investigations by USSS and other law enforcement agencies;

• Individuals who are granted or denied ingress and egress to areas secured by USSS, or to areas in proximity to persons protected by USSS, including but not limited to: invitees; passholders; tradesmen; and law enforcement, maintenance, or service personnel;

• Individuals who are witnesses, protectees, suspects, complainants, informants, defendants, fugitives, released prisoners, and correspondents who have been identified by USSS or from information supplied by other law enforcement agencies, governmental units, private institutions, and members of the general public in connection with USSS performance of its authorized protective functions;

• Individuals who have sought an audience or contact with persons protected by USSS;

• Individuals who have been involved in incidents or events which relate to the protective functions of the USSS; and

• Individuals protected by the USSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

• Individual's name;
• Address;
• Date of Birth;
• Case number;
• Arrest record;
• Nature and disposition of criminal charges, sentencing, confinement, release, and parole or probation status;
• Records concerning agency activities associated with protectee movements and other protective measures taken on a protectee's behalf;
• Records containing information compiled for the purpose of identifying and evaluating individuals who may constitute a threat to the safety of persons or security of areas protected by the USSS;
• Records containing information compiled for the purpose of a criminal investigation, including reports of informants and investigators, which are associated with an identifiable individual;
• Informant's name and contact information (e.g., address; phone number);
• Records containing reports relative to an individual compiled at various

stages of the process of enforcement of certain criminal laws from arrest or indictment through release from supervision;

• Records containing information supplied by other Federal, State, and local law enforcement agencies, foreign or domestic, other non-law enforcement governmental agencies, private institutions and persons concerning individuals who, because of their activities, personality traits, criminal or mental history, or history of social deviancy, may be of interest to the USSS in connection with the performance by that agency of its protective functions; and

• Records containing information compiled for the purpose of background investigations of individuals, including but not limited to, passholders, tradesmen, maintenance or service personnel who have access and/or have been denied access to areas secured by or who may be in proximity to persons protected by USSS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296; 5 U.S.C. 301; Federal Records Act, 44 U.S.C. 3101; 18 U.S.C. 3056; 18 U.S.C. 3056A and 6 CFR part 5.

PURPOSE(S):

The purpose of this system is to assist USSS in protecting its protectees by recording information necessary to implement protective measures and to investigate individuals who may come into proximity with a protectee, including individuals who have been involved in incidents or events which relate to the protective functions of the USSS, and individuals who have sought to make contact with a protectee.

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, all or a portion of the records or information contained in this system may be disclosed outside the Department of Homeland Security (DHS) as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the Department of Justice and other Federal, State, and local governmental agencies having a prosecution function for the use of attorneys, magistrates, and judges; and the parole and probation authorities for the purpose of prosecuting, sentencing, and determining the parole and probation status of criminal offenders or suspected criminal offenders; and for civil and other proceedings involving USSS protective functions.

I. To Federal, State, and local governmental agencies, foreign and domestic, for the purposes of developing information on subjects involved in USSS protective investigations and the evaluation of persons considered to be of protective interest and for the purpose of protective functions.

J. To Federal, State, and local governmental agencies, private institutions and private individuals, for the purpose of implementing protective measures.

K. To personnel of Federal, State, and local governmental agencies, foreign and domestic, when reasonably necessary to the exercise of the USSS protective function.

L. To private institutions and private individuals, identifying information pertaining to actual or suspected criminal offenders or other individuals considered to be of protective interest, for the purpose of furthering USSS efforts to evaluate the danger such individuals pose to persons protected by the agency.

M. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

N. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or the issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to

a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records in this system are stored in secure facilities behind locked doors. Electronic records media, such as magnetic tape, magnetic disk, digital media, and CD ROM are stored in proper environmental controls.

RETRIEVABILITY:

This system is indexed by case number, name, and other identifying data and other case related data, in master and magnetic media indices. Records may be retrieved by any of these indices. Access to the physical files is located at field offices, Headquarters, and other Washington, DC locations.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS and USSS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored, processed, and transmitted. Access to the records in this system is limited to those individuals who have a USSS approved need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Protective intelligence case records, including non-judicial protective intelligence cases, are routinely retained for a period of up to 5 years from the date of last action; or for 10 years from the date of last action if they contain electronic records. All judicial records are retained for a period of 20 years from the date of last action, unless otherwise required to be held permanently for transfer to the National Archives and Records Administration. Files relating to issuance of White House Complex passes for employees of the White House, Secret Service Employees, press representatives accredited at the White House, and other authorized individuals are retained for a period of 8 years from the date the file is closed. Records pertaining to the administration and operations of Secret Service protective program, shift reports, survey files, and special event files are retained for a period of 3 to 5 years from the end of the event. Records pertaining to trip files for domestic travel are retained for 5 years, and trip files for foreign travel are retained for 10 years from the end of the event. Campaign related files are retained for a period of 30 years after the end of the campaign and subsequently transferred to the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Strategic Intelligence and Information; Assistant Director, Office of Technical Development and Mission Support; and Assistant Director, Office of Protective Operations, U.S. Secret Service, 245 Murray Drive SW., Building T–5, Washington, DC 20223.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/USSS will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the USSS FOIA Officer, Freedom of Information and Privacy Acts Program, 245 Murray Drive, SW., Building T–5, Washington, DC 20223. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the DHS FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia.*

When seeking records about yourself from this system of records or any other USSS system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–(866) 431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Specify when you believe the records would have been created; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information USSS may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

The Secretary of Homeland Security has exempted this system from subsections (e)(4)(I) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and (k)(3); therefore, records sources shall not be disclosed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act and the limitations therein, this system is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(3) this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). In addition, to the extent a record contains information from other exempt Systems of Records,

USSS will rely on the exemptions claimed for those systems.

Dated: September 22, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–27883 Filed 10–27–11; 8:45 am]

BILLING CODE 4810–42–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–914; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–914 and Supplements A and B, Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. OMB Control No. 1615–0099.

The Department of Homeland Security, U.S. Citizenship and Immigration Services 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 60 days until December 27, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–914. Should USCIS decide to revise Form I–914 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–914.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997, or via email at *USCISFRComment@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0099 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Supplement A: Application for Immediate Family Member of T–1 Recipient; and Supplement B: Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–914, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–914 permits victims of severe forms of trafficking and their immediate family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–914, 500 responses at 2.25 hours per response; Supplement A, 500 responses at 1 hour per response; Supplement B, 200 responses at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,725 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: October 25, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–27981 Filed 10–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Form I–129F; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–129F, Petition for Alien Fiance(e). OMB Control No. 1615–0001.

The Department of Homeland Security, U.S. Citizenship and Immigration Services 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 60 days until December 27, 2011.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–129F. Should USCIS decide to revise Form I–129F 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–129F.

Written comments and suggestions regarding items contained in this notice,

and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997, or via email at *USCISFRComment@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0001 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129F, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* Form I–129F must be filed with U.S. Citizenship and Immigration Services (USCIS) by a citizen of the United States in order to petition for an alien spouse, finance(e), or child.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 54,000 responses at 1 hour and 30 minutes (1.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,000 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: October 25, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–27967 Filed 10–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: No Agency Form Number; File Number OMB 25, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: OMB–25, Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters. OMB Control No. 1615–0064.

The Department of Homeland Security, U.S. Citizenship and Immigration Services 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 60 days until December 27, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the OMB–25. Should USCIS decide to revise OMB–25 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 OMB–25.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997, or via email at *USCISFRComment@dhs.gov*. When submitting comments by email please add the OMB Control Number 1615–0064 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Special Immigrant Visas for Fourth

Preference Employment-Based Broadcasters.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–25., U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* The information collected via the submitted supplemental documentation (as contained in 8 CFR 204.13(d)) will be used by the USCIS to determine eligibility for the requested classification as fourth preference Employment-based immigrant broadcasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: October 25, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–27977 Filed 10–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–539, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–539, Application to Extend/Change Nonimmigrant Status. OMB Control No. 1615–0003.

The Department of Homeland Security, U.S. Citizenship and Immigration Services 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 60 days until December 27, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–539. Should USCIS decide to revise Form I–539 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–539.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997, or via email at *USCISFRComment@dhs.gov.* When submitting comments by email please add the OMB Control Number 1615–0003 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 a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–539, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary—*Individuals or households.* This form will be used to apply for an extension of stay or for a change to another nonimmigrant classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 195,000 responses at 45 minutes (.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 146,250 annual burden hours.

If you need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: October 25, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–27968 Filed 10–27–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–C–103]

Notice of Submission of Proposed Information Collection to OMB Annual Progress Reports for Empowerment Zones

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: Due to the fact the 60 days had not expired (12/3/2011) 30 day sent early.

The primary purpose of this collection is to continue current data reporting for Rounds, I, II, and III Empowerment Zones (EZs). HUD previously designated 30 EZs, which required to submit annual reports to HUD based on the progress reported in implementing the EZs' strategic plans. Businesses located in the EZs are eligible for Federal tax incentives to hire local residents and to expand or improve their operations. This is an extension of a currently approved collection.

DATES: *Comments Due Date:* November 28, 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 (2506–0148) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; email *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; email 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: Annual Progress Reports for Empowerment Zones.

OMB Approval Number: 2506–0148.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The primary purpose of this collection is to continue current data reporting for Rounds, I, II, and III Empowerment Zones (EZs). HUD previously designated 30 EZs, which required to submit annual reports to HUD based on the progress reported in implementing the EZs' strategic plans. Businesses located in the EZs are eligible for Federal tax incentives to hire local residents and to expand or improve their operations. This is an extension of a currently approved collection.

Frequency of Submission: On Occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	75	1		5.506		413

Total Estimated Burden Hours: 413.

Status: Extension without change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 21, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–28004 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–33]

Notice of Proposed Information Collection: Comment Request; New Construction Subterranean Termite Protection for New Homes

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* December 27, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–(800) 877–8339).

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Title of Proposal: Subterranean Termite Protection for New Homes.

OMB Control Number, if applicable: 2502–0525.

Description of the need for the information and proposed use: HUD

regulations at 24 CFR 200.926d(b)(3) require that the sites for HUD insured structures must be free of termite hazards. The HUD–NPCA–99–A requires the builder to certify that all required treatment for termites was performed by an authorized pest control company and further that the builder guarantees the treated area against infestation for one year. The form HUD–NPCA–99–B requires a licensed pest control company to provide to the builder a record of specific treatment information in those cases when the soil treatment method is used for prevention of subterranean termite infestation. When applicable the HUD–NPCA–99–B must accompany the HUD–NPCA–99–A. If the requested data is not collected, new home purchasers and HUD are subject to the risk of purchasing or insuring a home that could be immediately infested by termites and would have no recourse against the builder.

Agency form numbers, if applicable: HUD NPMA–99–A and HUD NPMA–99–B.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 9,990. The number of respondents is 15,000, the number of responses is 30,000, the frequency of response is on occasion, and the burden hour per response is .083 and .25 respectively.

Status of the proposed information collection: This is an extension of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: October 21, 2011.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–28008 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–34]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Cambridge Housing Authority of Cambridge, MA for the purchase and installation of a Variable Refrigerant Volume (VRV) heat pump system and vent limited gas regulators for the Lyndon B. Johnson Apartments project.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for the Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4112, Washington, DC 20410–4000, telephone number (202) 402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410–4000, telephone number (202) 402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on September 19, 2011, upon request of the Cambridge Housing Authority, HUD granted exceptions to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Lyndon B. Johnson Apartments project. The exception was granted by HUD on the basis that the relevant manufactured goods, (a VRV heat pump system and vent limited gas regulators), are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: October 19, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–28003 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–43]

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 October 20, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–27672 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5478–N–05]

Privacy Act of 1974; Notification of the Establishment of a Privacy Act System of Records, HUD Integrated Acquisition Management System (HIAMS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notification of the Establishment of a New Privacy Act System of Records.

SUMMARY: HUD proposes to establish a new record system to add to its inventory of system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed system of records, identified as HIAMS will be used by HUD's Office of the Chief Procurement Officer, as well as HUD's regional program offices, to store and manage HUD acquisition-related data from acquisition planning through contract completion. The regional offices will have access to HIAMS for the purposes of entering and reading data into the system. The system will consist of data elements about all companies or institutions authorized to do business with HUD as registered vendors within the Central Contractor Registry (CCR), overseen by the General Services Administration.

DATES: *Effective Date:* This action will be effective without further notice on November 28, 2011 unless comments are received that would result in a contrary determination.

Comments Due Date: November 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. FAX comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Harold Williams, Acting Departmental Privacy Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8087, or the Assistant Chief Procurement Officer, Elie Stowe, Department of Housing and Urban Development, Washington, DC 20410, telephone number (202) 708–0294 or (202) 402–3556. (These are not toll free numbers.) A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at 1–(800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provides that the public be afforded a 30-day period in which to comment on the new record system. The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Oversight and Government Reform of the House of Representatives, 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 June 25, 1993 (58 FR 36075, July 2, 1993).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: October 19, 2011.

Jerry E. Williams,

Chief Information Officer.

HUD/CPO/01

SYSTEM NAME:

HUD Integrated Acquisition Management System (HIAMS).

SYSTEM LOCATION:

HUD Information Technology Systems (HITS) Production Data Center located in South Charleston, West Virginia, and the HUD Headquarters, Washington, DC 20410, Intranet General Support System, which is also managed by the HITS contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All companies or institutions doing business with HUD and registered as vendors within the Central Contractor Registry (CCR).

CATEGORIES OF RECORDS IN THE SYSTEM:

HIAMS will collect and store vendor Taxpayer Identification Numbers (TINs), vendor names, and associated point-of-contacts information: such as names, Social Security numbers when used in lieu of TINs, Dun and Bradstreet Number (DUN) numbers, and other business related data, such as business telephone numbers, email addresses and business addresses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Businesses that choose to do business with the Department are required by law to provide the information identified herein (31 U.S.C. 7701(c); 31 U.S.C. 3325(d); 26 U.S.C. 6050M; 26 U.S.C. 6041 and 6041A). The vendor Tax ID Number is transmitted from the CCR. CCR registration requires vendors who want to do business with the federal government to supply TINs under 31 U.S.C. 7701(c). Vendor SSNs are supplied under Clause 52.222–8, Payrolls and Basic Records, of the Federal Acquisition Regulations (FAR) in accordance with the Davis Bacon Act.

PURPOSES:

The Office of the Chief Procurement Officer is implementing the HIAMS as an enterprise-wide, end-to-end acquisition management system. The information in HIAMS will be used by HUD to identify companies or institution doing business with HUD. The information in HIAMS will be shared with HUD financial management systems to: Record contract obligations and facilitate timely payments; meet mandatory reporting requirements (Federal Procurement Data System—Next Generation; and to compile statistics regarding HUD procurement activity. HIAMS will include acquisition and/or procurement-related data from planning through contract completion. The data maintained in HIAMS include budget execution information required to facilitate financial transactions throughout the procurement process (e.g., agency expenditures; invoices; billing dispute resolution documentation; reconciliation documents; service level agreements; distribution of shared expenses; goods acquisition information (which involves the procurement of physical goods, products, and capital assets to be used by the Federal government); and services acquisition information, which involves oversight and/or management of contractors and service providers from the private sector.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To HUD contractors, consultants or others, when necessary to perform a function or service related to this system

of records for which they have been engaged. Such recipients are required to comply with the Privacy Act of 1974, as amended (5 U.S.C. 552a).

2. To Federal, State and local entities for the purpose of the regular exchange of business contact information to facilitate collaboration for official contract business.

3. To disclose requirements, and business opportunities through Federal Business Opportunities (FEDBizOpps) and FedConnect. All information posted is non-proprietory and unclassified. HUD uses FedBizOpps and FedConnect, to solicit vendor(s).

4. To appropriate agencies, entities, and persons when:

a. the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

b. the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and

c. the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data are stored on the production HIAMS database servers. The data are backed up regularly in accordance with HUD policy. The storage practice for paper-based records includes storage, indirect monitoring, and file expiration. Paper based records do not include electronic downloads. All paper records are stored in a metal Electronic ''Lektriever Vertical Carousel'' repository. Sign out sheets are used to remove the files from the repository.

RETRIEVABILITY:

Vendor points-of-contacts names, vendor name and address and telephone number, DUN, TIN, and SSN.

SAFEGUARDS:

Strict access controls are governed for electronic records by the use of a user ID and password that require authentication before access is granted to HIAMS. Paper based records do not include electronic downloads. All paper records are stored in a metal Electronic ''Lektriever Vertical Carousel'' repository. Sign out sheets are used to remove the files from the repository.

RETENTION AND DISPOSAL:

Records retention and disposal are in accordance with FAR Subpart 4.7 for Contractor Records Retention. HIAMS has the ability to store archived data and is defaulted after 7 years. This complies with all federal regulations. The retention periods for contract files and/or procurement files are found in the General Records Schedule issued by the National Archives and Records Administration, Schedule 3, Item 3. The procurement records are held for 6 years and 3 months and destroyed in accordance with the referenced schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Elie Stowe, Assistant Chief Procurement Office for Policy and Systems, HUD, Washington DC 20410.

NOTIFICATION AND ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Acting Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Written requests must include the full name, Social Security number, date of birth, current address, and telephone number of the individual making the request.

CONTESTING RECORD PROCEDURES:

Procedures for the amendment or correction of records, and for applicants who want to appeal initial agency determinations, appear in 24 CFR, Part 16.

(i) In relation to contesting contents of records, the Acting Departmental Privacy Act Officer at HUD, 451 Seventh Street, SW., Room 4178, Washington, DC 20410, and;

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street, SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from information contained in other government agencies CCR, Federal Procurement Data System—Next Generation (FPDS–NG), Online Representations and Certifications Application (ORCA), Federal Business Opportunities (FedBizOpps), and FedConnect; and/or information already in other HUD financial systems: HUD Central Accounting and Program System, and PeopleSoft HUD Integrated Core Financial System.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2011–27986 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5478–N–04]

Privacy Act; Notice of Revision of System of Records, the Single Family Housing Enterprise Data Warehouse

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of revision of agency's Privacy Act System of Records.

SUMMARY: HUD is proposing to revise information published in the **Federal Register** about one of its record systems, the Single Family Housing Enterprise Data Warehouse (SFHEDW). The revision to the record system reflects current administrative changes; revises the system location; and involves adding a new routine use exception to permit the disclosure of records to the Federal National Mortgage Association (also known as Fannie Mae). Under this initiative HUD will transmit personal borrower data to Fannie Mae to facilitate financing opportunities to borrowers of FHA Title 1 loans for the purpose of making energy efficiency improvements to their principal residence. This initiative supports HUD mission to create strong, sustainable, inclusive communities and quality affordable homes. This notice deletes and supersedes prior notice published in the **Federal Register** at 73 FR 24604 on May 5, 2008. The scope and functional purpose of the systems remains unchanged.

DATES: *Effective Date:* This action shall be effective without further notice on November 28, 2011 unless comments are received during or before this period that would result in a contrary determination.

Comments Due Date: November 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–3000. Communications should refer to the above docket number and title. A copy of each communication submitted will

be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Harold Williams, Acting Departmental Privacy Act Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8087 or Mary Jo Sullivan, System Owner, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2121. (These are not toll-free numbers.) Telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new system of records, and require published notice of the existence and character of the system of records.

The report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: October 19, 2011.

Jerry E. Williams,

Chief Information Officer.

HUD/HSF–01

SYSTEM NAME:

Single Family Housing Enterprise Data Warehouse (SFHEDW).

SYSTEM LOCATION:

The HUD Data Center, Hewlett Packard Facility, South Charleston, West Virginia. HUD staff throughout the United States access SFHEDW through HUD's standard telecommunications network from desktop workstations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs, individuals who assumed such a mortgage, and individuals involved in appraising or underwriting the mortgage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, date of birth, home address, and social security number; racial/ethnic background, if disclosed, on mortgagors; identifying numbers on individuals involved in processing the loan; and data regarding currently and formerly insured mortgages. The loan data includes underwriting data, such as loan-to-value ratios and credit ratios; original terms, such as mortgage amount, interest rate, term in months; status of the mortgage insurance; and history of payment defaults, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 203, National Housing Act, Public Law 73–479; 42 U.S.C. 3543, Housing & Community Development Act of 1987.

PURPOSE(S):

The SFHEDW is an ongoing, fully operational data warehouse that is the key source of data for anyone who needs Single Family data. It is an integrated data warehouse that contains critical Single Family business data from fourteen (14) sources, mostly from FHA Single Family automated systems. The system allows queries and provides reporting tools to support oversight activities, market and economic assessment, public and stakeholder communication, planning and performance evaluation, policies and guidelines promulgation, monitoring and enforcement.

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 other routine uses include:

(a) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(b) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(c) To Federal National Mortgage Association (also known as Fannie Mae), when Fannie Mae is the holder of single-family energy efficient mortgage and Title I home improvement loans, without the use of SSN's.

(d) To appropriate agencies, entities, and persons when:

(1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

(2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the HUD or another agency or entity) that rely upon the compromised information; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum. Manual files are stored in file cabinets with secured by locks.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number, case number, property address, or any other type of stored data.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel. Manual records are accessed by only those who have a need-to-know. System access is granted by user id and password only.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for at least 10 years beyond maturity, prepayment, or claim termination, approved under HUD's Record Disposition Schedule 13, Title I Records, Appendix 13.

SYSTEM MANAGER(S) AND ADDRESS:

Mary Jo Sullivan, Deputy Director, Office of Single Family Program Development, HUP, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

NOTIFICATION AND ACCESS PROCEDURES:

For information, assistance, or inquiry about existence of records, contact the Acting Departmental Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

The procedures for contesting the contents of records and appealing initial denials appear in 24 CFR Part 16. If additional information or assistance is required, contact:

(i) The Acting Departmental Privacy Act Officer, Department of Housing and Urban Development; 451 Seventh Street, SW., Room 2256, Washington, DC

20410, if contesting the content of records; or

(ii) The Departmental Privacy Appeals Office, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 for appeals of initial denials.

RECORD SOURCE CATEGORIES:

Mortgagors, appraisers, mortgagee staff underwriters, and HUD employees—indirectly, immediate sources are the following:

1. A43—Single Family Insurance System (SFIS)
2. A43C—Single Family Insurance Claims System (CLAIMS)
3. A80R—Single Family Premium Collections System—Upfront (SFPCS–U)
4. A80H—Single Family Mortgage Asset Recovery Technology System (SMART)
5. A80S—Single Family Acquired Assets Management System (SAMS)
6. F17—Computerized Home Underwriting Mortgage System (CHUMS)
7. F42D—Single Family Default Monitoring System (SFDMS)
8. F42—Consolidated Single Family Statistical System (CSFSS)
9. F51—Institution Master File (IMF)
10. A80N—SF Mortgage Notes Servicing (SFMNS/IFS)
11. F72—Title I Insurance and Claims System (TIIS)
12. F12—Home Equity Conversion Mortgages (HECM)
13. HMDA data from Federal Reserve Board (FRB)
14. F71A—Generic Debt Management System (GDEBT)
15. A15—Geocoding Service Center (GSC)

EXEMPTIONS FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 2011–27988 Filed 10–27–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2011–N197; 91200–1231–9BPP–L2]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Conservation Order for Light Geese

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on October 31, 2011. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before November 28, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (email). Please include ''1018–0103'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *INFOCOL@fws.gov* (email) or (703) 358–2482 (telephone). You may view the ICR online at *http://www.reginfo.gov.* Follow the instructions to view Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0103.

Title: Conservation Order for Light Geese, 50 CFR 21.60.

Service Form Number(s): None.

Type of Request: Revision of a currently approved collection.

Description of Respondents: State and tribal governments; individuals who participate in the conservation order.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Activity/requirement	Annual number of respondents	Total annual responses	Completion time per response	Total annual burden hours
States—collect information, maintain records, prepare annual report	39	39	74 hours	2,886
Participants—provide information to States	21,538	21,538	10 minutes	3,590
Total	21,577	21,577		6,476

Estimated Annual Nonhour Burden Cost: $97,500, primarily for State overhead costs (materials, printing, postage, etc.).

Abstract: The number of light geese (lesser snow, greater snow, and Ross' geese) in the midcontinent region has nearly quadrupled during the past several decades, due to a decline in adult mortality and an increase in winter survival. We refer to these species and subspecies as light geese because of their light coloration, as opposed to dark geese, such as white-fronted or Canada geese. Because of their feeding activity, light geese have become seriously injurious to their habitat, as well as to habitat important to other migratory birds. This poses a serious threat to the short- and long-term health and status of some migratory bird populations. We believe that the number of light geese in the midcontinent region has exceeded long-term sustainable levels for their arctic and subarctic breeding habitats, and that the populations must be reduced. Title 50 Code of Federal Regulations (CFR) part 21 provides authority for the management of overabundant light geese.

Regulations at 50 CFR 21.60 authorize States and tribes in the midcontinent and Atlantic flyway regions to control light geese within the United States through the use of alternative regulatory strategies. The conservation order authorizes States and tribes to implement population control measures without having to obtain a Federal permit, thus significantly reducing their administrative burden. The conservation order is a streamlined process that affords an efficient and

effective population reduction strategy, rather than addressing the issue through our permitting process. Furthermore, this strategy precludes the use of more drastic and costly direct population-reduction measures such as trapping and culling geese. States and tribes participating in the conservation order must:

- Designate participants and inform them of the requirements and conditions of the conservation order. Individual States and tribes determine the method to designate participants and how they will collect information from participants.
- Keep records of activities carried out under the authority of the conservation order, including:

(1) Number of persons participating in the conservation order;

(2) Number of days that people participated in the conservation order;

(3) Number of persons who pursued light geese with the aid of a shotgun capable of holding more than three shells;

(4) Number of persons who pursued light geese with the aid of an electronic call;

(5) Number of persons who pursued light geese during the period one-half hour after sunset;

(6) Total number of light geese shot and retrieved during the conservation order;

(7) Number of light geese taken with the aid of an electronic call;

(8) Number of light geese taken with the fourth, fifth, or sixth shotgun shell;

(9) Number of light geese taken during the period one-half hour after sunset; and

(10) Number of light geese shot, but not retrieved.

- Submit an annual report summarizing the activities conducted under the conservation order on or before September 15 of each year. Tribal information can be incorporated in State reports to reduce the number of reports submitted.

Comments: On May 24, 2011, we published in the **Federal Register** (76 FR 30188) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on July 25, 2011. We received five public comments, including one from an individual who was opposed to the population reduction program, but did not comment on the information collection itself.

We received comments from the Wyoming Game and Fish Department, the Atlantic Flyway Council, Mississippi Flyway Council, and the Central Flyway Council. Flyway Councils are comprised of all State wildlife agencies within each respective administrative Flyway. The State of Wyoming and the three Flyway Councils agreed that it was important to estimate the number of citizens participating in the conservation order, as well as actual light goose harvest. However, all commenters recommended that variables related to methods of take should be evaluated for their continued usefulness and potentially discontinued from the information collection. They recommended that only information on hunter numbers and light goose harvest be collected. Commenters also stressed that individual States use different methodologies for obtaining information and that simply adding estimates from disparate methodologies leads to overall estimates that are not as reliable as would be liked. Commenters believed the Service should take over responsibility for data collection, possibly through the Service's Harvest Information Program (HIP).

Response: Implementation of the light goose conservation order required using new methods of take that were controversial because historically they had been illegal during normal hunting seasons. For that reason, we required information be collected on the use of such tools so that we could evaluate their effectiveness. We agree that information collected to date should be fully evaluated and that the utility of continued information collection for those variables should be analyzed. Discontinuation of information collection on those variables would require rulemaking to reduce the number of specific requirements outlined in 50 CFR 21.60. During discussions with Flyway Councils regarding initiation of the conservation order, there were concerns about whether or not a national collection should be developed for the conservation order. That approach was not pursued due to the need to develop a Federal permit. It was decided that each State would conduct its own collection. Although State harvest estimates may not be fully comparable, we believe that summation of such estimates is warranted for general monitoring purposes.

We are still awaiting a report from the Arctic Goose Habitat Working Group of the Arctic Goose Joint Venture to determine the best method of collecting data to provide the highest quality of information in the most efficient way possible. We feel it is important to wait for and consider the findings of this report because the Joint Venture is comprised of many of our management partners.

Our Harvest Information Program is geared towards estimating harvest of birds during regular hunting seasons that end on or before March 10 each year. Many States hold their light goose conservation order (not a regular hunting season) after March 10. Therefore, if HIP were used to estimate light goose conservation order harvest, our annual HIP reports would be delayed and could affect the normal hunting regulations promulgation process. The Service can only require HIP registration for regular hunting seasons. There is no current mechanism for the Service to require HIP registration for conservation order participants.

We have not made any changes to the information collection requirements at this time. We will continue to work with the States, Flyway Councils, and the Arctic Goose Joint Venture to determine the best method of collecting data to provide the highest quality information in the most efficient way possible.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: October 24, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–27918 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N227; 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 laws require that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents on or before November 28, 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 email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

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 email or address not listed under **ADDRESSES**. If you provide an email 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, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: David Nesbit, Gonzales, TX; PRT–189407

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for barasingha (*Rucervus duvaucelii*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Alan Ong, Fremont, CA; PRT–56735A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise *(Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Charles Salisbury, Dade City, FL; PRT–56309A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:

Bovidae.
Equidae.
Psittacidae.
Crocodilidae.

Species:

Galapagos tortoise (*Chelonoides nigra).*
radiated tortoise (*Astrochelys radiata).*
Red-crowned crane (*Grus japonica).*
ring-tailed lemur (*Lemur catta).*
black lemur (*Eulemur macaco).*
brown lemur (*Eulemur fulvus).*
black and white ruffed lemur (*Varecia variegate).*
red ruffed lemur (*Varecia rubra).*
cotton-headed tamarin (*Saguinus oedipus).*
Diana monkey (*Cercopithecus diana).*
Mandrill (*Papio sphinx).*
lar gibbon (*Hylobates lar).*
Indian rhinoceros (*Rhinoceros unicornis).*
lowland tapir (*Tapirus terrestris).*
Asian tapir (*Tapirus indicus).*

Applicant: Carson Springs Wildlife Foundation, Gainesville, FL; PRT–56870A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Species:

Galapagos tortoise (*Chelonoids nigra).*
radiated tortoise (*Astrochelys radiate).*
ring-tailed lemur (*Lemur catta).*
black and white ruffed lemur (*Varecia variagata).*
red ruffed lemur (*Varecia rubra).*
black lemur (*Eulemur macaco).*

Applicant: Charles Munoz, Aurora, CO; PRT–101033

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for Cabot's tragopan (*Tragopan caboti*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Paula Hansen, Salem, OR; PRT–055381

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for red siskin (*Carduelis cucullata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Los Angeles Zoo and Botanical Gardens, Los Angeles, CA; PRT–56760A

The applicant requests a permit to import 10 live, captive-born komodo monitors (*Varanus komodoensis)* from the Czech Republic, for the purpose of enhancement of the survival of the species.

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: Leonard Voyles, Richmond, TX; PRT–57362A

Applicant: Matthew Bindon, Howell, MI; PRT–57442A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–27983 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2011–N213; FF09D00000–FXGO1664091HCC05D–123]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Meeting:* Tuesday November 15, 2011, from 8:30 a.m. to 4:30 p.m., and Wednesday November 16, 2011, from 8:30 a.m. to 4:30 p.m. (Eastern standard time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held in the Secretary's Conference Room at the Department of the Interior, Room 5160, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit recreational hunting;
2. Benefit wildlife resources; and
3. Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Sport Wildlife Trust Fund;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting and outdoor recreation on private lands; and
8. When requested by the agencies' designated ex officio members or the DFO in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc*.

Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Coordination of conservation program delivery between federal, state and private entities;
3. Programs of the Department of the Interior and Department of Agriculture, and their bureaus, that enhance hunting opportunities and support wildlife conservation;
4. America's Great Outdoors; and
5. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc*.

PUBLIC INPUT

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	November 7, 2011.
Submit written information or questions before the meeting for the council to consider during the meeting.	November 7, 2011.

PUBLIC INPUT—Continued

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Give an oral presentation during the meeting	November 7, 2011.

Attendance

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Hannibal Bolton,

Acting Director.

[FR Doc. 2011–27946 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000.L51100000.GN0000. LVEMF09CF200.241A; NVN–067930; 11–08807; MO#4500024151; TAS: 14X5017]

Notice of Availability of the Draft Environmental Impact Statement for the Phoenix Copper Leach Project, Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as modified, the Bureau of Land Management (BLM), Nevada has prepared a Draft Environmental Impact Statement (EIS) for the Phoenix Copper Leach Project (Proposed Project) and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Phoenix Copper Leach Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Phoenix Copper Leach Project Draft EIS by any of the following methods to the attention of Dave Davis:

- *Fax:* (775) 635–4034.
- *Email: CU_Leach@blm.gov.*
- *Mail:* Bureau of Land Management, 50 Bastian Road, Battle Mountain, NV 89820 *Attn:* Phoenix Project Manager.

Copies of the Phoenix Copper Leach Project Draft EIS are available in the Mount Lewis Field Office at the above address and on the Battle Mountain District's National Environmental Policy Act (NEPA) Web page at: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field/blm_information/national_environmental.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Dave Davis, BLM Battle Mountain District, Phoenix Copper Leach Project Manager, telephone (775) 635–4150; address 50 Bastian Road, Battle Mountain, NV 89820; email *CU_Leach@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (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: Newmont Mining Corporation (Newmont) has submitted a proposed Amendment to the Plan of Operations for expansion and operation of the existing Phoenix Gold Mine to include leaching and beneficiation of copper oxide rock material that was previously permitted for disposal on waste rock facilities within the approved Phoenix Mine boundary. The Proposed Project would be located in north-central Nevada 12 miles southwest of Battle Mountain, Nevada, on private and public lands in Lander County. The proposed expansion would increase the surface disturbance of the existing mine area an additional 902 acres; 194 acres of public land and 708 acres of private land.

The Phoenix Copper Leach Project Draft EIS describes and analyzes the site-specific impacts for all affected resources. Three alternatives are analyzed: two action alternatives, the Proposed Action and the Reona Copper Heap Leach Facility (HLF) Elimination Alternative, and the No Action Alternative. Eleven other alternatives were considered then eliminated from further analysis and are discussed in the Draft EIS. Alternatives considered but eliminated from further analysis include: three alternative process options; three alternative plant design options; two alternative facility location options; one alternate pond cover design option; one alternate Phoenix heap leach pad configuration option; and the Borrow Area Elimination Alternative.

Mitigation measures have been identified to minimize potential environmental impacts and to ensure that the Proposed Project would not result in undue or unnecessary degradation of public lands. In addition, the Draft EIS includes an analysis of cumulative impacts, including a comprehensive evaluation of potential impacts to Native American cultural values. The BLM's Preferred Alternative is the Proposed Action as modified by the proposed mitigation.

The Phoenix Copper Leach Project Preferred Alternative would consist of the following primary components: (1) Expansion of the existing project boundary; (2) development and operation of two copper HLFs; (3) construction of six new process ponds; (4) construction and operation of a copper solvent extraction/electro-winning facility; (5) designation of a new optional use area that could be developed as a copper HLF and borrow area; (6) establishment of a new clay borrow area; (7) development of new water monitoring wells; (8) construction of a new haul road, pipeline, and utility corridor; (9) development of a new production water well; and (10) conversion of six process ponds to evaporation ponds during reclamation. New surface disturbance associated with the Proposed Action totals 902 acres. The majority of the proposed facilities would occur in areas that previously have been approved for surface disturbance. Under the Proposed Action, approximately 158 million tons of copper ore would be mined for processing resulting in the production of approximately 245 million pounds of recoverable copper during the ore processing timeframe. Active mining and processing for the project would last approximately 24 years; overall closure and reclamation activities are anticipated to extend approximately 10 years beyond the operational phase. A minimum of 13 years of revegetation and reclamation monitoring are estimated following mine closure.

Under the Reona Copper HLF Elimination Alternative, the proposed Reona Copper HLF and associated infrastructure (*e.g.,* solution pipelines between the proposed solvent extraction/electro-winning facility and the Reona Copper HLF and event pond) would not be developed. The 58 acres of proposed disturbance within the Reona heap leach pad area would continue to be utilized as a gold cyanide HLF, as permitted under the Phoenix Project Final Environmental Impact Statement (NV063–EIS00–28, 2002). The eight million ton of copper ore, planned for the Reona Copper HLF, would not be mined and processed by leaching. All other facilities would be the same as discussed for the Proposed Action.

The No Action Alternative would involve continuation of currently authorized gold mining, leaching, and milling operations at the Phoenix Mine in accordance with the Plan of Operations NVN–067930, as permitted under the Phoenix Project Record of Decision (November 28, 2003) and the other Federal and state permits. Under the No Action Alternative, the Proposed Project would not be constructed, and the currently classified waste rock that contains leach-grade copper would continue to be disposed of in one or more of the currently permitted waste rock facilities at the Phoenix Mine. Upon completion of currently permitted mining operations, the existing facilities identified and analyzed in the Phoenix Project Final EIS would be closed and reclaimed in accordance with current permits and applicable Federal and state closure and reclamation requirements.

On February 12, 2008, a Notice of Intent was published in the **Federal Register** (73 FR 8059–8060) inviting scoping comments on the Proposed Project. A public scoping meeting was held on February 27, 2008, in Battle Mountain, Nevada. The Draft EIS reflects input received from the public and other government agencies. Key issues identified during the scoping process include the following: (1) Potential contamination of surface water and groundwater from leakage or spillage of process solutions or reagents; (2) potential contamination of water in Willow Creek drainage during flood events from the operation of the proposed Phoenix Copper Leach Facility; (3) potential increases in local atmospheric particulates resulting from haul traffic and increased disturbance of soil surfaces; (4) potential atmospheric emissions of sulfuric acid and other process chemicals; (5) increased fragmentation and loss of wildlife habitat; (6) potential contribution to cumulative water quality issues within the Battle Mountain mining district; (7) permanent alternation of local landforms, visible over a considerable distance; (8) potential impacts to cultural resources and resources important to Native Americans; and (9) potential socioeconomic impacts. All comments that were received have been incorporated in a Scoping Summary Report and have been considered in preparation of this Draft EIS. During the development of the Draft EIS, the Environmental Protection Agency, Region IX, the Nevada Department of Environmental Protection, Bureau of Mining Regulation and Reclamation, and the Nevada Department of Wildlife identified the permanent closure of the copper leach facilities and disposal of chemical precipitates resulting from the drain-down of fluids during the closure process as an issue of concern.

In May 2008, the BLM sent letters to 12 tribes, bands, and interested parties notifying them of the Proposed Project and soliciting comments. Three of these groups (Battle Mountain Band, Yomba Shoshone, and Duckwater Shoshone) responded to the letters, and one, the Battle Mountain Band, requested a field tour of the study area. The field tour was held on August 29, 2008. Several concerns were expressed by the tribal participants, in particular, mining and its impacts on natural resources. None of the tribal members identified any specific sites or resources of concern within the Proposed Project area. The BLM continued consultation in February 2011, by sending letters to seven tribes, bands, and interested parties. No additional issues have been raised. Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment—you should be aware that your entire comment—including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10

Christopher J. Cook,

Field Manager, Mount Lewis Field Office.

[FR Doc. 2011–27796 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF ENERGY

[LLWO300000.L14300000]

Notice of Availability of the Supplement to the Draft Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States and Notice of Public Meetings

AGENCY: Bureau of Land Management, Interior. Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) and the Department of Energy (DOE) (the Agencies) as joint lead agencies announce the availability of the Supplement to the Draft Programmatic Environmental Impact Statement (EIS) for Solar Energy Development in Six Southwestern States (Supplement) (BLM/DES 11–49, DOE/EIS–0403D–S).

DATES: The Agencies will accept comments for ninety (90) calendar days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The Agencies will hold public meetings on the Supplement. The dates and locations of the public meetings are listed in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: You may submit comments related to the Supplement by the following methods:

- *Web site:* Using the online comment form available on the project *Web site: http://solareis.anl.gov.* This is the preferred method of commenting.
- *Mail, addressed to:* Solar Energy Draft PEIS, Argonne National Laboratory, 9700 S. Cass Avenue—EVS/240, Argonne, Illinois 60439.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on the Supplement or general information regarding the BLM National Environmental Policy Act of 1969 (NEPA) process should be directed to Shannon Stewart, Senior Planning and Environmental Analyst, BLM Washington Office, by email at *shannon_stewart@blm.gov,* or by telephone at 202–912–7219. Requests for additional information on the Supplement may also be directed to Jane Summerson, DOE Solar Programmatic EIS Document Manager, by email at *jane.summerson@ee.doe.gov,* or by telephone at 202–287–6188. For general information regarding the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, by telephone at 202–586–4600, leave a message at 1–800–472–2756, or by email at *askNEPA@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Supplement, references, and additional information regarding solar energy development are available at the project *Web site: http://solareis.anl.gov.* An electronic copy of the Supplement also can be viewed in any BLM State Office public room in the six-state study area and is available through the BLM Web site at *http://www.blm.gov.* The Supplement is also available on the DOE NEPA Web site at *http://energy.gov/nepa.* A complete, printed copy is available for review at the following BLM offices:

- Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004.
- Caliente Field Office, U.S. Highway 93 Building #1, Caliente, Nevada 89008.
- California Desert District, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.
- California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825.
- Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.
- Cedar City Field Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84721.
- El Centro Field Office, 1661 S. 4th Street, El Centro, California 92243.
- Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406.
- Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.
- Lower Sonoran Field Office, 21605 N. 7th Avenue, Phoenix, Arizona 85027.
- Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502.
- New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico, 87508.
- Palm Springs—South Coast Field Office, 1201 Bird Center Drive, Palm Springs, California 92262.
- San Luis Valley Public Lands Center, 1803 West Highway 160, Monte Vista, Colorado 81144.
- Southern Nevada District Office, 4701 North Torrey Pines, Las Vegas, Nevada 89130.
- Tonopah Field Office, 1553 South Main Street, Tonopah, Nevada 89049.
- Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

The BLM and the DOE will hold four public meetings on the Supplement to provide an overview of the document, answer questions, and receive public comments. The meeting site will open to the public at 6 p.m. The official meeting will begin at 7 p.m. and close after all individuals who wish to speak have been heard. The meeting dates and locations are given below. The specific venues will be announced at least 15 days in advance via local media, the project Web site (*http://solareis.anl.gov/*), and the DOE NEPA Web site (*http://energy.gov/nepa*).

- *Las Vegas, Nevada*—Wednesday, November 30, 2011.
- *Phoenix, Arizona*—Thursday, December 1, 2011.
- *El Centro, California*—Wednesday, December 7, 2011.
- *Palm Desert, California*—Thursday, December 8, 2011.

At these meetings the public will have an opportunity to provide oral and written comments. Oral and written comments from the meetings and additional comments submitted during the comment period will be considered by the Agencies in preparing the Final EIS. Comments submitted after the close of the comment period will be considered to the extent practicable.

Background

On December 17, 2010, the Agencies published a Draft Programmatic EIS for Solar Energy Development in Six Southwestern States (Arizona, California, Colorado, Nevada, New Mexico, and Utah). Public comments were accepted through May 2, 2011. More than 80,500 comments were received. The public, as well as many cooperating agencies, offered suggestions on how the Agencies could increase the utility of the document, strengthen the proposed BLM Solar Energy Program, and increase certainty regarding solar energy development on BLM-administered lands.

The Agencies have revised the Solar PEIS to better meet their solar energy objectives. The Agencies have prepared a targeted Supplement to the Draft Solar Programmatic EIS (Supplement) that includes modified and new components of the proposed BLM Solar Energy Program, DOE's proposed programmatic environmental guidance, and references to relevant portions of the Draft Solar Programmatic EIS. The Agencies have prepared this document in accordance with NEPA, as amended; the Council on Environmental Quality, the DOE, and the Department of Interior (DOI)

regulations implementing NEPA; and the Federal Land Policy and Management Act of 1976, as amended. The Supplement also updates the environmental effects analysis associated with BLM's modified action alternatives.

BLM-Specific Information

The BLM has identified a need to respond in a more efficient and effective manner to the high interest in siting utility-scale solar energy development on BLM-administered lands and ensure consistent application of measures to avoid, minimize, or mitigate the adverse impacts of such development. The BLM proposes to develop a new Solar Energy Program to further support utility-scale solar energy development on BLM-administered lands. The proposed Solar Energy Program has been designed to further the BLM's ability to meet the requirements for facilitating solar energy development on BLM-administered lands established by the Energy Policy Act of 2005 (Pub. L. 109–58) and Secretarial Order 3285A1 issued by the Secretary of the Interior. In particular, the proposed program has been designed to meet the requirements of Order 3285A1 to identify and prioritize solar energy development in locations best suited for such development, called solar energy zones (SEZ). The objectives of the BLM's proposed Solar Energy Program include:

- Facilitating near-term utility-scale solar energy development on public lands;
- Minimizing potential negative environmental, social, and economic impacts;
- Providing flexibility to consider a variety of solar energy projects (*e.g.,* by location, facility size, or technology);
- Optimizing existing transmission infrastructure and corridors; and
- Standardizing and streamlining the authorization process for utility-scale solar energy development on BLM-administered lands.

The elements of the BLM's proposed Solar Energy Program have been expanded from the Draft Solar Programmatic EIS and include:

1. Continued processing of pending applications for utility-scale solar energy development;
2. Identification of lands to be excluded from utility-scale solar energy development in the six-state study area;
3. Identification of priority areas (*i.e.,* SEZs) that are best suited for utility-scale production of solar energy in accordance with the requirements of Secretarial Order 3285A1 and the associated authorization procedures for applications in these areas;
4. Establishment of a process to identify new SEZs;
5. Establishment of a process that allows for responsible utility-scale solar energy development outside of priority areas (*i.e.,* variance process);
6. Establishment of mitigation requirements for solar energy development on public lands to ensure the most environmentally responsible development and delivery of solar energy; and
7. Amendment of BLM land use plans in the six-state study area to adopt those elements of the new Solar Energy Program that pertain to planning.

The alternatives being analyzed through the Supplement include the no action alternative, and two modified action alternatives, each of which would have the BLM establish a comprehensive Solar Energy Program to facilitate utility-scale solar energy development on BLM-administered lands.

On the basis of further data collection, consultation with cooperating agencies and resource managers, and analysis of comments submitted on the Draft Solar Programmatic EIS, the BLM has modified its preferred alternative to emphasize its commitment to the concept of SEZs by eliminating or adjusting SEZs to ensure they are not located in high conflict areas, establishing a protocol to identify new SEZs, and outlining incentives for projects within SEZs. In addition, the BLM has revisited ongoing state-based planning efforts to assure that such efforts could result in the identification of new SEZs. While the BLM's preferred alternative emphasizes the use and creation of SEZs for utility-scale solar energy development, the BLM also proposes a process that will accommodate responsible development outside of SEZs.

Under the modified program alternative (the BLM's preferred alternative), the BLM identifies categories of lands to be excluded from utility-scale solar energy development and identifies specific locations best suited for utility-scale production of solar energy (*i.e.,* SEZs) where the BLM would prioritize development. The modified program alternative emphasizes and incentivizes development within SEZs and proposes a collaborative process to identify additional SEZs. In order to accommodate the flexibility described in the BLM's program objectives, the modified program alternative allows for utility-scale solar development outside of SEZs in accordance with the proposed variance process. The modified program alternative also establishes authorization policies and procedures for utility-scale solar energy development on BLM-administered lands.

Under the modified SEZ alternative, the BLM would restrict utility-scale solar energy development applications to SEZs only, and designate all other lands as exclusion areas for utility-scale solar energy development. The proposed authorization policies that are part of the modified program alternative would also apply to applications in SEZs under the modified SEZ alternative.

The no action alternative remains unchanged from the Draft Solar Programmatic EIS. The no action alternative continues the issuance of right-of-way authorizations for utility-scale solar energy development on BLM-administered lands by implementing the requirements of the BLM's existing solar energy policies. Lands available for solar energy development would include those areas currently allowable under existing applicable laws and statutes and in conformance with the approved land use plan(s). Future solar energy projects and land use plan amendments would continue to be evaluated solely on an individual, case-by-case basis.

DOE-Specific Information

The DOE is required to meet mandates under Executive Order 13212, ''Actions to Expedite Energy-Related Projects'' (66 FR 28357; May 22, 2001); Executive Order 13514, ''Federal Leadership in Environmental, Energy, and Economic Performance'' (74 FR 52117; October 8, 2009); and Section 603 of the Energy Independence and Security Act of 2007 (EISA) (Pub. L. 110–140). The DOE's purpose and need is to satisfy both executive orders and comply with congressional mandates to promote, expedite, and advance the production and transmission of environmentally sound energy resources, including renewable energy resources and, in particular, cost-competitive solar energy systems at the utility scale.

Specifically, the DOE proposes to further integrate environmental considerations into its analysis and selection of solar projects through the development of programmatic environmental guidance. The proposed DOE guidance, provided in this Supplement, builds on the BLM's analysis of potential impacts of utility-scale solar development on the environment for all phases of development to provide a technical basis. The DOE could use, as appropriate, the programmatic guidance

for solar projects supported by DOE in any location, not just BLM-administered lands in the six-state study area.

The DOE will consider this guidance, including recommended environmental practices and mitigation measures, in its investment and deployment strategies and decision-making process. This guidance, based on the analyses in the Draft Solar Programmatic EIS and other information, would provide DOE with a tool for making more informed, environmentally sound decisions at the outset, help to streamline future environmental analysis and documentation for DOE-supported solar projects, and support the DOE's efforts to comprehensively (1) Determine where to make technology and resource investments to minimize the potential environmental impacts of solar technologies for DOE-supported solar projects, and (2) establish environmental mitigation recommendations for proponents of DOE solar projects to consider in project plans.

Through the Solar Programmatic EIS, the DOE is evaluating two alternatives: an action alternative and a no action alternative. Under the action alternative, the DOE would develop and adopt programmatic environmental guidance that would be used by DOE to further integrate environmental considerations into its analysis and selection of proposed solar projects. In the Supplement, DOE presents for public comment proposed guidance intended to amend its existing case-by-case approach, thus facilitating the advancement of solar energy development. Under the no action alternative, the DOE would continue its existing case-by-case process for addressing environmental concerns for solar projects supported by DOE. It would not develop programmatic environmental guidance with recommended environmental best management practices and mitigation measures that could be applied to DOE-supported solar projects.

Other Agency Involvement

Cooperating Federal agencies on the Solar Programmatic EIS include the Department of Defense; the U.S. Fish and Wildlife Service; the National Park Service; the Bureau of Reclamation; the U.S. Environmental Protection Agency, Region 9; and the U.S. Army Corps of Engineers, South Pacific Division. Other cooperating agencies on the Solar PEIS include the Arizona Game and Fish Department; the California Energy Commission and Public Utilities Commission; the Nevada Department of Wildlife, the N–4 Grazing Board, and the Southern Nevada Water Authority; the Utah Public Lands Policy Coordination Office; Clark, Esmeralda, Eureka, Lincoln, and Nye Counties, Nevada; Saguache County, Colorado; and Dona Ana County, New Mexico.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Michael D. Nedd,

Assistant Director, Minerals and Realty Management, Bureau of Land Management.

Henry Kelly,

Acting Assistant Secretary for Energy Efficiency and Renewable Energy, Department of Energy.

Authority: 40 CFR 1506.6, 1506.10, 43 CFR 1610.2, and 10 CFR 1021.313.

[FR Doc. 2011–27874 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NAMA–0411–7123; 3401–007–SZM]

Record of Decision on the Final Environmental Impact Statement for the National Mall Plan, National Mall and Memorial Parks, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability, Record of Decision on the Final Environmental Impact Statement for the National Mall Plan, National Mall and Memorial Parks, Washington, DC.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final Environmental Impact Statement for the National Mall Plan, National Mall and Memorial Parks (Final EIS/Plan).

ADDRESSES: The Record of Decision, Final EIS/Plan, and other information are available for public review in the Office of the Superintendent, National Mall and Memorial Parks, 900 Ohio Drive SW., Washington, DC 20024–2000. Copies are also posted online at *http://www.nps.gov/nationalmallplan.*

FOR FURTHER INFORMATION CONTACT: Superintendent, National Mall and Memorial Parks, 900 Ohio Drive SW., Washington, DC 20024–2000, or by telephone at (202) 245–4690.

SUPPLEMENTARY INFORMATION: The Record of Decision was signed at the Thomas Jefferson Memorial in Washington, DC on November 9, 2010, by Secretary of the Interior Ken Salazar; Assistant Secretary for Fish, Wildlife and Parks Tom Strickland, and National Park Service Director Jon Jarvis. The Record of Decision was also signed by National Capital Regional Director Peggy O'Dell and Acting National Mall and Memorial Parks Superintendent Maria Burks. A Floodplain Statement of Findings was signed on September 30, 2010, and a Programmatic Agreement with the Advisory Council on Historic Preservation, the District of Columbia State Historic Preservation Office, and others was signed on November 8, 2010. All of these documents are posted online at *http://www.nps.gov/nationalmallplan.*

Other related material is also available at *http://www.nps.gov/nationalmallplan*—''A National Mall Plan: Summary,'' ''The National Mall Plan: 2010 General Implementation Priorities'' list and related map, ''The Draft Environmental Impact Statement and National Mall Plan,'' newsletters, studies, public comment reports, maps, historic reports and background materials, and a number of related papers.

The National Mall in Washington, DC is managed by the National Park Service as part of the National Park System. Following direction by Congress, in November 2006, the National Park Service announced an intensive planning effort to refurbish the National Mall so that (1) Its treasured memorials and historic landscapes could be preserved, (2) very high levels of use could be sustained, and (3) the needs of visitors could be met. This effort recognized that the National Mall was not designed for the types and levels of use it currently receives—nearly 25 million visits annually, including demonstrations, national celebrations, and permitted events. This high level of visitation has resulted in adverse impacts on the cultural and natural resources of the National Mall. Adequate facilities are lacking for large gatherings, events, exhibitions, and celebrations; for tourism and general visitation; for group visitation; for visitors with disabilities; and for recreational opportunities. This has had adverse impacts on visitor experiences and park operations.

The scope of the Final Plan/EIS encompasses three specific locations

collectively referred to as the National Mall, in Washington, DC.

- The Mall, which extends from the grounds of the United States Capitol to the Washington Monument and includes Union Square.
- The Washington Monument and its grounds.
- West Potomac Park, including the Lincoln Memorial, the World War II Memorial, the Vietnam Veterans Memorial, the Franklin Delano Roosevelt Memorial, the Tidal Basin, and the Thomas Jefferson Memorial.

The Record of Decision identifies the preferred alternative, as described in the Final EIS/Plan, as the selected action for implementation. The preferred alternative articulates a vision to protect and refurbish the National Mall so that it can better fulfill its function as our American symbol and civic space for our democracy, and so that high levels of use can be sustained, resources protected, and visitor needs met.

The National Park Service's proposed course of action is to reinforce the overall identity of the National Mall and to establish a sense of place through enduring and compatible high-quality design, as well as through the highest standards of facility maintenance. The National Mall will be respectfully rehabilitated and refurbished, with improvements made to the pedestrian environment, so that very high levels of use can be accommodated and so that the needs of all visitors can be met in an attractive, high-quality, energy-efficient, and sustainable manner. As the preeminent civic stage for our country, First Amendment demonstrations, commemorations, national ceremonies and celebrations will be better accommodated. Memorials and landscapes will be protected and the large areas of open space that are defining features of the designed historic landscape will be better maintained.

The landscape will evolve to accommodate contemporary uses while respecting the planned historic character and visions of the L'Enfant and McMillan plans. The National Mall will be emphasized as a year-round destination where the beauty and variety of every season will enhance visitor experiences. Diverse opportunities will be available for visitors and will include educational, cultural, and musical programs, as well as active and passive recreational activities. The National Park Service will continue to manage the National Mall pursuant to the applicable laws, regulations, and policies for these natural, cultural, and historic resources. Taken as a whole, the selected action is also the environmentally preferred alternative because it best meets all six goals of the National Environmental Policy Act (NEPA). It was developed by combining the advantages of the other alternatives, and resource conditions will be greatly improved to help achieve the paramount goal of enriching and providing a quality American experience for all. The selected action will address high levels of use and improve conditions.

The decision is based on:

- Considerations of public use;
- Civic, ceremonial and commemorative functions;
- Park operational efficiency;
- Analyses of environmental impacts on cultural and natural resources;
- Demonstrations;
- Special events;
- National celebrations;
- Access and circulation;
- Visitor experience;
- Socioeconomic environment; and
- Park operations.

Planning started with a National Park Service-hosted national symposium on future use and management of the National Mall and featured nationally-recognized experts in architecture, freedom of speech, First Amendment rights, landscape architecture, history, law enforcement, planning, and government. Substantial public involvement was integral to the process for developing the plan and resulted in more than 30,000 public comments, as well as close collaboration with 21 governmental agencies and 30 organizations with an interest in the National Mall and/or historic preservation.

The Final EIS/Plan will serve as the foundation for subsequent implementation plans. Among decisions made in the Final EIS/Plan, the identification of locations capable of better accommodating use within a designed historic landscape is significant.

The National Park Service investigated means to avoid or minimize environmental impacts as a result of the plan and its projects. The National Park Service had studies, and assessments prepared at the beginning of the planning process, both for public information and as background for the National Park Service planning team. The National Park Service also worked with the U.S. Environmental Protection Agency and consultants to learn about best practices for solid waste and recycling programs. The results of this extensive background analysis were incorporated into the alternatives, including the preferred alternative. The National Park Service will continue to take all practical measures to avoid environmental harm and harm to related cultural and historic resources through compliance with statutes such as the NEPA and the National Historic Preservation Act, which provide for analyses and consultation. The National Park Service will continue to work with the U.S. Army Corps of Engineers on projects related to the Potomac River, the Tidal Basin, and the Potomac Park levee, and as appropriate with other organizations, agencies, and commissions including the Advisory Council on Historic Preservation, the District of Columbia State Historic Preservation Office, the U.S. Fish and Wildlife Service, the U.S. Commission of Fine Arts, and the National Capital Planning Commission.

The Record of Decision contains:

- A summary of the selected alternative;
- Mitigation measures developed to minimize environmental harm;
- The four other alternatives considered (including a no-action alternative);
- The basis for the decision in terms of planning objectives and the criteria used to develop the preferred alternative;
- The finding of no impairment of park resources and values;
- The environmentally preferred alternative; and
- The public and agency involvement.

Dated: September 28, 2010.

Stephen E. Whitesell,

Regional Director, National Capital Region.

[FR Doc. 2011–27891 Filed 10–27–11; 8:45 am]

BILLING CODE 4312–39–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1011–8676; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 8, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National

Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by November 14, 2011. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

IOWA

Adair County

Hotel Greenfield, 110 E. Iowa St., Greenfield, 11000812

Black Hawk County

Waterloo East Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), 128–329 E. 4th, 612–616 Mulberry, 501–632 Sycamore Sts., Waterloo, 11000813

Buena Vista County

Danish Lutheran Church, 113 W. 4th St., Alta, 11000814

Carroll County

Armour Creameries Poultry House, 218 5th Ave. S., Coon Rapids, 11000815

MAINE

Androscoggin County

Issacson, Philip M. and Deborah N., House, 2 Benson St., Lewiston, 11000816

Waldo County

Seven Star Grange, No. 73, 696 Bangor Rd., Troy, 11000817

Troy Meeting House, 514 Bangor Rd., Troy, 11000818

York County

Emery School, 116 Hill St., Biddeford, 11000819

MARYLAND

Howard County

Oakland Mills Blacksmith House and Shop, 5471 Old Columbia Pike, Columbia, 11000820

Prince George's County

Fairmont Heights Historic District, 56th Ave., Sheriff Rd., Balsamtree Dr., 62nd St., 62nd Pl., Eastern Ave., Fairmount Heights, 11000821

Glenn Dale Tuberculosis Hospital and Sanatorium, 5201 Glenn Dale Rd., Glenn Dale, 11000822

MASSACHUSETTS

Barnstable County

Truro Highlands Historic District, Highland Light Rd., Truro, 11000823

MONTANA

Valley County

Glasgow Army Airfield Norden Bombsight Storage Vault, ½ mi. N. of Glasgow, Glasgow, 11000824

NEW MEXICO

Eddy County

LA 157206—White Oaks Pictograph Site (Guadalupe Mountains Rock Art MPS), Address Restricted, Queen, 11000829

LA 158783—Ambush Site (Guadalupe Mountains Rock Art MPS), Address Restricted, Queen, 11000825

LA 162411—Lost Again Shelter (Guadalupe Mountains Rock Art MPS), Address Restricted, Queen, 11000828

LA 64908—Ambush Two Hands Shelter (Guadalupe Mountains Rock Art MPS), Address Restricted, Queen, 11000826

LA 71921—Horse Well Shelters (Guadalupe Mountains Rock Art MPS), Address Restricted, Queen, 11000827

TENNESSEE

Anderson County

Fort Anderson on Militia Hill, Vowell Mountain Rd., Lake City, 11000830

VERMONT

Chittenden County

LeClair Avenue Historic District, 6, 7, 8, 11, 14 LeClair Ave., 11–13, 12, 20 North St., Winooski, 11000831

VIRGINIA

Amelia County

Barrett—Chumney House, 2400 Richmond Rd., Amelia Courthouse, 11000832

Chesterfield County

Bellwood (Boundary Increase), 8000 Jefferson Davis Hwy., Richmond, 11000833

Fairfax County

Freeman Store, 131 Church St. NE., Vienna, 11000834

Woodlawn Plantation (Boundary Increase), 9000 Richmond Hwy., Alexandria, 11000836

Loudoun County

Unison Battlefield Historic District, Parts of Quaker Ln., Jeb Stuart, Unison, Newlin Mill, Millville, Bloomfield, Welbourne, Greengarden Rds., Unison, 11000835

Petersburg Independent City

Sutherland House, 606 Harding St., Petersburg (Independent City), 11000837

Roanoke Independent City

City of Roanoke Fire Station No. 5, 216 12th St. NW., Roanoke (Independent City), 11000838

Rockingham County

Cave Hill Farm, 9780 Cave Hill Rd., McGaheysville, 11000839

Shenandoah County

Maphis, John Miley, 56 Bell's Ln., Edinburg, 11000840

WISCONSIN

Forest County

Armstrong Creek Bridge, Old 101 Rd. over Armstrong Cr., Armstrong Creek, 11000841

[FR Doc. 2011–27890 Filed 10–27–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0111

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for Areas Designated by Act of Congress. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0111.

DATES: Comments on the proposed information collection activities must be received by December 27, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or by email at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in

30 CFR 761—Areas Designated by Act of Congress. OSM will request a 3-year term of approval for each information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 761 is 1029–0111. Responses are required to obtain a benefit for this collection.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 761—Areas Designated by Act of Congress.

OMB Control Number: 1029–0111.

Summary: OSM and state regulatory authorities use the information collected for 30 CFR 761 to ensure that persons planning to conduct surface coal mining operations on the lands protected by § 522(e) of the Surface Mining Control and Reclamation Act of 1977 have the right to do so under one of the exemptions or waivers provided by this section of the Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for certain surface coal mine permits and state regulatory authorities.

Total Annual Respondents: 16 coal mining applicants and 24 state regulatory authorities.

Total Annual Burden Hours: 512.

Total Annual Non-Wage Costs: $2,508.

Dated: October 21, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–27844 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost. This information collection activity was previously approved by OMB and assigned control number 1029–0039.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by November 28, 2011, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via email to *OIRADocket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR 784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. OSM is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0039, and is displayed in 30 CFR 784.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on August 3, 2011 (76 FR 46841). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR 784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0039.

Summary: Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 39 underground coal mining permit applicants and 24 state regulatory authorities.

Total Annual Burden Hours: 13,200.

Total Annual Non-wage Cost Burden: $378,932.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of

automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 21, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–27849 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0036

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information for Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0036.

DATES: Comments on the proposed information collection must be received by December 27, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783, or by email at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. The collection is contained in 30 CFR part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. OSM will request a 3-year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for part 780 is 1029–0036. Responses are required to obtain a benefit for this collection.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

OMB Control Number: 1029–0036.

Summary: Sections 507(b), 508(a), 510(b), 515(b) and (d), and 522 of Public Law 95–87 require applicants to submit operation and reclamation plans for coal mining activities. This information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mine permits on Federal lands, and State regulatory authorities.

Total Annual Responses: 220 applicants and 217 State responses.

Total Annual Burden Hours for Applicants: 131,378.

Total Annual Burden Hours for States: 76,115.

Total Annual Burden for All Respondents: 207,853.

Total Annual Non-Wage Costs for All Respondents: $1,992,392.

Dated: October 21, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–27842 Filed 10–27–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–723]

Certain Inkjet Ink Cartridges With Printheads and Components Thereof; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a General Exclusion Order; and Termination of the Investigation

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 this investigation and has issued a general exclusion order prohibiting importation of infringing inkjet ink cartridges with printheads and components thereof.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. 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 June 25, 2010, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California and Hewlett-Packard Development Company, L.P., of Houston, Texas (collectively ''HP''). 75 FR 36442 (June 25, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (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 inkjet ink cartridges with printheads and components thereof by reason of infringement of various claims of United States Patent Nos. 6,234,598 (''the '598 patent''); 6,309,053 (''the '053 patent''); 6,398,347 (''the '347 patent''); 6,481,817 (''the '817 patent''); 6,402,279 (''the '279 patent''); and 6,412,917 (''the '917 patent''). The '917 patent was subsequently terminated from the investigation. The complaint named the following entities as respondents: MicroJet Technology Co., Ltd. of Hsinchu City, Taiwan (''MicroJet''); ain Asia Pacific Microsystems, Inc. of Hsinchu City, Taiwan (''APM''); Mipo Technology Limited of Kowloon, Hong Kong (''Mipo Tech.''); Mipo Science & Technology Co., Ltd. of Guangzhou, China (''Mipo''); Mextec d/b/a Mipo America Ltd. of Miami, Florida (''Mextec''); SinoTime Technologies, Inc. d/b/a All Colors of Miami, Florida (''SinoTime''); and PTC Holdings Limited of Kowloon, Hong Kong (''PTC'').

Respondents Mipo, Mipo Tech., SinoTime, and Mextec were subsequently terminated from the investigation. Respondent MicroJet defaulted. Respondent PTC did not participate in the hearing and failed to file post-hearing briefs. Pursuant to 19 CFR 210.17(d) and (e), the ALJ drew an adverse inference against PTC that ''PTC imported accused products into the United States, that those products were manufactured by MicroJet, and that those products contain ICs [integrated circuits] made by APM.'' Final Initial Determination (''ID'') at 29.

On June 10, 2011, the Administrative Law Judge (''ALJ'') issued his final ID, finding a violation of section 337 by the respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over APM. The ALJ also found that there has been an importation into the United States, sale for importation, or sale within the United States after importation of the accused inkjet ink cartridges with printheads and components thereof. Regarding infringement, the ALJ found that MicroJet and PTC directly infringe claims 1–6 and 8–10 of the '598 patent; claims 1–6 and 8–17 of the '053 patent; claims 1, 3–5, and 8–12 of the '347 patent; claims 1–14 of the '817 patent; and claims 9–15 of the '279 patent. The ALJ also found that MicroJet induces infringement of those claims. The ALJ further found that APM does not directly infringe the asserted claims of the '598 and does not induce infringement of the asserted patents. The ALJ, however, found APM liable for contributory infringement. With respect to invalidity, the ALJ found that the asserted patents were not invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '598, '053, '347, '817, and '279 patents as required by 19 U.S.C. 1337(a)(2).

On June 24, 2011, HP filed a contingent petition for review of the ID. On June 27, 2011, APM and the Commission investigative attorney filed petitions for review of the ID. On July 5, 2011, the parties filed responses to the various petitions and contingent petition for review.

On August 11, 2011, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. 76 FR 51055 (Aug. 17, 2011). Specifically, the Commission determined to review the finding that HP failed to establish by a preponderance of the evidence that Respondent APM induced infringement of the asserted patents.

On August 25, 2011, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. On September 1, 2011, the parties filed reply submissions. Although Respondent PTC failed to appear at the hearing and failed to file post-hearing briefs, resulting in the ALJ drawing an adverse inference against PTC (ID at 29), PTC filed a letter dated August 24, 2011, responding to the issue under review. However, by failing to file a post-hearing brief, PTC has waived any arguments it has or may have had about any issues in this investigation. *See* Order No. 2, Ground Rule 11.1. Accordingly, the Commission declines to consider PTC's submission.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined that there is a violation of section 337. The Commission has determined to reverse the ALJ's finding that HP failed to establish by a preponderance of the evidence that Respondent APM induced infringement of the asserted patents, and finds that HP established by a preponderance of the evidence that APM induced infringement of the asserted patents. The Commission adopts the ALJ's findings in all other respects.

The Commission has further determined that the appropriate remedy is a general exclusion order prohibiting the entry of inkjet ink cartridges with printheads and components thereof that infringe any of the asserted claims. The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the general exclusion order. Finally, the Commission has determined that a bond of 100 percent of the entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of inkjet ink cartridges with printheads and components thereof that are subject to the order. The Commission's order and opinion were delivered to the President and to 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 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46, 210.50.

By order of the Commission.

Issued: October 24, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–27885 Filed 10–27–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–68]

Treasure Coast Specialty Pharmacy Decision and Order

On September 14, 2011, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision. There were no exceptions filed to the ALJ's decision.

Having reviewed the record in its entirety including the ALJ's

recommended decision, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended decision to grant the Government's Motion for Summary Decision.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration, BT9856002, issued to Treasure Coast Specialty Pharmacy, be, and it hereby is, revoked. I further order that any pending application of Treasure Coast Specialty Pharmacy, to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.

Dated: October 7, 2011.

Michele M. Leonhart,

Administrator.

Scott Lawson, Esq., for the Government
Richard K. Alan, II, Esq., for the Respondents

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Gail A. Randall, Administrative Law Judge. On June 27, 2011, the Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause and an Immediate Suspension of Registration (''Order''), immediately suspending the DEA Certificate of Registration, No. BT9856002, of Treasure Coast Specialty Pharmacy (''Treasure Coast''), as a retail pharmacy pursuant to 21 U.S.C. 824(d) (2006), because Treasure Coast's continued registration constitutes an imminent danger to the public health and safety. The Order also proposed to deny any pending DEA registration applications by Treasure Coast and to deny the pending application for DEA registration by Pappy's Drugs d/b/a Prima Vista Pharmacy (''Pappy's Drugs'') because their registrations would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

Specifically, the Order alleged that Treasure Coast ''has dispensed and continues to dispense controlled substances, primarily Schedule III anabolic steroids and Schedule II narcotics under circumstances demonstrating that [Treasure Coast] knew or should have known'' that those prescriptions were not issued for a legitimate medical purpose. [Order at 2]. The Order explains that this knowledge must be inferred from Treasure Coast's association with and filling of prescriptions issued by physicians who have pled guilty in federal court to unlawfully distributing steroids, and who market themselves as providing ''hormone replacement therapy'' and ''anti-aging'' services. [*Id.*]. In addition, the Order alleges that Treasure Coast dispensed controlled substances based on invalid prescriptions where the prescribing practitioners were not licensed to prescribe controlled substances in the various states where their patients were located.'' [*Id.*]. Further, the Government alleges that despite Treasure Coast being apprised that it is illegal for it to practice in North Carolina without a license, the pharmacy continued to ship anabolic steroids to customers located in that state. [*Id.* at 3–4].

Next, the Government alleged that Treasure Coast filled prescriptions for Schedule II controlled substances prescriptions ''under circumstances indicating that the drugs are diverted from legitimate channels, misused, or abused.'' [*Id.* at 4].

On July 28, 2011, counsel for Treasure Coast and Pappy's Drugs (collectively, ''Respondents'') timely filed a request for a hearing in the above-captioned matter.

On July 29, 2011, the Government filed its Motion For Summary Disposition And Motion to Stay Proceedings (''Government's Motion''). Therein, the Government moved for summary disposition of the portion of these proceedings that relate to Treasure Coast's registration. The Government based its motion on the fact that the State of Florida suspended Treasure Coast's registration as a community pharmacy and, therefore, Treasure Coast currently lacks state authority to handle controlled substances.

On August 1, 2011, I ordered the Respondents to file a response to the Government's Motion, if any, on or before August 5, 2011.

On August 5, 2011, counsel for the Respondents filed their Respondents' Response to DEA's Motion For Summary Disposition And Motion To Stay Proceedings (''Respondents' Response''). Therein, the Respondents argued that the Government is precluded from using Treasure Coast Pharmacy's lack of state licensure as a basis for revocation of its DEA registration, through summary disposition or otherwise, as the Government failed to state those grounds in its Order to Show Cause. Consequently, the Respondents' aver that Treasure Coast's due process rights require the Government ''to serve an Order to Show Cause * * * stating the DEA's new or substituted basis for revocation and calling upon [Treasure Coast] to appear at the time and place stated in the Order to Show Cause, but in no event less than thirty days after the date of receipt of this order.'' [Resp. Response at 2]. In addition, the Respondents argue that under applicable Florida law the owner of a pharmacy need not be licensed as such, yet must designate a managerial pharmacist that is so licensed. Further, citing *Federgo* v. *Department of Professional Regulation,* 452 So.2d 1063 (Fla. 3rd DCA 1984), the Respondents state that alleged wrongdoing of a pharmacist does not trigger nor support the suspension of the pharmacy's state license. [*Id.* at 3].

On August 5, 2011, I ordered the Government to reply to the Respondents' Response no later than August 12, 2011.

On August 9, 2011, counsel for Treasure Coast filed its Respondents' Supplemental Response to DEA's Motion For Summary Disposition And Motion To Stay Proceedings. Therein, the Respondents argue that Treasure Coast has a valid Florida retail pharmacy drug wholesale distribution license, and on that basis summary disposition is inappropriate.

On August 12, 2011, counsel for the Government filed its Government's Reply To Respondent's Initial And Supplemental Responses To Government's Motion For Summary Disposition (''Government's Reply''). In its Reply the Government argues that its Motion for Summary Disposition remains valid. First, the Government addresses the Respondents' due process argument in stating

> The Administrative Procedures Act (APA), 5 U.S.C. 551 *et seq,* does not * * * mandate * * * an inelastic application of the strictures of administrative due process: ''[p]leadings in administrative proceedings are not judged by the standards applied to an indictment at common law.'' *Citizens State Bank of Marshfield* v. *FDIC,* 751 F.2d 209, 213 (8th Cir. 1984) (quoting *Aloha Airlines* v. *Civil Aeronautics Bd.,* 598 F.2d 250, 262 (DC Cir. 1979), *cited* in *Liddy's Pharmacy, L.L.C.,* 76 FR 48887, 48896, fn 15. As noted in *Liddy's,* ''the failure of the Government to disclose an allegation in the Order to Show Cause is not dispositive, and an issue can be litigated if the Government otherwise timely notifies a respondent of its intent to litigate the issue.'' *Id.* Due process is traditionally measured by the notice accorded respondents not by the contents of the OTSC but by subsequent prehearing statements. *Id. citing Darrell Risner, DMD,* 61 FR 728, 730 (1996); *Nicholas A. Sychak, d/b/a Medicap Pharmacy,* 65 FR 75959, 75961 (2000); *John Stafford Noell,* 59 FR 47359, 47361 (1994).

[Government's Reply at 3–4]. Therefore, the Government argues that it accorded

the Respondent due process when it notified Treasure Coast of its basis for summary disposition in the Government's prehearing Motion for Summary Disposition [*Id.* at 4].

Next, the Government addresses the substantive basis for its Motion. Specifically, the Government argues that Treasure Coast's possession of a wholesale distributor permit is meaningless, as the loss of its community pharmacy license renders that permit useless. [*Id.* at 5–6]. The Government points to Florida Statute Sections 499.01(2)(f) and 499.003(51) for the proposition that a pharmacy's possession of a wholesale distributor permit is conditioned on that pharmacy's maintenance of a community pharmacy license. [*Id.* at 5]. The Government buttresses this argument via provision of a letter from the Chief Legal Counsel for the Emergency Action Unit of the Florida Department of Health, stating ''[b]ecause Treasure Coast's community pharmacy permit is presently suspended, Treasure Coast may not operate under either its community pharmacy permit or its wholesale distributor permit.'' [*Id.*]. Hence, the Government argues that the Respondent currently lacks state authority to handle controlled substances and, therefore, summary revocation of its DEA registration is appropriate.

For the reasons set forth below, I will grant the Government's Motion and recommend that the Deputy Administrator revoke Treasure Coast's DEA Certificate of Registration and deny any currently pending applications to renew its registration.

II. Discussion

a. Procedural Due Process

First, I reject Treasure Coast's argument that it will not be afforded procedural due process if its registration is revoked due to its lack of state licensure, as that basis was not noticed in the Government's Order. As correctly stated by the Government, the confines of this administrative proceeding are not defined by the Government's Order to Show Cause, but rather the Government's prehearing disclosures, *in toto.* [*See* George Mathew, M.D., 75 FR 66,138, 66146 (DEA 2010)]. Further, the DEA has consistently followed *Goldberg* v. *Kelly,* 397 U.S. 254, 270 (1970), by writing: ''In *Goldberg,* the Supreme Court held that 'where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.' '' [Beau Boshers, M.D., 76 FR 19,401, 19,403 (DEA 2011) (citing *Goldberg,* 397 U.S. at 270 (quoting *Greene* v. *McElroy,* 360 U.S. 474, 496 (1959))]. The Court has further explained that ''[a] party is entitled * * * to know the issues on which [the] decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.'' [*Id.* (citing *Bowman Transp., Inc.* v. *Arkansas-Best Freight System, Inc.,* 419 U.S. 281, 288 n.4 (1974))].''

Here, the Government put the Respondent on notice through its Motion for Summary Disposition. Accordingly, Treasure Coast's due process rights are not violated because the Government, through its prehearing Motion, timely notified Treasure Coast of its intent to pursue revocation of its registration on the basis of the pharmacy's lack of state licensure. In its Response, Treasure Coast had the opportunity to rebut the factual basis upon which the Government based its Motion. For this reason, Treasure Coast's due process argument fails.

b. Wholesale Distribution Permit and State Authority

The DEA will not maintain a controlled substances registration if the registrant is without state authority to handle controlled substances. The Controlled Substances Act (''CSA'') provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. [*See* 21 U.S.C. 823(f) (''the Attorney General shall register practitioners (including pharmacies * * *) * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices''). *See also* 824(a)(3) (stating ''a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or registration suspended, revoked or denied by competent State authority'')]. The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a registrant who no longer possesses a state license to handle controlled substances. [*See e.g. Joseph Baumstarck,* 74 FR 17,525, 17,527 (DEA 2009) (stating the ''ALJ applied the Agency's long-settled ruled [sic] that a practitioner may not maintain his DEA registration if he lacks authority to handle controlled substances under the laws of the state in which he practices''); *Roy Chi Lung, M.D.,* 74 FR 20,346 (DEA 2009); *Gabriel Sagun Orzame, M.D.,* 69 FR 58,959 (DEA 2004); *Alton E. Ingram, Jr., M.D.,* 69 FR 22,562 (DEA 2004); *Graham Travers Schuler, M.D.,* 65 FR 50,570 (DEA 2000); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (DEA 1993)].

The parties do not dispute that the State of Florida suspended Treasure Coast's retail pharmacy registration. Therefore, Treasure Coast no longer possesses authority under that license to handle controlled substances. However, Treasure Coast argues that it currently possesses other state authority to handle controlled substances, through its maintenance of a wholesale distributor permit.

Nevertheless, I am persuaded by the Government's argument that the State of Florida did not intend a pharmacy, who lacks authority to handle controlled substances under a retail pharmacy registration, to be permitted to handle controlled substances under a wholesale distribution permit. Not only is the alternative plainly inconsistent with Florida law, it renders an absurd interpretation of those laws. [*See* Fla. Stat. 499.01(2)(f) (2010) (only permitting a retail pharmacy to obtain a wholesale distribution permit); 499.003(51) (defining ''retail pharmacy'' as ''a community pharmacy licensed under chapter 465''); Durr v. Shinseki, 638 F.3d 1342, 1348 (11th Cir. 2011) (''[b]ecause the legislature is presumed to act with sensible and reasonable purpose, statute should, if at all possible, be read so as to avoid unjust or absurd conclusion.'')].

This interpretation is consistent with the letter from the Chief Legal Counsel, Emergency Action Unit, Florida Department of Health, who wrote that, ''[b]ecause Treasure Coast's community pharmacy permit is presently suspended, Treasure Coast may not operate under either its community pharmacy permit or its wholesale distributor permit.'' [Government's Reply, attachment 3]. Therefore, because, as a matter of law, Treasure Coast no longer possesses state authority to handle controlled substances, its DEA registration must be revoked.

c. Respondents' Other Arguments

Treasure Coast's other arguments for denial of the Government's Motion are irrelevant to this proceeding. First, the Respondent's argument that Florida law does not require the owner of a retail pharmacy to be registered as a pharmacist, but instead permits a pharmacy to designate managerial authority to a registered pharmacist, is irrelevant because despite the truth or

falsity of that assertion, the DEA registers pharmacies, not pharmacists,[1] and Treasure Coast *as a retail pharmacy* currently lacks state authority to operate.

In addition, the Respondents' argument that the State of Florida may not revoke a pharmacy's registration on the basis of its pharmacist's wrongdoing is equally irrelevant. Upon a motion for summary disposition due to lack of state licensure, the DEA will not consider whether the State has a valid basis for revoking the Respondent's registration; it will only consider whether the Respondent currently possesses state authority. As Treasure Coast does not, its registration must be revoked.

III. Conclusion, Order, and Recommendation

It is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required under the rationale that Congress does not intend administrative agencies to perform meaningless tasks. [*See Layfe Robert Anthony, M.D.,* 67 FR 35,582 (DEA 2002); *Michael G. Dolin, M.D.,* 65 FR 5,661 (DEA 2000); *see also Philip E. Kirk, M.D.,* 48 FR 32,887 (DEA 1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *Puerto Rico Acqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994)]. Consequently, there is no genuine dispute of material fact as the Respondent currently lacks state authority to handle controlled substances. Therefore, summary disposition for the Government is appropriate.[2]

Accordingly, *I hereby grant* the Government's Motion for Summary Disposition.

I also forward the portion of this case that relates to Treasure Coast's registration to the Deputy Administrator for final disposition. I recommend that Treasure Coast's DEA Certificate of Registration, Number BT9856002, be revoked and any pending renewal applications for this registration be denied.

Dated: August 16, 2011.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2011–27927 Filed 10–27–11; 8:45 am]

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[1] 21 U.S.C. 823(f).

[2] This opinion does not reach the other factual issues made in the Order to Show Cause. Rather, this opinion solely addresses Treasure Coast's loss of ability to handle controlled substances in the State of Florida, and, thus, ability to maintain a DEA registration.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Abelardo E. Lecompte-Torres, M.D. Decision and Order

On April 29, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Abelardo E. Lecompte-Torres, M.D. (Respondent), of Ponce, Puerto Rico. The Show Cause Order proposed the denial of Respondent's application for a DEA Certificate of Registration, on the ground that his registration ''would be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).'' Show Cause Order at 1.

The Show Cause Order specifically alleged that ''[o]n or about April 7, 2009, [Respondent] filed an application for registration[,] seeking a DEA Certificate of Registration as a practitioner in Schedules II through V * * * at the registered location of 620 Lady Di Street, Apartment #10, Parque Los Almendros, Ponce, Puerto Rico 00716.'' *Id.* The Show Cause Order then alleged that on August 21, 2006, Respondent had voluntarily surrendered his previous DEA registration pursuant to a Memorandum of Understanding he entered into with DEA on July 11, 2006. *Id.*

The Show Cause Order further alleged that on May 2, 2007, Respondent was indicted in the United States District Court for the District of Puerto Rico and charged with violations of 18 U.S.C. 2; 1349; 1956(h) and (a)(1)(A)(i); as well as 21 U.S.C. 841(a)(1) and 846. Show Cause Order at 2. The Show Cause Order also alleged that the indictment alleged that Respondent had authorized multiple prescriptions for controlled substances, including hydrocodone, for internet customers who resided in jurisdictions where he was not authorized to practice medicine. *Id.* The Order further alleged that the indictment had charged him with authorizing ''prescriptions for individuals with whom [he] did not establish a valid doctor-patient relationship'' because he ''(1) fail[ed] to establish a sufficient patient history; (2) fail[ed] to perform an adequate physical or mental exam; (3) fail[ed] to use appropriate diagnostic or laboratory testing; and (4) fail[ed] to provide a means to monitor medication response.'' *Id.*

Finally, the Show Cause Order alleged that on January 10, 2008, Respondent pled guilty to one count of conspiracy to possess with intent to distribute hydrocodone, a violation of 21 U.S.C. 841(a)(1) and 846. *Id.* The Order then alleged that Respondent was subsequently convicted and sentenced to three years probation. *Id.*

On May 22, 2010, the Show Cause Order, which also notified Respondent of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either, was served on him by certified mail as evidenced by the signed returned receipt card. *See id.* at 2 (citing 21 CFR 1301.43(a)); *see also* GX 10. Thereafter, on June 22, 2010, Respondent's counsel timely submitted a letter to the Office of Administrative Law Judges (ALJ) wherein he waived his right to a hearing but requested the opportunity to file a written statement. *See* GX 11. Respondent further stated that he did not contest the numbered allegations of the Show Cause Order (which are set forth above), but that he would ''bring to [the Agency's] attention facts that particularize and expand said findings.'' *Id.* Respondent also stated that he would like to bring to the Agency's attention ''extenuating circumstances which should attenuate the agency's final determination.'' *Id.*

However, when, as of September 21, 2010, the Government had not received his statement, it filed its Request for Final Agency Action and forwarded the Investigative Record to this Office. Subsequently, on December 17, 2010, the Government filed an Addendum to its Request for Final Agency Action, stating that it had since learned that Respondent had entered into an agreement with the Puerto Rico Board of Licensing and Medical Discipline (Board), and that on September 22, 2010, the Board had issued a resolution, the terms of which include, *inter alia,* that Respondent surrender his authority to prescribe controlled substances for a term of three years, effective September 29, 2010.

On December 17, 2010, the Government served the Addendum on Respondent's counsel by first class mail. Since Respondent's June 2010 letter, DEA has not received any other correspondence from Respondent or his counsel.

I therefore find that Registrant has waived his right to a hearing and to submit a written statement beyond that contained in his June 2010 letter. *See* 21 CFR 1301.43(e). Accordingly, I issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government, including Respondent's statement that he does not contest the allegations

contained in the Order to Show Cause. *See* 21 CFR 1301.46; 1316.49. I make the following findings of fact.

Findings

Respondent previously held a DEA registration as a practitioner. However, on September 19, 2005, Respondent was issued an Order to Show Cause and Immediate Suspension of Registration based on allegations that he had issued controlled-substance prescriptions over the internet to persons he neither saw nor physically examined and with whom ''he had no prior doctor-patient relationship,'' and on whom he did not maintain patient records. GX 3, at 5. The 2005 Show Cause Order thus alleged that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescriptions. *Id.* at 6–7.

Thereafter, Respondent and DEA settled the matter by entering into a Memorandum of Agreement (MOA), which became effective on July 11, 2006, and which is to remain in effect for five years. GX 4, at 8. Pursuant to the MOA, Respondent agreed to surrender his registration and the Government agreed that it would approve his application for a new registration ''after the expiration of twenty-four (24) months from service of the'' 2005 Show Cause Order ''barring any unforeseen or heretofore unknown basis to deny the application,'' and that ''no act that formed the basis for * * * paragraphs 15–17'' of the 2005 Show Cause Order ''shall form the sole basis for [the] denial of Registration.'' [1] *Id.* at 4–5. On August 21, 2006, Respondent surrendered his registration. GX 5.

On May 2, 2007, a Federal grand jury sitting in the District of Puerto Rico, issued a superseding indictment, which charged Respondent with conspiring to distribute controlled substances, in violation of 21 U.S.C. 846; unlawfully distributing a controlled substance (hydrocodone), in violation of 21 U.S.C. 841(a)(1); conspiracy to commit wire fraud, in violation of 18 U.S.C. 1349; and conspiracy to commit money laundering, in violation of 18 U.S.C. 1956(h) and 1956(a)(1)(A)(i). *See* GX 7. On January 10, 2008, Respondent pled guilty to one count of Conspiracy to Possess with Intent to Distribute Hydrocodone, in violation of 21 U.S.C. 841(a)(1) and 846; on August 8, 2008, the United States District Court entered its judgment finding him guilty of the offense and sentenced him to three years' probation and 288 hours of community service. *See* GX 8.

On April 7, 2009, Respondent submitted an online application for a new DEA Certificate of Registration as a Practitioner in schedules II–V. Respondent sought registration at the address of 620 Lady Di Street, Apt. #10, Parque Los Almendros, Ponce, Puerto Rico 00716. GX 1, at 1.

On May 26, 2010, the Puerto Rico Board issued a complaint against Respondent's license on the ground that he had been convicted of a crime involving moral turpitude. Declaration of Diversion Investigator, at 2. On September 2, 2010, Respondent and the Board's Investigator agreed to a settlement; on September 22, the Board voted to adopt the settlement. *Id.*

Pursuant to the settlement, Respondent was allowed to continue practicing medicine. *Id.* at 3. However, Respondent ''[s]urrender[ed] his capacity to prescribe controlled substances for a term of three years.'' *Id.* I therefore find that Respondent is currently without authority to handle controlled substances in the Commonwealth of Puerto Rico, the jurisdiction in which he has sought registration.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that ''[t]he Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Moreover, the CSA defines ''[t]he term 'practitioner' [to] mean[] a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense, * * * [or] administer * * * a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). *See also id.* § 824(a)(3) (authorizing revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

As these provisions make plain, possessing authority under state law (or in the case of Puerto Rico, the law of the Commonwealth) to handle controlled substances is an essential condition for obtaining and maintaining a DEA registration. *Steven B. Brown,* 75 FR 65660, 65663 (2010) (citing *John B. Freitas,* 74 FR 17524, 17525 (2009)); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988).

It is undisputed that the Puerto Rico Board has suspended Respondent's authority to dispense controlled substances in the Commonwealth, the jurisdiction in which he practices, for a period of three years, and that he does not satisfy the CSA's requirement for obtaining a registration. *See* 21 U.S.C. 802(21) & 823(f). Accordingly, his pending application will be denied.[2]

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I order that the pending application by Abelardo E. Lecompte-Torres, M.D., for DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: October 17, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–27929 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

[1] The MOA also provided that:

DEA is not precluded from introducing this Agreement, violations of this Agreement and any other relevant allegations, whether enumerated herein or not, that preceded or may ensue during or after the effective period of this Agreement in any future administrative proceedings. Further, nothing in this Agreement shall be construed as a waiver to use any other grounds for revocation or denial of a DEA registration, including, but not limited to, the admissibility of this Agreement and/or any violations of this Agreement in the event that future administrative proceedings become necessary.

GX 4, at 5–6.

[2] While the Government contends that Respondent's application should also be denied based on his involvement in an additional internet prescribing scheme and his felony conviction for participating in this scheme, *see* Request for Final Agency Action, at 7–9; for the reason stated above, I conclude that it is unnecessary to address whether this conduct provides a further ground for denying his application.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Aaron Gloskowski, D.O.; Decision and Order

On March 17, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Aaron Gloskowski, D.O. (Registrant), of Kearny, Arizona. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BG6908757, as a practitioner in Schedules II through V, and the denial of any pending applications to renew or modify his registration, pursuant to 21 U.S.C. 824(a)(3) & (4) and 823(f). Show Cause Order at 1.

More specifically, the Show Cause Order alleged that as a result of action by the Arizona Board of Osteopathic Examiners in Medicine and Surgery (hereinafter, the Board), Registrant is without authority to practice medicine or handle controlled substances in the State of Arizona, the State in which he is registered with DEA, and therefore is not entitled to hold a DEA registration. *Id.* at 1–2.

The Show Cause Order also alleged that pursuant to Registrant's consent agreements with the Board, on two occasions, Registrant provided urine samples for drug testing, which tested positive for methamphetamine, a Schedule I[1] controlled substance. *Id.* at 2. The Order further alleged that Registrant has a history of drug abuse dating to at least November 2008, when he entered into a Rehabilitation Agreement with the Board, and that his self-abuse of a controlled substance is also a ground for revocation of his DEA registration. *Id.* The Order also notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either. *Id.* at 2. (citing 21 CFR 1301.43).

The Government initially attempted to serve the Show Cause Order by certified mail addressed to Registrant at his registered address. However, the mailing was returned to the Government marked: ''Moved, Left no Address'' and ''Unable to Forward.'' Government Request for Final Agency Action (Request), at 1.

Registrant was then located by a DEA Diversion Investigator (DI), who then resent the Show Cause Order to him by certified mail; according to a certified mail receipt, on April 4, 2011, Registrant was served with the Order. Request at 1–2. On March 21, 2011, the Government also emailed the Order to Registrant; the DI confirmed that Registrant had received the email and had opened the attachment containing the Order. *Id.* at 2.

Since the date of service of the Show Cause Order, thirty days have now passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration BG6908757, which authorizes him to handle controlled substances in Schedules II through V as a practitioner, at the registered address of 100 Tilbury Drive, Kearny, Arizona. His registration does not expire until September 30, 2012.

Registrant was formerly licensed as an osteopathic physician in Arizona. On November 21, 2008, Registrant entered into a Stipulated Rehabilitation Agreement with the Arizona Board of Osteopathic Examiners in Medicine and Surgery, under which he was allowed to participate in the Board's confidential program for the treatment and rehabilitation of doctors of medicine who are impaired by alcohol or drug abuse, pursuant to A.R.S. § 32–1861. *See* GX E, at 1 (Stipulated Rehabilitation Agreement). The Rehabilitation Agreement was to remain in effect for 5 years. *Id.* at 3.

The Rehabilitation Agreement stipulated that any violation of its terms constituted unprofessional conduct as defined in A.R.S. § 32–1854,[2] and may have resulted in disciplinary action pursuant to A.R.S. § 32–1855. *Id.* at 1. Therein, Registrant agreed to various conditions, including that he take only those medications prescribed to him by his primary care physician; that he submit to biological fluid collection for testing, *id.* at 4–5; and that in the event of a relapse, he would enter into an Interim Consent Agreement for Practice Restriction that required, among other things, that he not practice medicine until such time as he successfully completed a long-term inpatient or residential treatment program designated by the Board. *Id.* at 7.

On February 25, 2009, the Board was notified that Registrant had provided a biological fluid sample which tested positive for methamphetamine. GX F, at 3 (Consent Agreement and Order For Probation, June 29, 2009). Upon notice from the Executive Director of the Board, Registrant voluntarily refrained from practicing medicine, successfully completed an inpatient treatment program, and entered an outpatient program. *Id.* at 3.

On June 29, 2009, the Board issued an Interim Order placing Registrant on probation for five years. The Board imposed extensive conditions on Registrant, including that he participate in the Board's monitored aftercare program and participate in the intensive outpatient program until the program's medical director approved his discharge from it. *Id.* at 4. The Board also ordered that he attend a 12-step program or self-help group; obtain psychological counseling; take no medication unless prescribed by his primary care physician or in an emergency; consume no alcohol or poppy seeds; and submit biological fluid samples upon the Board's request with the further provision that his failure to cooperate in the collection of such samples ''may be considered [a] failure to comply with th[e] Order.'' *Id.* at 4–7. Finally, the Order provided that ''the positive finding in [Registrant's] biological fluid of a drug or medication not prescribed to [him] in accordance with this Order shall be considered proof of a relapse,'' and that in the event of a relapse, his ''license to practice medicine shall be summarily suspended pending a formal administrative hearing for revocation.'' *Id.* at 7–8.

On June 9, 2010, Registrant submitted a biological fluid sample for testing pursuant to the 2009 Order. GX H, at 5–6. As a result of irregularities found in the sample, Registrant was directed by the Board to submit an observed urine test and hair test for sampling. *Id.* at 6. Registrant submitted the biological fluid testing sample; however, the collected sample had not been ''observed'' and the chain of custody form did not indicate ''observed'' but ''monitored.'' *Id.* at 7. The Board then informed Registrant by letter that all future biological testing fluid samples must be observed. *Id.* at 8.

On July 27, 2010, the day after meeting with Board staff to discuss his compliance with the 2009 Order, Registrant submitted to another urine test, which tested positive for amphetamines and methamphetamine. Based in part on this test result, the Board summarily suspended Registrant's license to practice osteopathic medicine. GX G, at 3–4.

Following a hearing before a State Administrative Law Judge (ALJ), the Board made extensive findings regarding Registrant's compliance with the Consent Order. GX H. Regarding

[1] In fact, methamphetamine is a schedule II controlled substance. *See* 21 CFR 1308.l2(d).

[2] Under Arizona law, ''unprofessional conduct'' includes, *inter alia:* ''[p]racticing medicine while under the influence of alcohol, narcotic or hypnotic drugs or any substance that impairs or may impair the licensee's ability to safely and skillfully practice medicine''; ''[e]ngaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard''; ''[v]iolating a formal order, probation or a stipulation issued by the Board under this chapter;'' ''[a]ny conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so''; and ''[a]ny conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.'' Ariz. Rev. Stat. § 32–1854 (3), (6), (25), (38), and (39).

Registrant's July 27, 2010 drug test, the Board found that while the positive result for amphetamines could be explained by a legitimate prescription Registrant had for Vyvanse, the methamphetamine result revealed a high concentration of an isomer which ''marks the biologically active ingredient in the street drug methamphetamine that is not normally prescribed.'' *Id.* at 9. While Respondent argued that he was also taking Claritin-D at the time of the test, the director of the laboratory that performs biological fluid testing for the Board, and who holds a Ph.D. in toxicology, *id.* at 4, ''testified that he had no doubt whatsoever that [Registrant's] July 27, 2010 specimen tested positive for methamphetamine.'' *Id.* at 9, 12. The Board thus found that Registrant had ''relapsed to substance abuse and violated the Consent Agreement'' and that ''[t]hese acts constitute unprofessional conduct as defined by'' Arizona law. *Id.* at 12 (citing Ariz. Rev. Stat. § 32–1854(25), (38), and (39)). The Board further found that Registrant had failed to accept responsibility ''for his repeated failures to comply with the Consent Agreement and his relapse,'' and revoked his state osteopathic license. *Id.* at 12–13.

I therefore find that Registrant is currently without authority to handle controlled substances under the laws of the State of Arizona, the State in which he is registered with DEA.

Discussion

The Loss of State Authority Ground

Under the Controlled Substances Act (CSA), a practitioner must be currently authorized to handle controlled substances in the ''jurisdiction in which he practices'' in order to maintain a DEA registration. *See* 21 U.S.C. 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''). *See also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for obtaining and maintaining a DEA registration.

Accordingly, DEA has held that revocation of a registration is warranted whenever a practitioner's state authority to dispense controlled substances has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

As found above, on March 22, 2011, the Arizona Board revoked Registrant's state osteopathic medicine license. Accordingly, Registrant is without authority to dispense controlled substances in the State where he practices medicine and holds his DEA registration, and is therefore no longer entitled to hold his registration. *See* 21 U.S.C. 802 (21), 823(f), 824(a)(3). Therefore, pursuant to the authority granted under 21 U.S.C. 824(a)(3), his registration will be revoked.

The Public Interest Ground

The Government further argues that Registrant's abuse of methamphetamine is an additional ground for revoking his registration because he has committed acts that render his registration inconsistent with the public interest. Request for Final Agency Action, at 3 (citing 21 U.S.C. 824(a)(4)). I agree.

Section 304(a) of the Controlled Substances Act provides that a ''registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked by the Attorney General upon a finding that the registrant * * * has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). With respect to a practitioner, the Act requires the consideration of the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f).

The public interest factors are considered in the disjunctive. *Robert A. Leslie,* 68 FR 15227, 15230 (2003). I may rely on any one or a combination of factors and may give each factor the weight I deem appropriate in determining whether to revoke an existing registration or to deny an application for a registration. *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA,* 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005).

In this matter, while I have considered all of the factors, I conclude that it is not necessary to make findings with respect to factors one [3] through four. However, I conclude that factor five, which authorizes the Agency to consider ''other such conduct which may threaten public health and safety,'' 21 U.S.C. 823(f)(5), supports a finding that Respondent has committed acts which render his continued ''registration inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

Under longstanding Agency precedent, factor five encompasses ''wrongful acts relating to controlled substances committed by a registrant outside of his professional practice but which relate to controlled substances.'' *David E. Trawick,* 53 FR 5326, 5327 (1988). More recently, I explained that ''DEA has long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five and has done so even when there is no evidence that the registrant abused his prescription writing authority. Moreover, DEA has revoked registrations and/or denied applications for a registration even where there is no evidence that the practitioner committed acts involving unlawful distribution to others.'' *Tony T. Bui, M.D.,* 75 FR 49979, 49989 (2010) (citations omitted.)

As found above, in 2008, Registrant self-reported to the Arizona Board that he was beginning in-patient treatment for substance abuse. GX H, at 3. Moreover, on two subsequent occasions (February 25, 2009 and July 27, 2010), Registrant provided biological specimens which tested positive for methamphetamine, in violation of his agreements with the Board. Of further significance, the Board found that Registrant's July 2010 test sample had a 90% concentration of an isomer which is the biologically active ingredient in methamphetamine which is sold on the street. *Id.* at 9.

Thus, substantial evidence supports the conclusion that Registrant has

[3] For the same reason that supports revocation under 21 U.S.C. 824(a)(3), factor one would also support revocation.

repeatedly engaged in the self–abuse of a Schedule II controlled substance, and done so notwithstanding the attempts by the Arizona Board to assist Registrant to rehabilitate himself. I therefore hold that Registrant has engaged in ''such other conduct which may threaten public health or safety,'' 21 U.S.C. 823(f)(5), and that he has committed acts which render his registration ''inconsistent with the public interest.'' *Id.* § 824(a)(4). This conclusion provides a further reason to revoke Registrant's registration and to deny any pending applications.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BG6908757, issued to Aaron Gloskowski, D.O., be, and it hereby is, revoked. I further order that any pending application of Aaron Gloskowski, D.O., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.

Dated: October 7, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–28011 Filed 10–27–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–55]

Linda Sue Cheek, M.D., Decision and Order

On December 30, 2010, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision. Thereafter, Respondent filed exceptions to the decision.

Having reviewed the entire record including Respondent's exceptions, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended order, except as discussed below. Accordingly, I will order that Respondent's application be denied.

Before proceeding to discuss Respondent's exceptions, a discussion of the ALJ's consideration of ''community impact'' evidence is warranted. *See* ALJ at 33–35.[1] Therein, the ALJ acknowledged the recent decision in *Gregory Owens, D.D.S.,* 74 FR 36751 (2009). In *Owens,* I explicitly declined to extend the holding of *Pettigrew Rexall Drugs,* 64 FR 8855, 8859–60 (1999), which cited evidence that a pharmacy was ''one of two pharmacies in a relatively poor, medically underserved community'' as ground for staying a revocation order, to the case of a prescribing practitioner. 74 FR at 36757. As *Owens* explained, ''consideration of the socioeconomic status of a practitioner's patient population is not mandated by the text of either 21 U.S.C. 823(f) or 824(a)(4).'' *Id. Owens* further explained that such a rule is ''unworkable'' and ''would inject a new level of complexity into already complex proceedings and take the Agency far afield of the purpose of the CSA's registration provisions, which is to prevent diversion.'' *Id.*

The ALJ further noted, however, that in *Imran I. Chaudry, M.D.,* 69 FR 62081, 62083–84 (2004), the Agency had ''considered and given weight to community impact evidence, without specifically citing *Pettigrew.''* ALJ at 34. Notwithstanding the lengthy explanation *Owens* provided as to why community impact evidence is irrelevant in a proceeding involving a prescribing practitioner, the ALJ reasoned that in ''[i]n light of [*Chaudry*], I find that community impact evidence as a threshold matter is not entirely irrelevant.'' *Id.*

While in *Chaudry,* the Agency noted that evidence that the respondent, who was a cardiologist, practiced in a medically underserved community ''provide[d] some support for maintaining [his] registration,'' the Agency further held that this evidence ''also has a negative implication for continued registration'' because Respondent placed the community at risk by abusing methamphetamine and distributing it to another physician. 69 FR at 62084. Thus, in *Chaudry,* while the registrant was the only cardiologist in ''a town of approximately 4,000 people,'' the Agency actually relied on this evidence to revoke the practitioner's registration.

The decision in *Chaudry* did not, however, explain to what factor this evidence—whether cited in mitigation by the registrant or cited in aggravation by the final decision—was relevant. While it is possible to view such evidence as relevant (at least when offered as evidence of an aggravating circumstance) in determining whether a registrant has engaged in ''such other conduct as may threaten public health and safety,'' 21 U.S.C. 823(f)(5), a practitioner's self-abuse of a controlled substance ''threaten[s] public health and safety'' without regard to the socioeconomic characteristics of the community in which he or she practices.[2]

Moreover, my review of *Chaudry* reinforces the correctness of my conclusion in *Owens.* As I explained in *Owens,* ''[t]he public interest standard of 21 U.S.C. § 823(f) is not a freewheeling inquiry but is guided by the five specific factors which Congress directed the Attorney General to consider; consideration of the socioeconomic status of a practitioner's patient population is not mandated by the text of either 21 U.S.C. §§ 823(f) or 824(a)(4), which focus primarily on the acts committed by a practitioner.'' 74 FR at 36757.

As I further explained in *Owens* (as well as in numerous other cases), ''where the Government has made out a *prima facie* case that a practitioner has committed acts which render [her] registration inconsistent with the public interest, the relevant inquiry is * * * whether the practitioner has put forward 'sufficient mitigating evidence to assure the Administrator that he can be entrusted with the responsibility carried by such a registration.' '' *Id.* (quoting *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008)). Moreover, in numerous decisions, I have made clear that ''this inquiry looks to whether the registrant has accepted responsibility for [her] misconduct and undertaken corrective measures to prevent the re-occurrence of similar acts.'' *Id.* As explained in *Owens,* ''[w]hether a practitioner treats patients who come from a medically underserved community or who have limited incomes has no bearing on whether [she] has accepted responsibility and undertaken adequate corrective measures.[3]'' *Id.*

In *Owens,* I also noted that the diversion of prescription controlled substances ''has become an increasingly serious societal problem, which is particularly significant in poorer communities whether they are located in rural or urban areas.'' *Id.* (citing *George C. Aycock,* 74 FR 17529, 17544 n.33 (2009); *Laurence T. McKinney,* 73 FR 43260 (2008); *Paul H. Volkman,* 73

[1] All citations to the ALJ's decision are to the slip opinion as issued by him.

[2] While the decision noted that the registrant had also distributed methamphetamine to another physician, this conduct would clearly fall within factor four, ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances.'' 21 U.S.C. 823(f)(4).

[3] Of course, in determining the appropriate sanction, DEA also considers the extent and egregiousness of a registrant's misconduct, the degree of the registrant's candor, as well as the Agency's interest in deterring others from engaging in similar acts. *See Owens,* 74 FR at 36757; *Paul Weir Battershell,* 76 FR 44359 (2010); *Joseph Gaudio,* 74 FR 10083, 10095 (2009); *Janet Thornton,* 73 FR 50354 (2008).

FR 30630 (2008); *Medicine Shoppe-Jonesborough,* 73 FR 364)). *See also id.* (citing U.S. General Accounting Office, *Prescription Drugs: OxyContin Abuse and Diversion and Efforts to Address the Problem* 31–32 (Dec. 2003) (noting that ''the Appalachian region, which encompasses parts of Kentucky, Tennessee, Virginia, and West Virginia, has been severely affected by prescription drug abuse, particularly pain relievers * * * for many years'')). As I further explained, ''the residents of this Nation's poorer areas are as deserving of protection from diverters as are the citizens of its wealthier communities, and there is no legitimate reason why practitioners should be treated any differently because of where they practice or the socioeconomic status of their patients.'' [4] *Id.*

It is acknowledged that there is no evidence in this record that Respondent was engaged in diverting controlled substances.[5] Rather, the principal allegations involve Respondent's having been mandatorily excluded from participation in Federal health care programs by the Secretary of the Department of Health and Human Services pursuant to 42 U.S.C. 1320a–7(a) following her conviction for having committed Health Care Fraud in violation of 18 U.S.C. 1347, as well as her having issued controlled substance prescriptions without a registration. ALJ Ex. 1, at 1–2 (citing 21 U.S.C. 823(f) & 824(a)(5)).

Under 21 U.S.C. 824(a)(5), the Attorney General is authorized to suspend or revoke a registration ''upon a finding that the registrant * * * has been excluded (or directed to be excluded) from participation in a program pursuant to'' 42 U.S.C. 1320a–7(a). As I recently explained, *see Terese, Inc.,* 76 FR 46843, 46846 (2011), this provision subjects to revocation the registration of a practitioner who has been mandatorily excluded ''from participation in any Federal health care program'' based on her conviction for an offense falling within one of four categories of offenses including a ''[f]elony conviction relating to health care fraud.'' 42 U.S.C. 1320a–7(a)(3). The consequence of the exclusion is to prohibit Respondent from participating ''in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act.'' GX 6 (letter from Reviewing Official, Health Care Program Exclusions, Office of Counsel to the Inspector General, Department of Health and Human Services, to Respondent (Sep. 30, 2008)).

In enacting 42 U.S.C. 1320a–7, Congress was obviously aware that many of the beneficiaries of Medicaid, Medicare, and other health care programs (such as SCHIP) are residents of medically underserved communities. Yet Congress made the exclusion of a provider from participation in these programs mandatory upon conviction of one of the four categories of offenses enumerated in 42 U.S.C. 1320a–7(a), including a conviction for Health Care Fraud. Given this, it makes no sense for the Agency to consider community impact evidence in exercising its authority under 21 U.S.C. 824(a)(5).

I therefore re-affirm my holding in *Owens* that community impact evidence is not relevant in determining whether to grant a prescribing practitioner's application under 21 U.S.C. 823(f) or to revoke an existing registration under the various authorities provided in 21 U.S.C. 824(a). I further hold that to the extent *Chaudry* (or any other case involving a prescribing practitioner) suggests otherwise, it is overruled.

The ALJ also found that on February 12, 2009, the Virginia Medical Board reinstated Respondent's medical license. ALJ 26. The ALJ further concluded that this action ''weigh[s] in favor of a finding that Respondent's registration would not be inconsistent with the public interest, at least as of February 12, 2009.'' *Id.*

However, following the closing of the record, on July 8, 2011, the Virginia Board of Medicine issued an Order following a hearing it conducted on June 24, 2011; I take official notice of the Board's Order.[6] *See In re: Linda Sue Cheek, M.D.* (Va. Bd. Med., Jul 8, 2011). The Board made numerous findings, the most significant being that Respondent committed unprofessional conduct in violation of Va. Code Ann. § 54.1–2915.A(16) & (17). *Id.* at 8. The Board also indefinitely suspended Respondent's medical license ''for a period of no less than twelve (12) months from entry of [its] Order.'' *Id.*

Under the Controlled Substances Act, a practitioner must possess authority to dispense controlled substances under the laws of the State in which she practices in order to hold a DEA registration. *See* 21 U.S.C. 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''); *id.* § 802(21) (''The term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to * * * dispense * * * a controlled substance in the course of professional practice. * * *''); *see also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration where registrant ''has had his State license * * * suspended * * * by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances''). Accordingly, this development provides a further basis to deny Respondent's application. *See Robert Wayne Mosier, D.O.,* 75 FR 49950 (2010) (citing cases) (''DEA has consistently held that holding authority under state law is a prerequisite for obtaining a registration under the CSA.''). Moreover, even if Respondent had prevailed on the other allegations (or rebutted the Government's *prima facie* case), the loss of her state authority would still require the denial of her application.

Respondent's Exceptions

Respondent filed extensive exceptions to the ALJ's decision. Most of these exceptions (which do not comply with DEA's regulations because they do not cite to the transcript or exhibits, *see* 21 CFR 1316.66(a)), involve challenges to

[4] In *Owens,* the ALJ relied on the fact that roughly ten percent of the practitioner's patients were from an underserved community and that a majority of his patients had limited finances. 74 FR at 36757 n.22. I rejected this evidence noting that ''the ALJ's reasoning begs the question of how many patients from underserved areas would a practitioner have to treat to claim the benefit of the rule.'' *Id.* I also rejected the ALJ's reliance on the fact that a majority of the registrant's patients had limited incomes, because determining what constitutes a patient with a limited income or finances and how many patients (or what percentage of patients) a practitioner must have to claim entitlement to this rule was unworkable. *Id.*

While the evidence adduced here (which the ALJ rejected as insufficient) was primarily limited to Respondent's assertion that she ''was the only pain management doctor reasonably available in southwestern Virginia,'' ALJ at 34; here again, there are no workable standards for determining whether other doctors are reasonably available. Moreover, the CSA's primary purpose is to prevent the diversion of controlled substances and nothing in the respective statutes (21 U.S.C. 823(f) & 824(a)) directs the Agency to consider community impact evidence in determining whether to grant an application for registration or to continue an existing registration.

[5] To make clear, there was no evidence of diversion in *Owens* either.

[6] 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.

the ALJ's credibility determinations and what Respondent maintains was the ALJ's ''predetermined prejudice against'' her, Resp. Exc. at 4, including the ALJ's finding that Respondent lacked candor and gave inconsistent explanations. *Id.* at 11. The ALJ personally observed the demeanor of the various witnesses and evaluated each witness's testimony for its consistency and inherent probability. *See Dewey C. MacKay,* 75 FR 49956, 49963 (2010) (citing *Universal Camera Corp.* v. *NLRB,* 340 U.S. 474 (1951)). Moreover, having reviewed the entire record, I find no reason to reject the ALJ's various factual findings.

Furthermore, I find no basis to conclude that the ALJ was biased against Respondent. As the Supreme Court has explained, ''judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.'' *Likety* v. *United States,* 510 U.S. 540, 555 (1994). That an ALJ, upon considering the evidence, finds much of a party's evidence either not credible or unreliable, does not establish bias. Accordingly, I reject Respondent's exceptions to the ALJ's factual findings.

Respondent further takes exception to the ALJ's findings that she does not accept responsibility for the various acts of misconduct which were proven on this record. With respect to her Health Care Fraud conviction, Respondent argues that by pleading guilty and complying with the various requirements of her sentence, she has accepted responsibility. Resp. Exc. at 6. With respect to the allegation that she wrote controlled substance prescriptions without a registration, Respondent argues that she admitted to writing two prescriptions by mistake shortly after her medical license was restored by the State and that she ''is only aware of [two] prescriptions'' which she wrote and ''admitted to.'' *Id.* at 8. Respondent also takes exception to the ALJ's finding that she unlawfully used another physician's DEA registration to issue controlled substance prescriptions, arguing that she acted as a nurse practitioner, who was supervised by another physician, who reviewed the patient files and authorized the prescriptions. *Id.* at 9–10. According to Respondent, there is nothing in either Federal law or the Virginia Board of Medicine's rules that prohibit one physician from supervising another. *Id.* at 9. Moreover, Respondent argues that if DEA had timely issued her a new registration, ''the complaint here would not have any substance'' and that DEA's failure to grant her application demonstrates an ''abject plan to create the scenario in which to charge [her] with committing a crime.'' *Id.* at 10.

As for the ALJ's finding that Respondent did not accept responsibility for her Health Care Fraud conviction, it is true that pleading guilty and complying with her sentence is probative evidence of whether she has accepted responsibility. However, Respondent did not stop there. Instead, as the ALJ found (and the testimony shows), Respondent maintained that her conviction was ''unjust[],'' Tr. 386, as it was based on ''six billing incidents * * * when I was out of the country,'' that ''the most I got paid over or extra was $ 11.00 per visit,'' and that the U.S. Attorney's Office had brought her down ''for $ 66.00.'' *Id.* at 384–85. Moreover, Respondent testified that it was her belief that the prosecution was ''purely * * * a result of the fact that I treat pain, and I prescribe opiates, and that the agenda of the United States Government is to stop the treatment of pain in this country.'' *Id.* at 383. Respondent did not explain, however, why, if she had only defrauded the Government of $66, the District Court ordered her to pay more than $24,000 in restitution, including more than $17,000 to the Virginia Medicaid Program and more than $7,000 to Medicare. GX 4, at 2. Moreover, as the ALJ noted, she further testified that ''[i]f this is fraud, maybe we need more of it.'' Tr. 382. Thus, the ALJ properly held that Respondent did not accept responsibility for her Health Care Fraud conviction.

As for the ALJ's finding that Respondent did not accept responsibility for her prescribing without holding a registration, it is acknowledged that she admitted to having written a prescription for Ambien (zolpidem), a schedule IV controlled substance, 21 CFR 1308.14(c)(51), on February 23, 2009, and a prescription for Lyrica (pregabalin), a schedule V controlled substance, *id.* 1308.15(e), on March 20, 2009. However, when confronted with evidence that she had written other prescriptions such as one for Lortab (hydrocodone), a schedule III controlled substance, *id.* 1308.13(e)(1), on April 6, 2009, Respondent testified that ''I cannot say this is my signature.'' Tr. 492. She then suggested that the Government had fabricated the prescription. *Id.*[7] Respondent also testified that she could not ''verify'' two other controlled substance prescriptions which bore a signature in her name. Tr. 493–94 (discussing GXs 11 & 12).[8] The ALJ properly found this testimony ''palpably incredible.'' ALJ at 28.

So too, Respondent asserted that she had an agreement with another physician (Dr. Shultz) under which she acted as a nurse practitioner and evaluated the patients and was supervised by Dr. Schultz; Respondent further claimed that Dr. Schultz would then review her evaluation and authorize a controlled substance prescription for the patients, which was then called in to the patient's pharmacy by Respondent or her staff. *See* RX 41. However, during an interview with a Diversion Investigator, Dr. Schultz stated that she only went to Respondent's clinic on Thursdays. Tr. 117–18. Dr. Schultz further told the Investigator that she did not give Respondent permission to call in prescriptions under her registration. *Id.* at 115.[9]

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[7] When asked whether she had written this prescription, Respondent testified: ''I cannot say that that is my signature.'' Tr. 492. When asked why she could not, Respondent answered:

I cannot say that that is my signature. I am not opposed to the idea that the government can do a lot of things. And I do not, without having had this information, and be[ing] able to do some research on my own, I will not admit to this being my signature or my prescription.

Id. When then asked whether she was ''asserting that the government may have falsified this document?,'' Respondent answered: ''Very possible.'' *Id.*

Respondent's failure to accept responsibility is further manifested by her contentions that if DEA had timely issued her a new registration, ''the complaint here would not have any substance'' and that DEA's failure to grant her application demonstrates an ''abject plan to create the scenario in which to charge [her] with committing a crime.'' Resp. Exc. at 10. However, no one forced Respondent to issue prescriptions without a registration and DEA's regulation clearly states that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.'' 21 CFR 1301.13(a). Also, given Respondent's exclusion under 42 U.S.C. 1320–7(a), DEA had no obligation to grant her application.

[8] Respondent maintained that she did not break any law by writing prescriptions which were not filled. Tr. 491, 493. However, under Federal law, the issuance of a prescription constitutes the constructive transfer of a controlled substance even if a pharmacist subsequently refuses to fill the prescription. *United States* v. *Roya,* 574 F.2d 386 (7th Cir. 1978); *United States* v. *Tighe,* 551 F.2d 18 (3d Cir. 1977).

[9] Against this evidence is a document signed on June 25, 2009, which purports to be a memorialization of a verbal contract entered into on February 23, 2009 between Respondent and Dr. Schultz. RX 41. Among this document's terms are that Dr. Schultz ''will approve medications as recommended by Dr. Cheek and allow Dr. Cheek or her staff to call them into the pharmacy in her name.'' *Id.* Continuing, the document states: ''Basically, Dr. Cheek is acting as a nurse practitioner would, under Dr. Schultz's supervision. Dr. Schultz reviews and signs the records of all patients receiving scheduled drugs on a regular basis.'' *Id.*

On June 25, 2009, the same day that the above document was signed, Respondent discussed with

DEA Investigators found numerous controlled substance prescriptions which were called into local pharmacies under Dr. Schultz's DEA registration by either Respondent or her employee, A.Y. *Id.* at 119; GXs 15–17. Upon reviewing the prescriptions, an Investigator determined that most of them were called in on days other than Thursdays. Tr. 118. Moreover, both the ALJ and Virginia Board (which conducted its own formal hearing) found Respondent's testimony that she was working under the supervision of Dr. Schultz to not be credible and that the arrangement was a sham. ALJ at 28–30; *see also In re Linda Sue Cheek,* at 4 (''The Board determined that [Respondent's] testimony concerning the arrangement that she had with Individual A [10] to provide patients with controlled substances, whereby Individual A was to establish a practitioner-patient relationship and issue prescriptions for controlled substances, was not credible. The Board finds that [Respondent] intended to circumvent her inability to prescribe Schedule II–V controlled substances as a result of not having a valid DEA registration.''). Thus, I reject Respondent's exception and agree with the ALJ that ''[t]he evidence as a whole demonstrates that Respondent's claim that she was working at the direction of Dr. Schultz is not supported by credible evidence.'' ALJ at 30.

Under Federal law, it is ''unlawful for any person knowingly or intentionally * * * to use in the course of the * * * dispensing of a controlled substance * * * a registration number which is * * * issued to another person.'' 21 U.S.C. 843(a)(2). It is also unlawful to dispense a controlled substance without first obtaining a registration to do so. 21 U.S.C. 822(a)(2). The evidence shows that Respondent committed multiple violations of both provisions.[11]

Accordingly, the record establishes three independent grounds for denying Respondent's application: (1) Her loss of state authority, *see* 21 U.S.C. 823(f); (2) her having violated Federal law by issuing controlled substance prescriptions when she did not possess a registration, *see id.* § 824(a)(4); and (3) her having been mandatorily excluded from participation in Federal Health Care programs based on her conviction for Health Care Fraud. *See id.* § 824(a)(5). In addition, the record establishes that Respondent has not accepted responsibility for her misconduct. Therefore, I will order that Respondent's application be denied.

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 Linda Sue Cheek, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective November 28, 2011.

Dated: October 17, 2011.

Michele M. Leonhart,

Administrator.

Robert W. Walker, Esq., for the Government

Linda Sue Cheek, M.D., 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, 5 U.S.C. 551 *et seq.,* to determine whether the Drug Enforcement Administration (''DEA'' or ''Government'') should deny Respondent's pending application for a DEA Certificate of Registration (''COR''). Without this registration, Respondent, Linda Sue Cheek, M.D. (''Respondent''), of Dublin, Virginia, would be unable to lawfully possess, prescribe, dispense, or otherwise handle controlled substances in the course of her practice.

On March 13, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause (''OSC'') seeking the denial of Respondent's pending application as a practitioner for registration in Schedules II through V, alleging that issuing a registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and that Respondent has been excluded from participation in a federal health care program as defined in 21 U.S.C. 824(a)(5). (ALJ Ex. 1 at 1.) The OSC alleged in substance: (a) Respondent had been excluded from participation in all federal health care programs for a period of five years following her guilty plea to one count of health care fraud in federal district court on February 21, 2008; and (b) Respondent surrendered her DEA COR number BC4510865 on November 17, 2008, but thereafter continued to issue numerous prescriptions for controlled substances using the surrendered COR, as well as the COR of another practitioner without authorization.

Respondent, acting *pro se,* timely requested a hearing (ALJ Ex. 2), which was held in Roanoke, Virginia, between October 5–6, 2010. After acknowledging that she understood her right to representation, as codified at 21 CFR 1316.50, Respondent elected to represent herself during the hearing. (*See* ALJ Exs. 3 & 4.) 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 evidence establishes by substantial evidence that Respondent's pending application for a DEA COR as a practitioner in Schedules II through V should be denied because such registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and because Respondent has been excluded or directed to be excluded from participation in a health care program pursuant to 21 U.S.C. 824(a)(5).

Evidence and Incorporated Findings of Fact

I find, by a preponderance of the evidence, the following facts:

I. Background

Respondent's State Medical License

On June 4, 2008, the Virginia Department of Health Professions ordered Respondent's medical license

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Dr. Schultz her conversation with the DEA Investigator. Respondent testified:

And when she told me she had said, ''No, I haven't told anybody they can use my DEA number,'' I said, ''Kathy, you allow us to call in prescriptions for our patients. That is using your DEA number.'' ''Oh, I didn't realize that,'' was her reply.

Tr. 422.

[10] The Board identified Individual A as ''a practitioner of osteopathic medicine who held [a DEA] registration, under which Individual A authorized prescriptions for controlled substances for Respondent's patients.'' *In re Linda Sue Cheek,* at 2. The Board's findings make clear that Individual A is Dr. Schultz.

[11] As noted above, Respondent analogized her relationship with Dr. Schultz to that of a nurse practitioner who is supervised by a physician. Apparently, the Virginia Board did not find the analogy persuasive as it found Respondent guilty of unprofessional conduct. *See In re Linda Sue Cheek,* at 2–4, 8. It is also noted that while the Virginia Board's rules allow a nurse practitioner to prescribe controlled substances, ''a practice agreement between the nurse practitioner and the supervising physician'' must be submitted and approved by both the Board of Medicine and the Board of Nursing. 18 VAC90–40–30; *id.* 90–40–40(3). In addition, the State's rules require that ''[t]he nurse practitioner shall include on each prescription written or dispensed his signature and prescriptive authority number as issued by the board and the Drug Enforcement Administration (DEA) number, when applicable.'' *Id.* 90–40–110.

suspended due to Respondent's felony conviction for health care fraud before the United States District Court for the Western District of Virginia. (Gov't Ex. 5.)

On October 29, 2008, after a formal administrative hearing, the Virginia Board of Medicine (''Board'') issued an Order denying reinstatement of Respondent's medical license, which remained on indefinite suspension. The Order precluded Respondent from petitioning the Board for reinstatement until Respondent presented satisfactory written evidence that she had successfully completed a Board-approved comprehensive physician competency evaluation. (Gov't Ex. 7.)

On January 8, 2009, Respondent petitioned the Board for reinstatement, after completing the required comprehensive physician competency evaluation. (Resp't Ex. 17.) On February 12, 2009, the Virginia Department of Health Professions notified Respondent of the decision to reinstate Respondent's medical license to full and unrestricted status with all attendant rights and privileges. (Resp't Ex. 18.)

Respondent Linda Sue Cheek, M.D.

Respondent graduated from the University of Texas Health and Science Center at San Antonio, earning a Doctor of Medicine degree on May 23, 1992. (Resp't Ex. 1.) Respondent completed her first year of family practice training at the University of Texas Health Science Center at San Antonio and successfully completed her last two years of training at Roanoke Memorial Hospital in Roanoke, Virginia in June 1995. The Virginia Department of Health Professions, Board of Medicine, issued Respondent a license to practice medicine and surgery on July 1, 1993. Respondent has since maintained a family practice to include a specialty in pain management and alternative medicine. Since 1998, Respondent has completed a number of medical training activities to include: Traditional Chinese Medicine, acupuncture, herbal medicine, Qi Gong, Clinical Issues in Primary Care, evidence-based wellness, clinical hypnosis, The Psychology of Health, Immunity and Disease, numerous pain management courses, addiction and drug diversion courses and homeopathic courses, among others. (Resp't Exs. 7–16.)

Respondent held DEA COR BC4510865 as of July 18, 1995, as a practitioner in controlled substances in Schedules II through V, at the registered address 28 Town Center Drive, Dublin, Virginia, which was last renewed on August 24, 2007. This COR had an expiration date of August 31, 2010. In a letter dated November 14, 2008, Respondent voluntarily surrendered her COR after a formal administrative hearing and denial of reinstatement of Respondent's medical license by the Virginia Board of Medicine on October 29, 2008. (*See* Gov't Ex. 8; Tr. 73–76.) On February 16, 2009, Respondent applied for a new registration with DEA as a practitioner in Schedules II through V, 28 Town Center Drive, Dublin, Virginia 24084. (Gov't Ex. 1.)

II. Investigation of Respondent

In support of the allegations contained in the OSC, the Government presented at hearing the testimony of three witnesses: Special Agent Jeffrey Overbeck, U.S. Department of Health and Human Services, Office of Inspector General (''SA Overbeck''), Diversion Investigator Steven Tomaziefski, U.S. Drug Enforcement Administration (''DI Tomaziefski''), and Special Agent Robert Slease, U.S. Department of Health and Human Services, Office of Inspector General (''SA Slease'').

SA Overbeck testified in substance that he has been a special agent for approximately nine years and has approximately twenty-one years of law enforcement experience. In his current position, SA Overbeck specializes in investigating Medicare and Medicaid fraud. SA Overbeck testified that his office began an investigation of Respondent on September 20, 2005, based on information provided by law enforcement agencies regarding concerns with Respondent's prescribing of narcotics and the use of ''cleansing sessions'' at Respondent's practice. (Tr. 31–32.) SA Overbeck further testified that the investigation revealed the cleansing sessions consisted of a group of patients that were required to either watch a movie or listen to a family nurse practitioner talk, before the patients could obtain prescriptions. If patients required additional medication they would have to repeat the cleansing sessions, which cost patients ''up to an additional hundred dollars a month, because they were required to buy supplements, and herbal supplements * * *'' before they could obtain prescription medications. (Tr. 42.) Respondent then billed the cleansing sessions as individual office visits, even though Respondent knew from a prior audit that Medicaid, Medicare and Anthem [12] would not pay for cleansing sessions.

SA Overbeck also testified that investigative findings revealed that Respondent's practice, New River Medical Associates, Inc., in Dublin, Virginia focused on pain management and alternative medicine. Respondent also employed two family nurse practitioners. Respondent and the two nurse practitioners each had Medicare, Medicaid and Anthem provider numbers, which could be billed for the services that each provided. On a number of occasions, Respondent submitted a bill for services under Respondent's provider number when Respondent was not actually present, contrary to the rules and regulations for ''incident to'' billing. (Tr. at 33–39.) SA Overbeck's testimony was fully credible. His testimony was internally consistent and the witness was able to recall factual events with a reasonable level of certainty.

Documentary evidence included Respondent's December 9, 2007, signed agreement to plead guilty to a one-count information charging health care fraud in violation of 18 U.S.C. 1347. (Gov't Ex. 3.) On May 27, 2008, the United States District Court for the Western District of Virginia entered a judgment pursuant to a plea of guilty by Respondent to one count of health care fraud, 18 U.S.C. 1347, for offense conduct ending in March 2006. Respondent was sentenced to ''probation for a term of: Four (4) years,'' with conditions of supervision, a $100.00 assessment, $1,000.00 fine and restitution in the amount of $24,210.37. (Gov't Ex. 4.)

A September 30, 2008 letter from the U.S. Department of Health and Human Services, Office of Inspector General, notified Respondent she was ''excluded from participation in any capacity in the Medicare, Medicaid, and *all* Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act) for the minimum statutory period of 5 years.'' The exclusion action was effective twenty days from the date of the letter. (Gov't Ex. 6.)

DI Tomaziefski testified in substance that he has been a diversion investigator with DEA for approximately five years, and following initial training was assigned to Roanoke, Virginia. DI Tomaziefski's experience includes participation as a lead investigator in approximately thirty regulatory investigations, and his duties also include reviewing pending applications for DEA registration. DI Tomaziefski testified to becoming aware of Respondent in August of 2008, and learning that Respondent had previously pled guilty and had her medical license suspended. (Tr. 68–70.) In September 2008 he contacted Respondent regarding her DEA registration but decided not to take any action regarding surrender of her DEA

[12] Anthem is a health insurance provider. (*See* Tr. 474.)

registration because of a pending petition by Respondent for reinstatement of her medical license. DI Tomaziefski further testified to contacting Respondent in November 2008 following the indefinite suspension of Respondent's medical license by the Commonwealth of Virginia, and discussing the surrender of her controlled substances privileges. In a letter to DI Tomaziefski dated November 14, 2008, Respondent relinquished her DEA COR. (Gov't Ex. 8; *see* Tr. 75.)

DI Tomaziefski further testified that in April 2009 he received information from the Virginia Department of Health Professions pertaining to two prescriptions that were written and signed by Respondent using her surrendered DEA number. (Tr. 79–80.) One prescription, for ''Lyrica 75 mg capsule #60 (sixty)'' with two refills, dated March 20, 2009, was not filled by a pharmacy. (Tr. 81; Gov't Ex. 9.) The second prescription, for ''Ambien 10 mg tablet #30 (thirty)'' with five refills, dated February 23, 2009, was filled by a pharmacy in Wytheville, Virginia. (Tr. 82–83; Gov't Ex. 13.) DI Tomaziefski further testified that he next began looking at different pharmacies for prescriptions that Respondent may have written. On May 19, 2009, DI Tomaziefski received by facsimile a three-page letter from Respondent (*see* Gov't Ex. 18) stating that she was aware that DEA ''is scouring the area for infractions of scripts for controlled drugs written by me * * *'' (Gov't Ex. 18 at 1.) She admitted that on the first day she got her medical license back, she conducted ''business as I always have, and signed all the scripts for the patients * * *'' but realized halfway through the morning that she did not have a DEA COR. (*Id.*) Respondent also stated ''I am willing to go to jail for providing the people of Southwest Virginia with relief from their suffering.'' (*Id.* at 2.) Respondent also advised in the letter that she had hired a Dr. Schultz *locum tenens* to see patients that needed her, explaining that

> Dr. Schultz saw the patients on her own from September, 2008 to February, 2009. When I got my license in February 2009, I asked her to continue assisting me with the scheduled medications, since I did not have my DEA certificate. She had experience with working with nurse practitioners, so she had no problem supervising me in the same manner. She also established her own practice in my building, so that those patients with Medicare, Medicaid, and any other insurance that I did not associate with, could have a primary care physician to write orders for them. Every patient that pertains to has seen her personally. She has personally seen every patient that receives Schedule II meds. She has approved the medications that they are receiving. Then they continue to see me and she signs their scripts. She has also given me instructions to call scripts in for patients that are schedule III–V. She reviews my notes and signs them. For her supervisory duties, New River Medical Associates pays her $100 per week. We are handling things as if I am a physician extender and she is the supervisory physician * * *
>
> (*Id.* at 3.)

DI Tomaziefski also testified that the dates of the prescriptions written by Respondent that he had obtained and seized as evidence did not match the date that Respondent had her medical license reinstated. DI Tomaziefski testified that on May 28, 2009, he sent a confidential source (''CS'') into New River Medical Associates to meet with Respondent as a patient. As a result of that visit, Respondent's office assistant, [AY],[13] called in a prescription for hydrocodone in the name of the CS to Dublin Pharmacy, Dublin, Virginia. (Tr. 99–100.) The record evidence contains a Dublin Pharmacy record with a handwritten notation including the names ''[AY]'' and ''Schultz,'' and the typed name of the CS, address, cost and quantity of the drug prescribed, along with the name ''Dr. Linda Cheek.'' DI Tomaziefski further testified that the CS wore a ''wire'' during the visit, which DI Tomaziefski listened to and learned that Dr. Schultz did not see the CS, even though the prescription was called in under Dr. Schultz's DEA number. (Tr. 101, 105; Gov't Ex. 14.)

DI Tomaziefski further testified that on June 2, 2009, he participated with the CS in a controlled purchase of the above prescribed hydrocodone from Dublin Pharmacy, and the purchased prescription drug was seized as evidence by DEA. On June 4, 2009, DI Tomaziefski and the CS returned for another controlled visit to Respondent. Respondent and Dr. Schultz confronted the CS with urinalysis results which revealed the presence of buprenorphine, not otherwise prescribed or disclosed by the CS to DEA. As a result, DEA terminated the undercover operation.

DI Tomaziefski next testified to obtaining additional copies of prescriptions issued under Respondent's name and using Respondent's surrendered DEA registration number. (Tr. 109.) On June 26, 2009, a prescription dated May 14, 2009, for ''Ambien 10 mg tablet #30 (thirty)'' with five refills was obtained from Martin's Pharmacy, in Pulaski, Virginia. DI Tomaziefski concluded the prescription had not been filled because it did not contain a pharmacy tag on the prescription. (Tr. 110; *see* Gov't Ex. 11.) On April 6, 2010, DI Tomaziefski obtained from Martin's Pharmacy a prescription dated February 23, 2009, for ''Lortab 7.5–500 mg tablet #120 (one hundred-twenty)'' with two refills and signed with Respondent's name, which was crossed out, and the name ''K Schultz'' inserted. DI Tomaziefski testified this prescription had been filled, as evinced by the presence of pharmacy tags on the record copies. (Tr. 111; *see* Gov't Ex. 12.) DI Tomaziefski further testified that he asked the pharmacist why Dr. Schultz's name was written on the prescription and was told that when the prescription was brought into the pharmacy he called New River and was told by ''someone at New River'' that Dr. Schultz had authorized the prescription. The pharmacist crossed out Respondent's name and wrote in Dr. Schultz's name. (Tr. 112.)

DI Tomaziefski next testified that on June 17, 2009, he spoke with Dr. Schultz by telephone and Dr. Schultz said she was not affiliated with New River Medical Associates but was just helping out until Respondent got her medical license back. Dr. Schultz also stated that she did not allow Respondent to call in prescriptions for any authorized refills under Dr. Schultz's DEA number. (Tr. 115.) The record evidence also reflects that Dr. Schultz only worked at New River Medical Associates on Thursdays. (Tr. 117–18.)

The record evidence includes twenty-two prescription records obtained by DI Tomaziefski from Dublin Pharmacy, in Dublin, Virginia, covering the period from March to April 2009, all reflecting ''called-in'' prescriptions by Respondent or [AY] using Dr. Schultz's DEA number. (Tr. 119; Gov't Ex. 15.) DI Tomaziefski testified that the dates on the prescriptions were significant because most of the prescriptions were called in on dates other than Thursdays. (Tr. 118.)

The record evidence also includes ten prescription records obtained by DI Tomaziefski from Martin's Pharmacy in Dublin, Virginia, covering the period from May to June 2009, all reflecting ''called-in'' prescriptions using Dr. Schultz's DEA number. All but one contained a handwritten notation of either Respondent or [AY]. (Gov't Ex. 16.) DI Tomaziefski testified that he knows these prescriptions are ''call-ins'' because an original prescription would have the identifying prescriber information, including DEA number, and signature of the provider. (Tr. 564.)

[13] As noted below, Respondent's employee [AY] is also a patient of Respondent. To protect patient privacy, only initials are used in this Recommended Decision when referring to Respondent's patients.

The record evidence further reflects seven prescription records obtained by DI Tomaziefski from a Rite Aid pharmacy covering the period May to June 2009, with all but one record reflecting ''called-in'' prescriptions using Dr. Schultz's DEA number. The prescription dated June 29, 2009, is a ''non-called in'' prescription bearing a signature consistent with K. Schultz and written on a prescription form in the name of Kathleen Schultz, D.O., 28 Town Center Drive, Dublin, VA. (Tr. 126–27; *see* Gov't Ex. 17 at 7.)

DI Tomaziefski further testified that on June 23, 2009, he traveled to Dr. Schultz's house with a Virginia State Police investigator for the purpose of serving a subpoena and to clarify information contained on Schedule II prescriptions that had been obtained during the DEA investigation. DI Tomaziefski explained that upon identifying themselves to Dr. Schultz, Dr. Schultz spontaneously stated that ''she didn't authorize anybody to use her DEA number.'' Dr. Schultz further stated that she was somewhat retired and worked one day a week at a clinic ''and that on Thursdays, most Thursdays'' would be at New River Medical Associates and wrote Schedule II prescriptions for patients. (Tr. 132.)

DI Tomaziefski further testified that on June 25, 2009, he received a telephone call from Respondent regarding the status of her application for a DEA COR. During the call, Respondent put Dr. Schultz on the line together with Respondent. Respondent and Dr. Schultz informed DI Tomaziefski that they had a verbal agreement wherein Respondent could call in prescriptions under Dr. Schultz's DEA number. (Tr. 134.)

On cross examination, DI Tomaziefski testified that the normal time to render a decision on an application for a DEA COR is approximately four to six weeks, but DEA is not obligated to adhere to that time period and the time period is longer when there are issues with the applicant. (Tr. 142–43.)

DI Tomaziefski's testimony was fully credible. The witness testified consistently with regard to facts, and his testimony as a whole reflected a recollection of factual events with a reasonable level of certainty.

III. Respondent's Evidence

Respondent testified at hearing and also presented testimony from former patients [AZ], [DS] and [ET]. [ET] testified by telephone, with consent of the parties, because [ET] was incarcerated at the time of hearing. Additionally, Respondent presented testimony from an employee and patient, [AY].

[AZ] testified in substance that [AZ] is a resident of Elliston, Virginia and had been a patient of Respondent for approximately three years before Respondent lost her medical license. [AZ] testified to being able to maintain a quality of life and function with pain medications, and believed that [AZ] ''wouldn't be here today if it wasn't for Dr. Cheek helping'' with [AZ]'s pain. (Tr. 178.) [AZ] further testified that after Respondent lost her medical license it was a very difficult time and a constant worry as to how [AZ] would obtain medication. (Tr. 181.) In 2008 [AZ] contacted Respondent's office and learned that Dr. Schultz was available. [AZ] returned to the office as a patient, at first seeing Dr. Schultz. [AZ] further testified that Respondent is not an easy doctor to get medications from, has rules to follow, and expects patients to maintain a healthy diet. [AZ] explained that [AZ] participated in ''cleansing groups'' and last participated several years prior to the hearing. (Tr. 187–88.)

On cross examination, [AZ] testified that it is approximately a twenty minute drive from [AZ]'s home to Respondent's office, and there are no other pain management physicians in the area. [AZ] had been referred to Respondent by another physician who had prescribed the same pain medication that [AZ] has taken for approximately fifteen years, including from Respondent. [AZ] explained that at no time did Respondent double up on [AZ]'s pain medication but was not sure if Respondent may have written extra prescriptions during May or June 2008. [AZ] explained that after returning to Respondent's practice in October 2008, [AZ] saw Dr. Schultz approximately once every three months, obtaining three months' worth of prescriptions per visit, because it was more cost- and environmentally effective than monthly visits.[14] (Tr. 214.) [AZ] stated that Dr. Schultz is [AZ]'s physician but [AZ] also sees Respondent. The last time Dr. Schultz had given [AZ] a physical examination was nine months to a year ago. [AZ] further testified that [AZ] did not make Dr. Schultz [AZ]'s full time physician because ''she has been practicing since back in the '50s, so I know she—but she is also kind of getting up there in age * * * but you know, she is 75 years old, or so. Well I'm not sure about her exact age is.'' (Tr. 220.) I find [AZ]'s testimony credible to the extent that it was internally consistent and the witness was able to recall factual events with a reasonable level of certainty.

Patient [DS] testified in substance to being a patient of Respondent since September 10, 2009, having previously been treated at a VA hospital. [DS] stated that [DS] left the VA hospital after it stopped managing [DS]'s pain for no reason. After discharge from the VA hospital and prior to treating with Respondent [DS] stated that [DS] was ninety percent disabled, suffering from withdrawal, and did not believe [DS] would live another two weeks without treatment. (Tr. 237.) After discharge from the VA hospital [DS] had difficulty finding a physician that would take [DS] given [DS]'s financial means. [DS] further testified that after treating with Respondent and Dr. Schultz, [DS]'s life improved ninety percent or more and [DS] was able to continue attending college. [DS] explained that Respondent is not an easy doctor and only gives pain medicine to someone actually in pain.

On cross examination [DS] indicated that [DS] lives approximately twenty-two miles from Respondent's office. While at the VA hospital [DS] was prescribed methadone and Percocet together, along with Neurontin. [DS] explained that [DS]'s frequency of visits to Respondent's office is once every three months, with the last visit being August 26, 2010. [DS] saw Dr. Schultz in September 2009, which [DS] described as a sit-down discussion. [DS] explained that [DS] believed Respondent was [DS]'s primary care physician. Respondent performed the first physical examination on [DS]'s first visit. (Tr. 254.) I find [DS]'s testimony credible in that it was generally consistent and the witness was able to recall factual events with a reasonable level of certainty.

[AY] testified in substance that [AY] is a certified nursing assistant and receptionist, hired by Respondent on February 5, 2002, initially working as a receptionist. [AY] testified that [AY] currently works as a receptionist and also assists patients. [AY] further testified to being laid off from work in October 2008 and returning to employment with Respondent in February 2009. [AY] stated that Dr. Schultz told [AY] that [AY] could call in prescriptions for the patients based on recommendations of Respondent. [AY] explained that in May 2009 Dr. Schultz put in writing that [AY] was authorized to call in controlled substances under Dr. Schultz's name. (Tr. 261–62.) [AY] further testified that

[14] [AZ] testified that [AZ] gets three months' worth of prescriptions, paying $110.00, ''which comes out to be cheaper than if I would have went monthly, and it is the green thing to do, because I'm not running up and down the road burning gas to get back and forth to the office.'' (Tr. 214.)

from May 2008 to October 2008 many patients called stating they were having a hard time finding physicians to care for them.

On cross examination and redirect examination [AY] further explained that [AY] has called in prescriptions as part of [AY]'s job and on a date uncertain Dr. Shultz gave [AY] verbal permission to call in prescriptions, later reduced to writing in June 2009. (Tr. 272–73.) [AY] further testified that [AY] is prescribed controlled substances by New River Medical Associates, is paid eleven dollars per hour, and the cost of [AY]'s visits is offset as part of [AY]'s employment, in that [AY] does not pay for office visits. (Tr. 277–78, 285–86.) [AY]'s Schedule II medications are prescribed by Dr. Schultz but Dr. Schultz has not performed a physical examination of [AY], only a patient history. (Tr. 278.) [AY] stated that she has only seen Dr. Schultz as a patient ''one time'' within the past year, but did not recall the date. (Tr. 279.) Dr. Schultz only comes into the office one day a week, on Thursdays. [AY] explained that all of the patients at New River Medical Associates are pain patients and all or most pay cash, which includes credit card payments and money orders, ranging from $55.00 to $110.00. [AY] stated that a patient paying $110.00 ''would get their examination of three month's worth of medication.'' (Tr. 284.) [AY] provided contradictory testimony with regard to insurance and Medicare patients, first testifying on cross examination that ''about ten percent'' are insurance patients but on redirect examination that the office does ''not accept insurance.''

[AY]'s testimony at times was not internally consistent and [AY]'s testimony is evaluated in light of [AY]'s employment status with Respondent at the time of hearing. Additionally, [AY] is a patient of Respondent, receiving services at reduced cost. [AY]'s testimony with regard to Dr. Schultz's presence at the office only on Thursdays is consistent with other objective record evidence and credible. [AY]'s testimony with regard to ''call-in'' prescription authority from Dr. Schultz largely mirrors that of Respondent and, as more fully explained below, I do not find that testimony entirely credible.

Patient [ET] testified in substance that [ET] was a patient of Respondent before Respondent lost her medical license in 2008. [ET] began seeing Respondent again in February 2009. [ET] testified that while Respondent was without a medical license [ET] received treatment at a health center in Pulaski, Virginia for depression, and also received heart medication and ibuprofen for pain. Upon returning to Respondent for treatment in February 2009, [ET] testified to receiving prescriptions from Respondent, but later learned from Respondent's office that [ET] had to return the prescription because it needed to be issued by a Dr. Schultz. [ET] further testified that Respondent was a good doctor. (Tr. 296–346.) On cross-examination [ET] testified that [ET] did not think that [ET] ever received a physical examination by Dr. Schultz. [ET] further testified that as of the date of hearing [ET] was taking only ibuprofen for pain. (Tr. 350–51.) I find [ET]'s testimony credible in that it was internally consistent and the witness was able to recall factual events with a reasonable level of certainty.

Respondent testified in substance that she is a resident of Dublin, Virginia, and began her family practice rotation at the University Health Science Center before transferring to Roanoke Memorial Hospital Family Practice Residency. (Tr. 359–60.) Respondent applied for a DEA COR while in residency but did not really use it until becoming a practicing physician in 1995. Respondent stated that she chose family practice in part because of the variety of the work and wanted to work in a rural area where good doctors were needed. Respondent explained that after beginning practice on her own she began studying alternative medicine and saw her first pain patient in the late 1990s. (Tr. 362.) Respondent further testified that she was not taught pain management in residency. Respondent began self-study in alternative medicine in 2000, attending numerous training courses and lectures on a variety of subjects. (Resp't Exs. 7–16.) Respondent further testified that she has become noted well enough as a pain management expert that she has been invited twice by two different drug companies to attend review sessions on how the drug companies could present drugs to the Food and Drug Administration (FDA), and how to market them. (Tr. 375.)

Respondent also testified to developing a multidisciplinary facility called New River Medical Associates, in Dublin, Virginia, which was designed to help fix problems and help people heal. (Tr. 377–78.) Respondent testified that she developed ''cleansing sessions'' which consisted of thirty minutes of exercise or counseling, with remarkable results. (Tr. 378–79.) Respondent explained that she decided to ''simply bill the simplest ENM code * * * because if you bill too simple, the insurance company can say, 'This was worth more than that,' and they can get you for fraud either way. Laws are basically built to cause doctors to be charged with fraud * * *.'' (Tr. 379–80.) Respondent further testified to ending the cleansing sessions in October 2005, after a conversation with an insurance investigator, who told Respondent the sessions were not billable. Respondent stated that as a result of the cleansing sessions taxpayers saved hundreds of thousands or even millions of dollars through improved patient health, concluding: ''If this is fraud, maybe we need more of it.'' (Tr. 382.)

Respondent testified that she signed a plea agreement and pled guilty due to six billing incidents when she was out of the country, stating that the most she was paid extra because of the billings was eleven dollars per hour or a total loss of $66.00. (Tr. 384–85.) Respondent further explained that following her guilty plea in 2008, she lost her medical license and ''[n]inety-nine percent of my patients were unable to find another physician to take care of them, even though I tried to communicate to my colleagues that these people needed a physician * * *.'' (Tr. 388.)

Respondent further testified that her medical license was reinstated on February 13, 2008, and she thereafter resumed seeing patients. Respondent testified that she was aware the Government had sent individuals to her practice, identified herein as confidential sources. In August 2005 Respondent declined to provide treatment to a confidential source after discovering that the individual's medical history was false. More recently, she instructed another confidential source to complete a detoxification program after a drug screen revealed multiple positive results. Respondent described having strict rules and procedures, including drug screens. (Tr. 391–93.)

Respondent next testified to hiring Dr. Kathy Schultz *locum tenans* to work with patients on her own from the ''fall of '08 to February 23rd of '09.'' (Tr. 407.) Respondent testified that Respondent acted in the manner of a family nurse practitioner during this time, to continue the plan established by Dr. Schultz, who ''simply established a continuation of my plan from the previous year.'' (Tr. 412.) Respondent testified to an agreement with Dr. Schultz that Dr. Schultz would see all patients receiving Schedule II drugs and Dr. Schultz did not need to see patients receiving Schedule III to V drugs. On or about June 25, 2009, Respondent had a conversation with Dr. Schultz, who told Respondent that she had a conversation with DEA and told DEA that she had not given anyone permission to use her DEA

number. Respondent testified she informed Dr. Schultz that ''you allow us to call in prescriptions for our patients * * *'' and Dr. Schultz replied that she ''didn't realize that.'' (Tr. 422.) Respondent then asked Dr. Schultz to call DI Tomaziefski to rectify the situation.

Respondent also testified that on June 25, 2009, a written document was created reflecting a February 23, 2009 verbal agreement, along with a June 25, 2009 addendum further describing the arrangement between Respondent, Respondent's staff and Dr. Schultz. (Resp't Ex. 41; Tr. 424.) Respondent also introduced a letter dated July 20, 2009, from Kathleen Schultz authorizing [AY] to call in Schedule III to V medications. (Resp't Ex. 36.)

Respondent further testified that since June 2010 a webcam service was added to allow Dr. Schultz to connect with Respondent's office and has offered Dr. Schultz a service to review computer information or patient records, but this service has not been set up. Dr. Schultz does not have a key to Respondent's practice location. Respondent further admitted to writing two prescriptions in twenty months that she should not have written, and due to a ''comedy of errors'' one prescription was filled. Respondent maintains that ''two prescriptions were written by me for patients on my first day back to work,'' stating that she ''had just completely forgotten in my head about the fact that I could not write the controlled drugs, and I did, luckily to only those two patients.'' (Tr. 432–33.)

On cross examination, Respondent stated that she did not engage in the treatment of patients between May 28, 2008, and February 13, 2009. (Tr. 477.) The evidence also included a Notice of Denial letter dated February 1, 2009, with a facsimile date of February 1, 2009, addressed to Respondent, denying a payment request for enrollee [AZ]. (Gov't Ex. 19.) The evidence also included a Medicare prior authorization for patient [AZ], dated January 30, 2009, signed by Respondent and listing Respondent as the prescribing physician with a fax notation of February 2, 2009 (hereinafter ''Prior Authorization Form''). (Gov't Ex. 20.) Respondent testified that the signature on page two of the Prior Authorization Form was her signature. (Tr. 482; *see* Gov't Ex. 20.) Respondent admitted it was wrong that she signed it and that Dr. Schultz either authorized her to sign or Respondent assumed Dr. Schultz would have authorized her to sign. (Tr. 482–84.)

At hearing, Respondent timely objected to the admission of Government Exhibits 19 and 20, arguing lack of proper notice. (Tr. 485.) 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 its registration so as to provide a full and fair opportunity to challenge the factual and legal basis for the Agency's action.'' *CBS Wholesale Distributors,* 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)). Although non-noticed evidence may not be used for purposes of imposing a sanction, it can be the proper subject of cross-examination to impeach credibility. *Mark J. Berger, D.P.M.,* 62 FR 5842, 5844 (DEA 1997).

I find that prior to hearing, the Government did not disclose the substantive information relating to the January 30, 2009 Medicare Prior Authorization Form for patient [AZ] in the OSC, subsequent pre-hearing statements or list of exhibits. Accordingly, for purposes of this Recommended Decision, I give no weight to that evidence and related testimony other than to evaluate Respondent's credibility.

On further cross-examination, Respondent was shown a prescription dated March 20, 2009, to patient [JB] for ''Lyrica 75 mg capsule #60 (sixty),'' (*see* Gov't Ex. 9), and admitted the prescription was hers and contained her signature. (Tr. 492.) Respondent was shown a prescription dated April 6, 2009, to patient [JS] for ''Lortab 7.5–500 mg tablet #60 (sixty),'' (*see* Gov't Ex. 10), and testified that she could not say it was her prescription or signature. (Tr. 491–92.) Respondent explained that she could not identify the prescription and signature as hers because she suggested it was ''very possible'' the Government may have falsified the document. Respondent further stated that she recalled writing the March 20, 2009 prescription for patient [JB] but not the April 6, 2009 prescription for patient [JS]. (Tr. 491–92; *see* Gov't Exs. 9 & 10.) Respondent moreover testified with regard to a May 14, 2009 prescription to patient [VY] for ''Ambien 10 mg tablet #30 (thirty),'' (*see* Gov't Ex. 11), that she could not verify it as a prescription that she wrote. (Tr. 493.) And with regard to a February 23, 2009 prescription to patient [RL] for ''Lortab 7.5–500 mg tablet #120 (one hundred twenty),'' (*see* Gov't Ex. 12), Respondent equivocated as to whether her signature appeared on the prescription. (Tr. 493–94.)

In a letter dated January 13, 2010, (Resp't Ex. 40 at 1), Respondent stated that Respondent wrote a prescription dated March 20, 2009, to patient [JB] for Lyrica. Respondent further wrote that she did not know Lyrica was a controlled substance. (*Id.*) Respondent testified at hearing that she did not check any resources at the time she wrote the prescription and acknowledged being mistaken. (Tr. 497–99.)

The Government's evidence included eight prescriptions for various medications to [ET], all dated May 27, 2010, in the name of Dr. Schultz.[15] (Gov't Ex. 21.) Respondent testified that she recognized the prescriptions, was [ET]'s primary care physician, and would have consulted Dr. Schultz regarding the prescriptions. The evidence also included sixteen different prescriptions for eleven different patients covering the time period from April 29, 2010, to June 10, 2010.[16] (Gov't Ex. 22.) All were issued in the name of Dr. Schultz. Respondent testified she could not necessarily testify that the signatures on the prescriptions were Dr. Schultz's, although she confirmed that all the prescriptions were written to patients at New River Medical Associates. (Tr. 520–21, 525.) During the Government's rebuttal case, DI Tomaziefski testified that those prescriptions were seized pursuant to a search warrant of Respondent's office on June 14, 2010, and were found in Respondent's office in a printer. (Tr. 567–68.)

Respondent further testified that with regard to the process of preparing prescriptions for patients, Respondent is ''the expert in pain management. Dr. Schultz is not the expert in pain management. I am. So, she relies on me to—to tell her what is needed for the patient.'' (Tr. 523.) Respondent then testified that she is ''recommending'' to Dr. Schultz and ''in many cases'' Dr. Schultz makes the decisions. (Tr. 524.)

In rebuttal, SA Slease testified that he has been employed as a Special Agent with the Department of Health and Human Services since 2005 and has experience in approximately twenty-five fraud related investigations. SA Slease further testified that he is familiar with Respondent's practice location and very familiar with the southwestern Virginia area, to include Dublin, Virginia. SA

[15] Respondent timely objected to the admission of this unnoticed and undisclosed evidence. For purposes of this Recommended Decision, I have only considered this exhibit on the issue of Respondent's credibility.

[16] Respondent initially objected to the admission of this exhibit on grounds other than notice. Respondent's objection was initially sustained for lack of foundation, but the exhibit was later admitted without objection. As this exhibit was unnoticed prior to hearing, for purposes of this Recommended Decision, I have only considered it on the issue of Respondent's credibility.

Slease testified to having conducted an Internet and government Web site search for pain management providers within one hour's drive of Dublin, and located seven providers in the surrounding area that specialize in pain management. (Tr. 540–42.)

The Parties' Contentions

I. The Government's Argument

The Government argues that Respondent's application for registration should be denied due to her mandatory five-year exclusion from Medicare and Medicaid, pursuant to 21 U.S.C. 824(a)(5). Additionally, the Government argues that Respondent's registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f) and 824(a)(4). The Government maintains that factor one of § 823(f), the recommendation of the appropriate state licensing board or professional disciplinary authority, is applicable based on the suspension and later reinstatement of Respondent's Virginia medical license but factor three, the applicant's conviction record relating to the manufacture, distribution or dispensing of controlled substances, is not applicable. As to factors two and four, the applicant's experience in dispensing or conducting research with respect to controlled substances and compliance with applicable laws relating to controlled substances, the Government maintains that Respondent issued prescriptions for controlled substances using her surrendered DEA COR. Additionally, the Government argues Respondent caused controlled substances prescriptions to issue under the DEA COR of another doctor, without permission. The Government further argues that Respondent executed pre-signed prescriptions for Schedule II controlled substances from 2003 through February 2006, in violation of 21 CFR 1306.05(a). Finally, the Government maintains that Respondent has refused to accept responsibility for past misconduct and was not forthright at hearing.

II. Respondent's Argument

Respondent argues that she only wrote one prescription for controlled substances on her first day back to work after her medical license was reinstated, a mistake due to habit. Respondent maintains that she has shown professional responsibility by calling the first patient to have the prescription returned, but after learning that it had already been filled ''there wasn't anything else she could do.'' Respondent also argues that she showed professional responsibility by calling the second patient and directing the patient to return the prescription before filling it. Respondent further argues that if ''DEA had done their job in a timely manner and approved Respondent's certificate within the timeframe listed on the DEA certificate Web site, that prescription would not have been a problem.'' Respondent maintains that over a twenty-month time span, only two prescriptions were written, and none in the past eighteen months, demonstrating Respondent's professionalism and accordance with the law. Respondent further argues that the called-in prescriptions for Dr. Schultz were done at Dr. Schultz's direction and not done illegally.

With regard to 21 U.S.C. 824(a)(5), Respondent argues that this particular exclusion from Medicare should not be the sole cause for denying her application for a COR because billing issues are very complex; the billing issues were based on ''incident-to billing by her nurse practitioners when Respondent was out of the country'' for which Respondent took responsibility; and denial of a COR ''on the most minimal felony conviction that could be assessed would be a gross injustice.''

Respondent maintains that her reinstatement by the Virginia Board of Medicine weighs in her favor as to factor one of § 823(f), the recommendation of the appropriate state licensing board or professional disciplinary authority. As to factor two, the applicant's experience in dispensing, or conducting research with respect to controlled substances, Respondent maintains that she has extensive experience and training in pain management, and has been recognized by other pain management specialists as well as pharmaceutical companies. In the case of factor five, Respondent maintains there is no allegation or evidence that any conduct by Respondent would threaten the public health and safety.

Respondent further argues that denying her application for a DEA COR would prevent her patients from receiving pain management treatment in Respondent's geographic area. Respondent questions whether the Government's ''real goal is to deny patient care to the underprivileged, poor, disabled, and elderly,'' among other charges.

Discussion and Conclusions

I. The Applicable Statutory and Regulatory 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.[17] Except when dispensed directly by a non-pharmacist practitioner to an ultimate user, controlled substances that are prescription drugs under the Food, Drug and Cosmetic Act must be dispensed pursuant to a prescription issued by a practitioner.[18] Furthermore, it is unlawful for any person knowingly or intentionally to use an expired registration number in the dispensing of a controlled substance to another person.[19] A prescription for a controlled substance may be issued only by an individual practitioner who is licensed to practice and is either registered or exempted [20] from registration.[21] A prescription issued by an individual practitioner may be communicated to a pharmacist by an employee or agent of the individual practitioner.[22] All prescriptions for controlled substances must be signed on and dated as of the date issued and must bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner.[23]

The CSA specifies in 21 U.S.C. 824(a) five factors that the Deputy Administrator may consider when suspending or revoking a DEA registration.[24] 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

[17] 21 U.S.C. 822(a)(2).

[18] 21 U.S.C. 829(a) (2006 & Supp. 2010).

[19] *Id.* 843(a)(2).

[20] The exemptions from registration identified in 21 CFR 1301.22(c) (agent or employee of hospital) and 1301.23 (military and certain other personnel) are inapplicable to the facts of this case.

[21] 21 CFR 1306.03(a) (2010).

[22] *Id.* 1306.03(b).

[23] *Id.* 1306.05(a).

[24] That subsection provides that a DEA registration may be revoked upon a finding that the registrant: (1) Has materially falsified an application for DEA registration; (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 registration inconsistent with the public interest; or (5) has been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a). It should also be noted that § 824(a) contains a reciprocal reference incorporating the public interest factors from § 823(f). *See* 21 U.S.C. 824(a)(4).

useless act of granting a license on one day only to withdraw it on the next.[25]

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).[26]

In an action to deny an application for a DEA COR, the Government has the burden of proving that the requirements for granting such registration are not satisfied.[27] The burden of proof shifts to the respondent once the Government has made its *prima facie* case.[28]

II. Exclusion From Medicare

The CSA, 21 U.S.C. 824(a)(5), provides, insofar as pertinent to this proceeding, that the Deputy Administrator may revoke or deny a registration if an applicant has been excluded from participation in a program pursuant to 42 U.S.C. 1320a–7(a).

Under Section 1320a–7(a), the Secretary of the Department of Health and Human Services is required to exclude from participation in any federal health care program any individual convicted of a criminal offense ''related to the delivery of an item or service under [42 U.S.C. 1395 *et seq.*] or under any State health care program,'' § 1320a–7(a)(1), as well as any individual ''convicted for an offense * * * in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program * * * [or a] criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct,'' § 1320a–7(a)(3).

I find that Respondent's Medicare fraud conviction and subsequent exclusion from Medicare are supported by substantial evidence. The evidence at hearing includes a plea agreement and judgment pertaining to Respondent's conviction for violating 18 U.S.C. 1347. (Gov't Exs. 3 & 4.) Additionally, the evidence includes a letter from the Department of Health and Human Services dated September 30, 2008, excluding Respondent from all federal health care programs for the minimum statutory period of five years. (Gov't Ex. 6.) Consequently, exclusion from Medicare is an independent ground for denying or revoking a DEA registration in this case. *See Johnnie Melvin Turner, M.D.,* 67 FR 71,203, 71,204 (DEA 2002).

Respondent does not dispute the evidence of conviction or exclusion, but argues, correctly, that denial of an application for registration on this ground is a matter of discretion. *See Dinorah Drug Store, Inc.,* 61 FR 15,972–03, 15,973 (DEA 1996) (denial of registration under Section 824(a)(5) discretionary so long as granting registration not inconsistent with public interest).

Accordingly, on these facts, the Government has met its burden of proving its Section 824(a)(5) claim, *see* 21 CFR 1301.44(d), placing the burden on Respondent to show that despite her conviction, granting her a COR would not be contrary to the public interest, *see Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008) (burden of proof shifts to Respondent once Government puts on *prima facie* case); *see also Thomas Johnston,* 45 FR 72,311, 72,311 (DEA 1980) (same).

I further find that the record evidence fully supports denying Respondent's application for registration on this ground alone. Respondent's conduct pertaining to her conviction for health care fraud related in substance to improper billing of services. Respondent's sentence included restitution in the amount of $24,210.37. (Gov't Ex. 4 at 2; *see generally* Tr. 45–46, 57, 392.) Respondent argues in part that she ''took responsibility for this action [and] exclusion should not be used as the sole cause of denial of a certificate.'' [29] To the contrary and as discussed below, Respondent's testimony demonstrated a complete lack of acceptance of responsibility,[30] among other things, and I find that granting Respondent a COR would be inconsistent with the public interest.

III. The Public Interest Standard

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA registration 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. *See 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).

IV. 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 a valid state medical license but Respondent's state medical license has been suspended in the past. The suspension of Respondent's medical license, between June 4, 2008, and February 12, 2009, included several findings of fact by the Virginia Board of Medicine regarding Respondent's conduct, her credibility and her conviction for health care fraud. The Board also found that ''[f]rom approximately 2003 until on or about February 28, 2006, at which time a search warrant executed at her practice produced a prescription pad with numerous pre-signed blank prescription sheets, Dr. Cheek pre-signed blank prescription sheets for use by the nurse practitioners if she was not in the office.'' (Gov't Ex. 7 at 3.) Additionally, the Board did not find credible Respondent's testimony at formal hearing that the pre-signed forms were not for medications. The Board also found that Respondent ''continued to prescribe Kadian 20 mg (morphine sulfate, C–II)'' to a patient despite the fact that a urine drug screen was negative for opiates during the relevant timeframe. (*Id.* at 3.) The Board further

[25] *Kuen H. Chen, M.D.,* 58 FR 65,401, 65,402 (DEA 1993) (citing *Serling Drug Co. & Detroit Prescription Wholesaler, Inc.,* 40 FR 11918, 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).

[26] *See Chen,* 58 FR at 65,402.

[27] 21 CFR 1301.44(d) (2010).

[28] *Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008); *see also Thomas Johnston,* 45 FR 72,311, 72,311 (DEA 1980).

[29] Resp't post-hearing br. at 9.

[30] Respondent's testimony pertaining to the offense conduct included the statement: ''If this is fraud, maybe we need more of it.'' Respondent later stated her belief in the ''unjustness'' of her conviction, claiming overbilling for only $66.00. (Tr. 382, 384–86.)

found Respondent in her testimony ''demonstrated little insight into the practice management and ethical issues regarding fraudulent billing that led to the suspension of her license and the additional patient care concerns. Specifically, Dr. Cheek did not take responsibility for her actions and felt that there was a government conspiracy against her because she practices pain management.'' (*Id.* at 4.)

In mitigation, the Virginia Medical Board reinstated Respondent's medical license on February 12, 2009. (Resp't Ex. 18.) While not dispositive, this reinstatement does weigh in favor of a finding that Respondent's registration would not be inconsistent with the public interest, at least as of February 12, 2009. The weight accorded to the reinstatement of Respondent's medical license, however, is tempered by the fact that on the first day of practice following reinstatement Respondent wrote prescriptions for controlled substances without a DEA registration. (*See, e.g.,* Gov't Ex. 18 at 1.)

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). Respondent argued at hearing, and 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 the third factor 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 and 4: Respondent's Experience in Dispensing Controlled Substances; and Compliance With Applicable State, Federal or Local Laws Relating to Controlled Substances

''Every person who manufactures, distributes, dispenses, imports or exports any controlled substance or who proposes to [do so] * * * shall obtain a registration unless exempted by law or pursuant to §§ 1301.22–1301.26.'' 21 CFR 1301.11(a) (2010). Although a person may apply for registration at any time, ''*[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.*'' *Id.* (emphasis supplied).

Respondent's conduct with regard to compliance with applicable federal, state or local laws relating to controlled substances since regaining her medical license in February 2009 has been dismal, at best. On the same day as her medical license was restored, Respondent admittedly wrote at least two prescriptions without authority. Respondent's testimony at hearing explaining that she had forgotten she was unauthorized to write prescriptions and wrote prescriptions by ''habit'' is simply not credible. The evidence at hearing reflects numerous prescriptions that Respondent wrote in her own name on and after February 13, 2009. The objective evidence of record reflects five prescriptions to different patients for Scheduled controlled substances, signed by Respondent between February 23, 2009, and May 14, 2009. (Gov't Exs. 9–13.) Finally, Respondent wrote a prescription for Lyrica on March 20, 2009, admitting that she did not know or research whether Lyrica was a controlled substance.[31] (Tr. 497–99; Resp't Ex. 40 at 1.)

Respondent's conduct with regard to issuing controlled substance prescriptions under the direction and authority of Dr. Kathleen Schultz was also unlawful. As an initial matter, Respondent's explanation of her arrangement with Dr. Shultz is not credible. Respondent maintains in substance that she reached a verbal and later written agreement with Dr. Schultz for Respondent to prescribe controlled substances, including pain medications, at the direction of Dr. Schultz. Respondent further testified that Dr. Schultz was present at Respondent's practice on Thursdays to see Respondent's patients and issue prescriptions. That testimony stands in sharp contrast to the objective evidence of record reflecting that a significant majority of prescriptions issued at Respondent's practice occurred on other days of the week. For example, DI Tomaziefski testified that ''most of the prescriptions were called in on days other than Thursdays.'' (Tr. 118; *see* Gov't Exs. 15 & 17.) Additionally, patients [DS], [AZ] and [AY] all testified to seeing Dr. Schultz rarely and that Respondent was effectively their primary care physician.

Respondent's testimony with regard to identification of her own signature as well as Dr. Schultz's signature on prescriptions issued from Respondent's office was notably contrived. Respondent testified that she recognized her own signature on a prescription for Lyrica with two refills issued on March 20, 2009. (Tr. 491; *see* Gov't Ex. 9.) Respondent further volunteered that the ''prescription is mine. It is signed. It was not filled. I do not therefore consider a law has been broken.'' (Tr. 491.) Respondent then testified that she did not recognize her signature on a prescription for Lortab issued on April 6, 2009, that had been filled. (Tr. 491–92; *see* Gov't Ex. 10.) Respondent offered that ''I cannot say this is my signature. I am not opposed to the idea the government can do a lot of things . * * *'' (Tr. 492.) Respondent testified she could not ''verify'' a prescription for Ambien dated May 14, 2009, bearing a signature in Respondent's name. (Tr. 493; *see* Gov't Ex. 11.) Respondent testified she could not recognize her signature on a prescription for Lortab dated February 23, 2009. (Tr. 494; *see* Gov't Ex. 12.) Finally, Respondent testified with regard to a prescription dated February 23, 2009, for Ambien, that the signature was hers and that she recalled writing the prescription. (Tr. 495; *see* Gov't Ex. 13.) This testimony as a whole was palpably incredible.

Respondent also testified that she could not recognize the signature of Dr. Schultz with regard to sixteen prescriptions. (Tr. 519–20; *see* Gov't Ex. 22.) This testimony is inconsistent with Respondent's prior testimony and assertion that she was working at the direction of Dr. Schultz, presumably following Dr. Schultz's written and oral directions. This testimony is also markedly at odds with the fact that sixteen prescriptions, eleven of which bore ''a do not fill before'' date in the name of Dr. Kathleen Schultz, were found in a printer in Respondent's office during the execution of a DEA search warrant on June 14, 2010.

The record as a whole supports by substantial evidence a finding that Respondent knowingly wrote prescriptions without authority on and after February 13, 2009, in her own name. Additionally, the record further supports a finding by substantial evidence that Respondent wrote prescriptions unlawfully using Dr. Schultz's DEA registration.

The evidence with regard to whether Dr. Schultz knowingly authorized Respondent and Respondent's assistant [AY] to call in prescriptions under Dr. Schultz's DEA registration number is mixed. DI Tomaziefski testified that in an initial conversation with Dr. Schultz, Dr. Schultz stated she did not authorize anyone to use her number. In a later call initiated by Respondent and with Respondent on the line, Dr. Schultz

[31] Pregabalin (Lyrica) is a Schedule V controlled substance. 21 CFR 1308.15(e)(1) (2010); *Schedules of Controlled Substances: Placement of Pregabalin Into Schedule V,* 70 FR 43,633–01 (DEA 2005).

stated she had authorized the use of her DEA number. Additionally, Respondent introduced a written agreement bearing signatures in the names of Dr. Schultz and Respondent, purporting to memorialize an agreement for Respondent to act under Dr. Shultz's direction for all Schedule II to IV medications, noting in part that Dr. Schultz does not need to see patients receiving Schedule III to V medications. (Resp't Ex. 41.) The written document purports to memorialize a verbal understanding between Dr. Schultz and Respondent as of February 23, 2009. An addendum dated June 25, 2009, notes Dr. Schultz will see ''all patients one time'' because of an inability ''to determine the legality'' of the original agreement. (*Id.*) While the evidence lends some support to a finding that Dr. Schultz may have authorized in some instances the ''call-in'' of Dr. Schultz's prescriptions by Respondent and [AY], as well as the supervision of Respondent, the evidence as a whole demonstrates that this arrangement was used primarily to allow Respondent to issue numerous controlled substance prescriptions with little if any substantive input by Dr. Schultz.

The transparency of the arrangement was quite apparent even from the testimony of Respondent. Respondent testified at one point that she was the pain management expert, not Dr. Schultz. (Tr. 523.) The testimony of Respondent's patients also undermined Respondent's story. All of Respondent's patients who testified indicated that they saw Respondent for treatment and only rarely did Dr. Schultz perform physical examinations or see patients. For example, patient [AZ] testified to last having a physical examination from Dr. Schultz nine months to a year ago, yet visited Respondent's practice approximately once every three months. (Tr. 214.) Patient [ET] testified that [ET] had been a patient of Respondent until Respondent lost her medical license in 2008. [ET] began treatment with Respondent again on February 23, 2009. (Tr. 340.) [ET] further testified that [ET] does not recall having a physical examination by Dr. Schultz. (Tr. 350.) Patient [AY] testified that Dr. Schultz was only present in Respondent's practice on Thursdays. (Tr. 280.) [AY] further testified that Dr. Schultz has never performed a physical examination of [AY] while a patient and that [AY] has only seen Dr. Schultz as a patient one time. (Tr. 278–79.)

The evidence also includes testimony from DI Tomaziefski regarding an undercover visit by a confidential source (''CS'') to Respondent's practice on May 28, 2009. DI Tomaziefski testified in substance that the CS was wearing a ''wire'' and DI Tomaziefski listened to the office visit and learned that the CS was treated by Respondent and not seen by Dr. Schultz. Respondent gave the CS a prescription for hydrocodone, which Respondent's office assistant called in to a local pharmacy using Dr. Schultz's DEA number. (Tr. 99–100; *see* Gov't Ex. 14.)

There is additional evidence of record reflecting inconsistencies with regard to Respondent's claim that she was working at the direction of Dr. Schultz, but further elaboration is unnecessary. The evidence as a whole demonstrates that Respondent's claim that she was working at the direction of Dr. Schultz is not supported by credible evidence. To the contrary, the evidence as a whole reflects a pattern of conduct by Respondent aimed at unlawfully circumventing her lack of a DEA COR to prescribe controlled substances in violation of 21 U.S.C. 822(a)(2) and 843(a)(2).

The Government has introduced evidence and argued that Respondent's history of non-compliance with applicable laws is evident from the October 29, 2008, findings of fact by the Virginia Board of Medicine. The Board found that from ''approximately 2003 until on or about February 28, 2006, at which time a search warrant executed at her practice produced a prescription pad with numerous pre-signed blank prescription sheets, Dr. Cheek pre-signed blank prescription sheets for use by the nurse practitioners if she was not in the office.'' (Gov't Ex. 7 at 3.) Such conduct is contrary to DEA regulations which require prescriptions for controlled substances to be ''dated as of, and signed on, the day when issued * * *'' as well as Virginia law.[32]

As an initial matter, this issue of Respondent's pre-signing of prescription pads between 2003 and 2006 was not specifically noticed by the Government in the OSC or pre-hearing statements. It was, however, addressed in Government Exhibit 7, an exhibit that was provided to Respondent prior to hearing, presumably on or before the September 13, 2010 deadline set by the Prehearing Ruling (ALJ Ex. 4 at 2), and filed on September 27, 2010. At hearing Respondent did not object to the admission of the exhibit. (Tr. 72.) 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 its registration so as to provide a full and fair opportunity to challenge the factual and legal basis for the Agency's action.'' *CBS Wholesale Distributors,* 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)). The DEA has previously held that 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).

I find in this case that the issue of Respondent's pre-signing of prescription pads between 2003 and 2006 was sufficiently noticed to Respondent in advance of hearing, because the matter was provided to Respondent as an exhibit prior to hearing. Respondent's failure to object to the admission of the exhibit further supports its consideration on the issue of sanction. I find that Respondent's history of pre-signing blank prescription sheets from 2003 to February 2006 to be supported by substantial evidence and contrary to DEA regulation and Virginia law.

The action of the Virginia Medical Board appears to consider issues directly related to this proceeding and therefore should be afforded significant weight. In particular, the Board's consideration of Respondent's lack of responsibility for her actions and belief in a government conspiracy against her practice of pain management was very consistent with the testimony of Respondent at the proceedings in the above-captioned case. It is also noteworthy that the Board did not find Respondent's testimony with regard to material issues to be credible. Respondent's clear disregard of applicable law and regulations prohibiting such conduct over an extended period of time weighs heavily against Respondent's application for registration.

Additionally, the evidence of Respondent's dispensing practice includes an instance on May 20, 2009, when she issued to a patient a prescription for Lyrica, a Schedule V controlled substance, admitting that she

[32] 21 CFR 1306.05(a) (2010). Requirements for prescriptions in Virginia include, among other things, that ''[e]ach written prescription shall be dated as of, and signed by the prescriber on, the day when issued.'' Va. Code Ann. § 54.1–3408.01(A) (2010).

did not know or research whether Lyrica was a controlled substance. Respondent maintained that the ''drug company did not do a very good job of informing'' her of the controlled status of the drug, elaborating that ''I fail to see why it had a controlled status.'' (Resp't Ex. 40 at 1; *see also* Tr. 497–99.) The applicable regulations are specific in placing the ''responsibility for the proper prescribing and dispensing of controlled substances'' on the practitioner, with a corresponding responsibility on the pharmacist.[33] Respondent's conduct in this instance was contrary to applicable regulations and inconsistent with the public interest.

The evidence of Respondent's experience in dispensing controlled substances and compliance with applicable law and regulations weigh heavily in favor of a finding that Respondent's registration would be inconsistent with the public interest.

Factor 5: Such Other Conduct Which May Threaten the Public Health and Safety

As to factor five, ''Respondent's lack of candor and inconsistent explanations'' may serve as a basis for denial of a registration. *John Stanford Noell, M.D.,* 59 FR 47,359, 47,361 (DEA 1994). Additionally, where a registrant [34] has committed acts inconsistent with the public interest, a registrant must accept responsibility for her actions and demonstrate that she will not engage in future misconduct. *Patrick W. Stodola,* 74 FR 20,727, 20,735 (DEA 2009).[35] 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).

Respondent's testimony at hearing repeatedly and clearly demonstrated that she does not accept responsibility for her actions. For example, Respondent testified that she

> do[es] not know why the government targets me. For some reason or other, the government has it in for Linda Cheek, M.D. It might be why. I am a renegade. I admit it. I always have been. If it weren't for people like me, changes would never be made, and I'm proud of that, and I'll stand by it.

(Tr. 389.) Respondent's testimony about a ''government conspiracy'' against her was also noted by the Virginia Board of Medicine in its Order dated October 29, 2008. ''Specifically, Dr. Cheek did not take responsibility for her actions and felt that there was a government conspiracy against her because she practices pain management.'' (Gov't Ex. 7 at 4.)

Respondent's testimony at hearing regarding her ''mistaken'' issuance of prescriptions because of ''habit,'' along with her testimony regarding the arrangement with Dr. Schultz to issue prescriptions at the direction of Dr. Schultz, is not credible; it is moreover contrary to other objective evidence of record. Equally incredible is Respondent's ability to recognize her signature in one instance, but not in another, for no apparent reason. Further examples permeate the record. I find that Respondent's lack of credibility during numerous material portions of her testimony weighs heavily in favor of denying Respondent's application.

V. Community Impact Evidence

Respondent at hearing sought to introduce testimony from several witnesses on the issue of ''community impact,'' maintaining that a denial of her DEA COR would leave southwestern Virginia medically underserved by pain management practitioners.[36] As a threshold matter, there is some question as to whether this issue is relevant at all in a DEA administrative proceeding regarding the registration of a practitioner. Agency precedent has found community impact testimony and evidence relevant with regard to pharmacies but has also rejected community impact evidence altogether in more recent cases. For example, the agency has considered and credited a respondent's argument that loss of registration would severely and adversely impact the local community by eliminating one of two pharmacies serving the poor. *Pettigrew Rexall Drugs,* 64 FR 8855, 8859–60 (DEA 1999). In recent cases, the agency held that ''DEA has never applied [the *Pettigrew*] rule in a subsequent case * * * it would be ill-advised to extend it to the case of a prescribing practitioner.'' *Gregory Owens, D.D.S.,* 74 FR 36,751, 36,757 (DEA 2009); *see also Steven M. Abbadessa, D.O.,* 74 FR 10,077, 10,078 (DEA 2009) (rejecting community impact evidence).

Although not discussed in *Owens,* there are cases since *Pettigrew* that have considered and given weight to community impact evidence, without specifically citing *Pettigrew.* For example, in a 2004 decision the Deputy Administrator explained that ''regardless of any demographic showing as to what proportion of Louisiana's population is medically underserved[,] such information does not detract from the fact that Respondent provides needed medical services to such an area * * * while this provides some support for maintaining registration under the facts of this case, it also has a negative implication for continued registration.'' *Imran I. Chaudry, M.D.,* 69 FR 62,081, 62,083–84 (DEA 2004).

In light of this precedent, I find that community impact evidence as a threshold matter is not entirely irrelevant. That said, the evidence adduced at hearing does not support a finding that denying Respondent's application for registration would have any appreciable adverse community impact. The testimony offered by Respondent and three patient witnesses claimed in substance that Respondent was the only pain management doctor reasonably available in southwestern Virginia. Respondent also introduced an Internet search results query to support her assertion. (Resp't Ex. 43.)

This testimony and evidence was rebutted by testimony from SA Slease, Department of Health and Human Services, who credibly testified that he was very familiar with the southwestern Virginia area to include Dublin, Virginia, and based on an Internet and government Web site search for pain management providers, located seven pain management specialists in the area.

While I have admitted and considered testimony with regard to community impact for the reasons set forth above, I find in this instance that the denial of Respondent's application for registration would have little if any adverse community impact with regard to the availability of pain management physicians.

Conclusion and Recommendation

I find the Government has established by substantial evidence a prima facie case in support of denying Respondent's application for registration. I conclude by a preponderance of the evidence that the Government has proved independent grounds for denying Respondent's application for registration pursuant to 21 U.S.C.

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[33] 21 CFR 1306.04(a) (2010).

[34] Although Respondent is not presently a registrant, she was a registrant in the past. (*See* Gov't Ex. 8; Tr. 73–76.) In any event, the extent of Respondent's acceptance of responsibility is unquestionably relevant to the question of whether her pending application should be granted. *See, e.g., Morall* v. *DEA,* 412 F.3d 165, 182–83 (DC Cir. 2005) (discussing several DEA decisions to continue registrations where physician cooperated with DEA investigators).

[35] *See also Hoxie* v. *DEA,* 419 F.3d 477, 484 (6th Cir. 2005) (Decision to revoke registration ''consistent with the DEA's view of the importance of physician candor and cooperation.'') .

[36] I allowed Respondent to call two of four proposed witnesses on this specific issue, because additional testimony would be unnecessarily duplicative. *See* 21 CFR 1316.59(a) (2010).

824(a)(5), and alternatively, that the balance of the other factors in this case weighs heavily in favor of a finding that Respondent's registration would be inconsistent with the public interest under § 823(f).

Once DEA has made its prima facie case for revocation or denial, the burden shifts to the respondent to show that, given the totality of the facts and circumstances in the record, revoking or denying the registration 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 potential registrant has committed acts inconsistent with the public interest, she must accept responsibility for her actions and demonstrate that she will not engage in future misconduct. *See Patrick W. Stodola,* 74 FR 20,727, 20,735 (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). An agency's choice of sanction will be upheld unless unwarranted in law or without justification in fact. A sanction must be rationally related to the evidence of record and proportionate to the error committed. *See* Morall v. *DEA,* 412 F.3d 165, 181 (DC Cir. 2005). Finally, an ''agency rationally may conclude that past performance is the best predictor of future performance.'' *Alra Laboratories, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995).

I recommend denial of Respondent's application. I find the evidence as a whole demonstrates that Respondent has not accepted responsibility. To the contrary, Respondent maintains without credibility that she is being unfairly persecuted because of her pain management practice. Respondent's past performance, including a felony conviction for health care fraud, past and recent history of non-compliance with applicable laws and regulations, and overall lack of candor while testifying at hearing is fully consistent with a denial of Respondent's application for a DEA COR.

Dated: December 30, 2010.

Timothy D. Wing,

Administrative Law Judge

[FR Doc. 2011–28002 Filed 10–27–11; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 10–73]

Shawn M. Gallegos, D.D.S., Decision and Order

On May 19, 2011, Administrative Law Judge (ALJ) 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 findings of fact, conclusions of law and recommended order in its entirety except as explained below.[1] Accordingly, I will order that the Respondent's application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I hereby order that the application of Shawn M. Gallegos, D.D.S., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This Order is effective immediately.

Dated: October 7, 2011.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq. & Brian Bayly, Esq., for the Government

Shawn M. Gallegos, D.D.S., pro se, Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

Introduction

Administrative Law Judge Timothy D. Wing. 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 dentist's application for a DEA Certificate of Registration (COR) as a practitioner. Without this registration the dentist, Shawn M. Gallegos, D.D.S. (Respondent or Dr. Gallegos), of Martinez, California, will be unable to lawfully prescribe, dispense or otherwise handle controlled substances in the course of his practice.

On August 3, 2010, the DEA Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause (OSC) to Respondent, giving Respondent notice of an opportunity to show cause why the DEA should not deny Respondent's application for a DEA COR, filed on or around January 27, 2010, pursuant to 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f), on the grounds that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f).

In part and in substance, the OSC alleges that Respondent voluntarily surrendered his DEA registration number BG6936491 for cause on December 2, 2009, alleging that during the course of a DEA investigation concerning suspicious orders of hydrocodone and phentermine, Respondent stated the controlled substances were not used in the normal course of his dental practice. The OSC further alleges that on multiple occasions, Respondent failed in his responsibility as a practitioner to ensure that the controlled substances ordered and dispensed by him were for a legitimate medical purpose by a practitioner acting in the usual course of professional practice, in violation of 21 CFR 1306.04(a). Additional alleged violations include the inability to account for the dispensing of the controlled substances in violation of 21 CFR 1304.04(a); the failure to keep a dispensing log for controlled substances, in violation of 21 CFR 1304.03(b); the failure to keep accurate, complete and mandatory records of controlled substances in violation of 21 CFR 1304.21(a); the failure to properly report the theft of hydrocodone and the unauthorized use of Respondent's registration, in violation of 21 CFR 1301.76(b); the failure to establish a valid doctor-patient relationship before issuing and dispensing controlled substances (diet pills), which were for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of 21 CFR 1306.04; and the commission of ''such acts that would render Respondent's registration inconsistent

[1] At page 19 of the slip opinion, the ALJ explained that ''Respondent's statement during the December 2, 2009 audit that the dispensing records were located within his patient records was found to be inaccurate. Even if true, the patient records would not substitute for required copies of DEA Form 222 relating to the Schedule II controlled substance oxycodone, among other recordkeeping requirements.'' To make clear, a DEA Form 222, which is otherwise known as an ''order form,'' must be executed for each distribution of a schedule II controlled substance with the exception of those distributions which are exempt under 21 CFR 1305.03. This form is not required, however, to document a practitioner's dispensing of controlled substances, which must be recorded in a dispensing log. *See* 21 CFR 1304.03(b), 1304.22(c). While the record establishes that Respondent ordered oxycodone only a single time (for which he did not have a copy of the requisite Form 222), Respondent was also required to maintain, for a period of two years, records documenting the receipt of all controlled substances he acquired, as well as an initial inventory when he first engaged in controlled substances activities and biennial inventories thereafter for each controlled substance he acquired. *Id.* 1304.04(a), 1304.11, 1304.21(a). Respondent, however, had no such records.

with the public interest, particularly in light of [the] failure to comply with State and Federal laws relating to controlled substances,'' citing 21 U.S.C. 823(f)(4) and 824(a)(4).[2]

In addition to the OSC, the Government also noticed and alleged in its September 24, 2010 prehearing statement that on January 16, 2010, Respondent used his previously surrendered DEA registration to call in a prescription for the controlled substance lorazepam, which was filled and dispensed to patient [GS]. (Gov't PHS at 7.) The Government further alleged that ''DI Windsor will testify that this [lorazepam] controlled substance is not used in the normal course of the Respondent's dental practice.'' [3] (Gov't PHS at 7–8.) The Government further alleged that ''Respondent will testify that he told DI Windsor and DI Myers that his suspicious orders of hydrocodone and phentermine were not used in the normal course of his dental practice.'' [4] (Gov't PHS at 3.) Finally, the Government alleged various instances of unprofessional conduct contained within a document entitled: ''In the Matter of the Accusation Against [Respondent],'' brought on behalf of the Dental Board of California, and dated January 31, 2011. (Gov't Ex. 10.)

On September 13, 2010, Respondent, acting *pro se,* requested a hearing on the allegations in the OSC. Following prehearing procedures, a hearing was held on April 5, 2011, in San Francisco, California, with the Government represented by counsel and Respondent appearing *pro se.*[5] Both parties called witnesses to testify and introduced documentary evidence. Respondent elected not to testify. 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, W10004582C, as a 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

Respondent was assigned DEA registration BG6936491 on September 7, 2000, as a practitioner in Schedules II–V. (Gov't Ex. 1.) The last renewal of this registration was on October 1, 2009, at the address of 220 E. Alamo Plaza, Alamo, California. On December 2, 2009, Respondent voluntarily surrendered this registration, ''after which date no controlled substances could be obtained, stored, administered, prescribed, or dispensed under DEA registration BG6936491.'' (Gov't Exs. 1 & 2.) On January 27, 2010, Respondent submitted an application for registration W10004582C as a practitioner in Schedules II–V, at the address of 220 E. Alamo Plaza, Alamo, California. (Gov't Exs. 1 & 3.)

II. The Government's Evidence

At hearing, the Government presented the testimony of three witnesses: Respondent's former patient [GS];[6] Respondent's ex-wife and former employee Maria Muratalla (Ms. Muratalla), and DEA Diversion Investigator Jamee Windsor (DI Windsor). DI Windsor testified in substance to having over ten years of experience in law enforcement, and to having been a diversion investigator with DEA since July 2009. (Tr. 107–109.) DI Windsor first became involved in an investigation of Respondent following receipt of a June 11, 2009 ''Suspicious Order'' report by The Harvard Drug Group (Harvard),[7] noting Respondent's order of four controlled substances that were inconsistent with his dental practice.[8] The report noted in bold print, with asterisks: ''*This dentist ordered the above items for their personal use.*'' [9] (Tr. 113; Gov't Ex. 5 at 1.) DI Windsor testified that the four controlled substances in question [10] are Schedule IV controlled substances used as diet aids to treat moderate to extreme obesity. (Tr. 113–14.)

The evidence also included a transaction history report from DEA's Automation of Reports and Consolidated Orders System (ARCOS),[11] reflecting six controlled substance transactions between Harvard and Respondent between October 2, 2007, and March 27, 2009. (Gov't Ex. 5 at 2–5; Tr. 121–22.) Five of the orders were for Schedule III controlled substances, and one transaction, dated July 30, 2008, was for the Schedule II controlled substance oxycodone. (Tr. 141; Gov't Ex. 5 at 2.)

DI Windsor next testified to visiting Respondent's registered practice location on the morning of December 2, 2009, accompanied by another DEA diversion investigator. (Tr. 129.) Respondent was present in the office along with a receptionist, and possibly a third employee. When the diversion investigators arrived they presented Respondent with a DEA form entitled Notice of Inspection of Controlled Premises, which was subsequently

[2] ALJ Ex. 1.

[3] At hearing, DI Windsor offered no testimony specifically addressing this issue. The Government did offer testimony from Ms. Muratalla which was mixed in terms of the use of lorazepam in Respondent's dental practice. Ms. Muratalla testified in substance that lorazepam was ''used for other people'' and also for dental patients. (Tr. 63–64.)

[4] Notably, the only testimony offered at hearing by DI Windsor regarding Respondent's December 2, 2009 statements arguably relevant to controlled substances not being used in the normal course of his dental practice, consisted of the following: ''Dr. Gallegos had said that he ordered diet pills for his wife and he had also said that she had ordered them for herself.'' (Tr. 146.) DI Windsor further testified based on her knowledge and experience as a diversion investigator that diet pills were inconsistent with a dental practice. (Tr. 119–20.) There was no testimony supporting the allegation that Respondent made similar reference to hydrocodone. DI Myers was not called to testify at hearing and Respondent did not testify. No written reports were offered memorializing any statements made to DEA diversion investigators by Respondent.

[5] Throughout the course of prehearing procedures Respondent was afforded various opportunities to obtain counsel, to include a letter to Respondent from the Office of Administrative Law Judges identifying Respondent's right to counsel pursuant to 21 CFR 1316.50 (2010) (ALJ Ex. 3), a similar notation in a November 12, 2010 prehearing ruling (ALJ Ex. 5 at 1–2) and the granting of a continuance at Respondent's request so that Respondent might obtain counsel. (ALJ Ex. 8 at 1–2.) At hearing, Respondent affirmed that he wished to proceed with the hearing without the assistance of counsel. (Tr. 4.)

[6] The patient's initials are used to protect patient privacy.

[7] Harvard was described by DI Windsor as a re-distributor of controlled substances to DEA registrants. (Tr. 116.)

[8] The report by Harvard contains a note at the bottom of the page which was determined by DI Windsor to be an error by Harvard. The notation ''[p]lease note that these are 3 separate 222 forms * * * all three signed by the same person'' was acknowledged by Harvard to be a mistake (''a typo'') on Harvard's part, but the remaining information in the report was believed to be accurate. (Tr. 127.)

[9] No testimony or evidence was offered regarding what knowledge or information formed the basis for this statement.

[10] Adipex (100 count bottle), Fastin (1000 count bottle), phentermine (1000 count bottle) and Tenuate (100 count bottle). (*See* Gov't Ex. 5 at 1.)

[11] DI Windsor offered testimony regarding the system. I also note that ''Registrants are also required to report records of sales or acquisitions of controlled substances in Schedules I and II, of narcotic controlled substances listed in Schedules III, IV and V, and of psychotropic controlled substances listed in Schedules III and IV with the DEA's Automation of Reports and Consolidated Orders System (ARCOS). 21 CFR 1304.33(c); 21 U.S.C. 827(d). These reports must be filed every quarter not later than the 15th day of the month succeeding the quarter for which it is submitted. 21 CFR 1304.33(b).'' *Easy Returns Worldwide, Inc.* v. *United States,* 266 F. Supp. 2d 1014, 1016 (E.D. Mo. 2003).

signed by Respondent.[12] (Tr. 131–34.) DI Windsor further testified that the inspection included ''an inventory of [Respondent's] dispensing of his controlled substances * * *.'' (Tr. 134–35.) The results of the inventory reflected 89.5 tablets of 5mg/500mg hydrocodone present in the office. (Gov't Ex. 8; Tr. 138.) In addition to the inventory, the inspection also sought to review required records, to include biennial inventories, dispensing logs, copies of DEA Form 222 for Schedule II controlled substances and other invoices for Schedule III–V controlled substances. (Tr. 139–41.) DI Windsor testified that none of the required records could be located and Respondent was unable to produce any. (*E.g.,* Tr. 141–42.) The diversion investigators reviewed a random sampling of Respondent's patient files, none of which included dispensing records for hydrocodone or oxycodone. (Tr. 142–43.)

DI Windsor also testified regarding statements made by Respondent during the inspection relating to controlled substances. With regard to diet pills, DI Windsor testified that Respondent first raised the issue, stating that ''he had ordered diet pills for his wife [referring to Ms. Muratalla] and he had also said that she ordered them for herself.'' (Tr. 146.) DI Windsor did not recall specifically discussing the diet pills Adipex, Fastin, phentermine or Tenuate with Respondent, or the specific time frames for the orders. (Tr. 147.) The inspection revealed no invoices, inventory or dispensing records of any type for any of the diet pills referenced in shipment records to Respondent. (Tr. 147–48.) DI Windsor further testified that Respondent stated he purchased the diet pills with a company credit card, and informed DI Windsor that he would work on getting a copy of the bill, but as recently as the date of hearing Respondent had not produced a copy. (Tr. 153.)

DI Windsor next testified that Respondent stated during the inspection that there had been two occasions within the preceding one or two years in which controlled substances believed to be hydrocodone that had been placed on his desk ''had come up missing.'' (Tr. 148, 150.) Respondent further stated that ''on one occasion he did not contact law enforcement [and] on the second occasion he thought law enforcement had been contacted by one of his staff, but he wasn't certain of that.'' (Tr. 149.) Respondent was certain that neither incident had been reported to DEA. (*Id.*) The lack of available records at Respondent's registered location precluded DI Windsor from determining the amount of the loss.

The evidence also included a form entitled Voluntary Surrender of Controlled Substances Privileges, dated December 2, 2009, and signed by Respondent. (Gov't Ex. 2.) DI Windsor testified that after the completion of the closing inventory and request for documentation, Respondent was presented the form, including an explanation of its terms and Respondent's right to re-apply at a later date. (Tr. 155–56.) Respondent signed the form but was unable to produce a copy of his DEA COR. (Tr. 159; Gov't Ex. 9.)

On cross- and redirect examination, DI Windsor testified to being at Respondent's office on December 2, 2009 for approximately two hours. (Tr. 168.) DI Windsor testified that between December 2, 2009, and August 3, 2010, she spoke with Respondent by telephone approximately six times regarding Respondent's application and the California Dental Board, but DI Windsor ceased communication with Respondent after becoming aware that Respondent ''had a patient call [DI Windsor] pretending to be [Respondent's] attorney.'' (Tr. 169, 173.) DI Windsor further testified that upon Respondent's request that she contact Harvard to inquire about the ordering of diet pills, DI Windsor called Harvard and was informed that the person who ordered the diet pills in June 2009 was not Ms. Muratalla.[13] (Tr. 170; 182–83.) DI Windsor's testimony was fully credible. Her testimony was internally consistent, corroborated by documentary evidence of record and the witness was able to recall factual events with a reasonable level of certainty.

The Government presented the testimony of Respondent's former patient [GS], who credibly testified in substance to being Respondent's patient from December 2009 until approximately March 2010. (Tr. 38–40.) [GS] testified that Respondent treated her initially in December 2009 for an infected tooth, and later in or about January 2010 Respondent performed a root canal. (Tr. 38.) [GS] further testified that Respondent prescribed ''two rounds of antibiotics * * * initially [and] on the third visit * * * he gave me a prescription for lorazepam.'' (Tr. 39.) [GS] specifically recalls being prescribed the lorazepam in the latter part of January or February of 2010. (*Id.*) On cross-examination, [GS] admitted to filing a complaint against Respondent with the California Dental Board ''for not finishing the work that I paid for.'' [14] (Tr. 41.)

The evidence also included a pharmacy prescription record dated January 16, 2010, detailing a prescription for ''Amox'' and ''Lorazepam'' to patient [GS], and listing Respondent as the prescriber. (Gov't Ex. 6.) DI Windsor credibly testified in relevant part that the prescription was ''phoned in'' and lorazepam was the only controlled substance prescribed and dispensed.[15] (Tr. 162–63.)

The Government next offered the testimony of Ms. Muratalla, who testified in substance to having married Respondent in 1999, separated in May 2008, and divorced in June 2010. (Tr. 47–48.) Ms. Muratalla explained that she also had a working relationship with Respondent, initially working as colleagues and eventually opening their own practice in September 2002. (Tr. 48.) Ms. Muratalla testified that her primary duty was working as a dental hygienist, but also had responsibilities such as ''management, payroll * * * accounts receivable and accounts payable, as well as * * * cleaning crew on weekends.'' (Tr. 49.) Ms. Muratalla explained that she performed all of the above duties until July 22, 2008, when Respondent removed her access to his financial accounts. (Tr. 53–54.) From July 22, 2008, until September 11, 2008, Ms. Muratalla testified that she was not involved in any ordering of drugs and only worked in Respondent's office as a hygienist.[16] (Tr. 51 & 53.)

Ms. Muratalla outlined the drug ordering system in Respondent's office between 2002 and July 2008, noting that ''I'm not sure how we came across Harvard drugstore'' but opened an account and eventually began placing all orders through Harvard for financial reasons. (Tr. 49.) In terms of Respondent's role in ordering drugs, Ms. Muratalla testified that Respondent did not make requests verbally, but was ''very specific as far as writing down a list for me. He did every time.'' (Tr. 50.) Ms. Muratalla did not recall amounts ordered but did not believe the amounts

[12] The notice includes in pertinent part a statement of rights, to include the right to ''not have administrative inspection without an administrative inspection warrant,'' and an acknowledgment and consent section, requiring signature by the registrant to consent to the inspection. (Gov't Ex. 4.)

[13] No testimony or other evidence was offered regarding the identity of the person Harvard said ordered the diet pills.

[14] [GS] had also testified on direct examination to being awarded a court judgment for $6649. (Tr. 40.)

[15] Lorazepam is a Schedule IV controlled substance. (Tr. 163.)

[16] Ms. Muratalla testified that she stopped working in Respondent's office altogether on September 11, 2008, because ''I had an official restraining order that was placed by [Respondent] on me.'' (Tr. 51.)

were excessive. (Tr. 51.) Ms. Muratalla further explained that she was the contact person in the office for drug orders which were sent to Respondent's office address using only Respondent's DEA number, because ''[h]e was the sole proprietor * * * [and] only dentist working at the practice.'' (Tr. 55.) Ms. Muratalla testified that Respondent had ''specific instructions to all staff members including myself, no one to open the box from [Harvard], it had to be placed on his desk without opening.'' (*Id.*) Respondent maintained the drugs in his office in a locked drawer and maintained possession of the key as well as the key to his office. (Tr. 60.)

Ms. Muratalla further testified about a series of drug orders placed between October 2007 and March 2009. (Tr. 59; *see* Gov't Ex. 5 at 2.) Ms. Muratalla indicated that the October 2, 2007 and February 5, 2008 orders for hydrocodone and acetaminophen were common orders that she placed for the office, but would not have placed the remaining four orders.[17] (Tr. 59.) Ms. Muratalla explained that she did not place the July 30, 2008 order for oxycodone and never recalled the office previously ordering or dispensing oxycodone. (Tr. 61.) Ms. Muratalla next testified to ordering controlled substances at the request of Respondent that she knew were used within and outside Respondent's dental practice, to include phentermine, Valium and Ambien, as well as ''over-the-counter drugs.'' (Tr. 63–64.) With regard to diet pills, Ms. Muratalla is positive she did not order any after July 2008 but did make diet pill orders before that at the written direction of Respondent, stating that none were for her use. (Tr. 64.) Ms. Muratalla testified that she had suspicions as to who was using the diet pills but had ''never seen anyone take those pills.'' (Tr. 65.)

On cross- and redirect examination, Ms. Muratalla testified that prior to 2007 when the dental practice was very busy approximately 4500 hydrocodone pills could reasonably have been distributed to patients, who were given ten to twenty pills at a time. (Tr. 76.) After 2007, Ms. Muratalla testified that that level of distribution was not possible because ''there was absolutely no patients coming through the doors.'' (Tr. 75–76.) Ms. Muratalla testified that she was familiar with a person named Jennifer Savarese, a dental distributor who visited Respondent's office, but she never reviewed a Harvard drug catalogue with Ms. Savarese regarding diet pills and never handed diet pills to Ms. Savarese. (Tr. 77–78; 81–82.) Ms. Muratalla further testified that her relationship with Ms. Savarese was strictly professional, and she did not socialize with Ms. Savarese or consider her a friend. (Tr. 80.)

In addition to the foregoing, the Government also introduced a document entitled: ''In the Matter of the Accusation Against'' [Respondent], brought on behalf of the Dental Board of California, and dated January 31, 2011.[18] (Gov't Ex. 10 at 1, 14.) The Accusation includes various allegations against Respondent to include, among others, unprofessional conduct by: prescribing controlled substances after voluntary surrender of privileges, citing California Health and Safety Code 11155; procuring a prescription for controlled substances by misrepresentation, concealment of material fact and making a false statement, citing California Health and Safety Code 11173; obtaining, possessing or administering to oneself cocaine between May and October 2008, and marijuana between March and April 2010, citing California Health and Safety Code 11054 and 11055; and using alcohol in a dangerous manner in or about January 8, 2010, citing California Business and Professions Code 1681(b).

III. Respondent's Evidence

Respondent did not testify and presented only one witness, Jennifer Yuen (*née* Savarese) (Ms. Savarese),[19] a dental products representative. Ms. Savarese testified in substance that she worked as a dental products representative and was professionally introduced to Respondent through a mutual acquaintance. Initially, Ms. Savarese had only a business relationship with Respondent and Ms. Muratalla but over time became friends, describing her relationship with Respondent as ''my dentist and friend.'' (Tr. 90.) Ms. Savarese described Ms. Muratalla as ''a very good friend of mine'' to include going out to lunch with Ms. Savarese and attending her wedding. (*Id.*)

With regard to the issue of diet pills, Ms. Savarese recalled going through a catalogue with Ms. Muratalla to order diet pills, and testified that ''she said she would order them through her rep for me.'' (*Id.*) When the pills came back to the office ''Maria gave them to me [and] I gave her cash.'' (Tr. 91.) Ms. Savarese specifically recalled that the only brand of diet pills ordered were phentermine, recalling placing two separate orders prior to 2007. (Tr. 94; 99–100.) She believed the total quantity ordered in 2006 and 2007 was at most 600 dosage units based on two separate orders of 300. (Tr. 101.) Ms. Savarese also admitted that at the time she placed the order for phentermine she did not ''think that it was illegal'' but now realizes that it was illegal. (Tr. 105.)

Respondent's evidence also included a May 11, 2000 Certificate of Recognition for high achievement in the Undergraduate Curriculum in Dental Care for Persons with Disabilities, a daily schedule calendar covering the period October 2007 to March 2009 and contact information for a probation office in Utah.[20] (Resp't Exs. 2–4.)

I find the testimony of Ms. Savarese fully credible. Her testimony was internally consistent, and the witness was able to recall factual events with a reasonable level of certainty. There is no documentary evidence of record that contradicts the testimony of Ms. Savarese, nor was there any evidence to suggest that she had a bias or other personal interest in the outcome of the case. Ms. Savarese's past relationship to Respondent was both professional and social, but no evidence was offered to suggest that the witness's relationship with Respondent or Ms. Muratalla would influence her testimony. Ms. Savarese's demeanor was serious and forthright throughout her testimony. The credibility of Ms. Savarese's testimony was further enhanced by her statement against interest, admitting that at the time she placed the order for phentermine she did not ''think that it was illegal'' but now realizes that it was illegal. (Tr. 105.)

I find the testimony of Ms. Muratalla only partially credible. I do not find credible Ms. Muratalla's testimony that she never reviewed a Harvard drug

[17] July 30, 2008 (oxycodone); October 16, 2008 (hydrocodone and acetaminophen); November 19, 2008 (hydrocodone); and March 27, 2009 (hydrocodone and acetaminophen). (Gov't Ex. 5 at 2.)

[18] When the document was tendered, DI Windsor testified in response to a question of when it is dated: ''This one. August 2nd, 2000 (sic), is when they got the complaint, and it expires on March 6th, 2011.'' (Tr. 188.) A review of the document reflects at paragraph two that the August 2, 2000 date refers to the issue date for Respondent's dental license with an expiration date of March 6, 2011, unless renewed. (Gov't Ex. 10 at 1.) The document is dated January 31, 2011. (*Id.* at 14.)

[19] The witness testified that she married in June 2008, but previously went by the last name Savarese. For purposes of this Recommended Decision, the witness will be referred to as Ms. Savarese.

[20] Respondent stated that he had prior employment as a probation officer with the State of Utah from 1992 to 1996. (Tr. 205.) Respondent also stated that the calendar was offered to show how many patients he had seen over a seventeen month period and ''the work that I did, that [patients] would require pain medication, and to where the 4500 pills would have went to, over 17 months.'' (Tr. 210.)

catalogue with Ms. Savarese regarding diet pills and never handed the pills to Ms. Muratalla. Nor do I find credible Ms. Muratalla's testimony that she did not socialize with Ms. Savarese. Evidence of Ms. Muratalla's past history with Respondent, including a severance of their professional and personal relationship in 2008, suggests the witness had a bias or interest in the outcome of the case. The witness's demeanor while testifying was fully consistent with that bias or interest, to include at various times nonresponsive answers or unsolicited comments adverse to Respondent.

The Parties' Contentions

I. The Government

The Government argues in its post-hearing brief that ''the ALJ and Deputy Administrator may consider the Dental Board's complaint as a recommendation * * * 'of the appropriate State licensing board.' '' [21] (Gov't Br. at 21.) The Government further argues in substance that Respondent issued a prescription for lorazepam without authorization using his surrendered DEA registration, failed to keep records such as invoices, dispensing logs and inventories related to his purchases of hydrocodone and oxycodone and failed to keep required records related to his purchases of controlled substance diet pills. (*Id.* 22–24.) The Government further argues that Respondent failed to report thefts of controlled substances on two occasions to DEA, as required by regulation. Finally, the Government argues that ''Respondent has not demonstrated to DEA that the problems that have been on-going in his practice since at least 2007 will not continue * * * [and] Respondent has forfeited his opportunity to show remorse.'' (*Id.* at 27.)

II. Respondent

Respondent argues in his post-hearing brief that the Government has not met its burden to identify who ordered the diet pills from Harvard, and further argues that the testimony of Ms. Muratalla should be given no weight. (Resp't Br. at 8–9.) Respondent maintains that the DEA made insufficient investigation regarding mistaken information contained within Government Exhibit 5, noting that this ''page could definitely have altered the whole scope of this investigation if proper investigation was done.'' (*Id.* at 3.)

[21] I have specifically declined to consider the California Dental Board complaint as a ''recommendation,'' because at most it contains accusations that are unresolved.

Respondent argues at various points that the Government has not met its burden of proof,[22] noting in part that Respondent has been an ''outstanding citizen who served the country as a probation officer * * * [and] was awarded an exclusive award from 'The Academy of Dentistry' for working with people with Disabilities when no one else would.'' (*Id.* at 9–10.) Respondent further argues that forms such as biennial inventories and invoice records were in the possession of Ms. Muratalla and the Government. (*Id.* at 6, 10.) Finally, Respondent argues in substance that due to reliance on hearsay and ''perjuries'' the Government has failed to establish by a preponderance of the evidence that Respondent's registration would be inconsistent with the public interest, and his application for registration should be granted. (*Id.* at 10.)

Discussion

I. The Applicable Statutory and Regulatory 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.[23] ''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner'' with a corresponding responsibility on the pharmacist who fills the prescription.[24] 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 his professional practice.[25] In addition, I conclude that the reference in 21 U.S.C. 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).[26]

A. The Public Interest Standard

The CSA, at 21 U.S.C. 824(a)(4), provides, insofar as pertinent to this proceeding, that the Deputy Administrator may revoke a COR if she finds that the registrant's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). 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 deemed appropriate, in determining whether a registration should be revoked or an application for registration denied. *See 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). Additionally, in an action to deny a registrant's COR application, the DEA has the burden of proving that the requirements for revocation are satisfied.[27] The burden of proof shifts to the respondent once the Government has made its prima facie case.[28]

B. Other Factors

In addition to the public interest factors discussed above, 21 U.S.C. 824(a) provides four other factors that

[22] Respondent appears to assert that the applicable standard of proof is the ''beyond a reasonable doubt'' standard. (*See, e.g.,* Resp't Br. at 4.) Contrary to Respondent's argument, however, the applicable standard of proof in this administrative proceeding is ''preponderance of the evidence.'' *Arthur Sklar, R.Ph., d/b/a King Pharmacy,* 54 FR. 34,623, 34,627 (DEA 1989). ''A sanction may not be imposed* * *except on consideration of the whole record* * *and supported by and in accordance with the reliable, probative, and substantial evidence.'' *See* 5 U.S.C. 556(d). Respondent appears to acknowledge as much, arguing that the ''issue before the court is whether the government has established by a *preponderance of the evidence* that Respondent's continued registration would be inconsistent with the public interest.'' (Resp't Br. at 8 (emphasis supplied).)

[23] 21 U.S.C. 822(a)(2); 21 U.S.C. 802(10).

[24] 21 CFR 1306.04(a).

[25] 21 U.S.C. 844(a).

[26] *See Kuen H. Chen, M.D.,* 58 FR. 65,401, 65,402 (DEA 1993).

[27] *See* 21 CFR 1301.44(e) (2010).

[28] *See Medicine Shoppe—Jonesborough,* 73 FR. 364, 380 (DEA 2008); *see also Thomas E. Johnston,* 45 FR. 72,311, 72,311 (DEA 1980).

the Deputy Administrator may consider in a proceeding to suspend or revoke a DEA COR.[29] 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.[30]

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).[31]

II. The Factors To Be Considered

Factors 1 and 3: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority and Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution or Dispensing of Controlled Substances

In this case, regarding Factor One, it is undisputed that Respondent currently holds a valid dental license in California, but Respondent's dental license is presently the subject of state disciplinary action pursuant to a pending state Accusation against Respondent, the results of which are unknown.[32] (Gov't Ex. 10.) While not dispositive, Respondent's possession of a valid unrestricted dental license in California does weigh in favor of a finding that Respondent's registration would not be inconsistent with the public interest. *See Robert A. Leslie, M.D.,* 68 FR. 15,227, 15,230 (DEA 2003) (state license is a necessary, but not a sufficient condition for registration, and therefore, this factor is not dispositive).

Regarding Factor Three, there is no evidence that Respondent has ever been convicted under any federal or state law relating to the manufacture, distribution or dispensing of controlled substances. I therefore find that this factor, although not dispositive, *see Leslie,* 68 FR. at 15,230, weighs against a finding that Respondent's registration would be inconsistent with the public interest.

Factors 2 and 4: Respondent's Experience in Handling Controlled Substances; and Compliance With Applicable State, Federal or Local Laws Relating to Controlled Substances

The Government alleges that Respondent failed to effectively monitor the receipt and distribution of controlled substances because Respondent did not maintain an effective recordkeeping system in accordance with 21 CFR 1304.03, 1304.04 and 1304.21, among others. The evidence and testimony in this case centered in significant part on Respondent's failure to properly handle controlled substances, as well as his failure to comply with applicable laws regarding mandatory record keeping. As an initial matter, this is not a case of a registrant failing to adhere to the finer points of record keeping. The undisputed evidence of record is that Respondent's record keeping was essentially non-existent.

Pursuant to 21 CFR 1304.03(b), 1304.21(a), 1304.22(a)(2)(iv), 1304.22(a)(2)(ix) and 1304.22(c), a registered individual practitioner is required to maintain records of controlled substances in Schedules II–V that are dispensed and received, including the number of dosage units, the date of receipt or disposal and the name, address and registration number of the distributor. It is unlawful to fail to make, keep or furnish required records.[33] DEA regulations require that ''each registered individual practitioner required to keep records'' shall maintain inventories and records of Schedule II controlled substances ''separately from all of the records of the registrant''; inventories and records of Schedule III–V controlled substances ''shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.'' [34]

One mandatory recordkeeping vehicle is DEA Form 222, the ''official triplicate order form[] used by physicians to order scheduled narcotics'' and other controlled substances.[35] A menu of federal regulations specifies procedures relating to DEA Form 222, such as obtaining, 21 CFR 1305.11, executing, 1305.12, filling, 1305.13, and endorsing DEA Form 222, 1305.14, among other procedures.[36] In addition, 21 CFR 1305.03 requires that a DEA Form 222 be used for each distribution of a controlled substance listed in Schedule I or II, and Section 1305.17 provides that these order forms must be maintained separately from all other records and that they ''are required to be kept available for inspection for a period of 2 years.''

Failing to comply with recordkeeping laws and regulations relating to controlled substances can justify adverse action against a registrant's COR. ''[A] blatant disregard for statutory provisions implemented to maintain a record of the flow of controlled substances and to prevent the diversion of controlled substances to unauthorized individuals, would justify revocation'' of a certificate of registration.[37]

DEA regulations state that a registered individual practitioner is required to keep records of controlled substances in Schedules II, III, IV and V which are dispensed.[38] As a general matter, records are required to be kept by the registrant and must be available for at least two years.[39]

The undisputed evidence of record reflects that Respondent consented to an inspection of his registered location on December 2, 2009, by two DEA diversion investigators. The evidence also reflects that between October 2007 and March 2009, Respondent had received in six separate shipments from his supplier, Harvard Drug Group, several thousand tablets of hydrocodone, and in July 2008, a significant quantity of oxycodone. (Gov't Ex. 5 at 2–5.) Additionally, the evidence reflects Respondent's order and receipt in or before June 2009 of significant quantities of the Schedule IV controlled substances Adipex, Fastin,

[29] 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 a program pursuant to 42 U.S.C. 1320a–7(a). It should also be noted that 824(a) contains a reciprocal reference incorporating the public interest factors from 823(f). *See* 21 U.S.C. 824(a)(4).

[30] *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)); *see also Scott J. Loman, D.D.S.,* 50 FR. 18,941 (DEA 1985); *Roger Lee Palmer, D.M.D.,* 49 FR. 950 (DEA 1984).

[31] *See Chen,* 58 FR. at 65,402.

[32] No further evidence or testimony was offered with regard to the status or outcome of the state review, and I give the allegations contained within the Dental Board Accusation no evidentiary weight for purposes of this Recommended Decision.

[33] 21 U.S.C. 842(a)(5).

[34] 21 CFR 1304.04(g) & (f)(2).

[35] *Robert L. Dougherty, Jr., M.D.,* 60 FR. 55,047, 55,048 (DEA 1995).

[36] *See, e.g.*, 21 CFR 1305.15- .19.

[37] *Robert L. Dougherty, Jr., M.D.,* 60 FR. 55,047, 55,050 (DEA 1995) (citing *George D. Osafo, M.D.,* 58 FR 37,508, 37,509 (1993) (revoking practitioner's registration where ''[r]espondent failed to comply with numerous recordkeeping requirements[, explaining that] * * * it is a registrant's responsibility to be familiar with the Federal regulations applicable to controlled substances'')); *see also Hugh I. Schade, M.D.,* 60 FR. 56,354, 56,356 (DEA 1995) (noting the inventory procedures required by Sections 1304.11 to 1304.13, and 1305.06).

[38] 21 CFR 1304.03(b) (2010).

[39] 21 CFR 1304.04.

phentermine, and Tenuate, referred to collectively as ''diet pills.'' As of December 2, 2009, Respondent had received thousands of tablets of controlled substances, requiring various levels of record keeping. The December 2, 2009 audit of Respondent's registered location, with Respondent present, resulted in the inventory and accounting of only 89.5 tablets of hydrocodone. (Gov't Ex. 8.) Moreover, no copies were found of required DEA Form 222, which should have documented each distribution of the Schedule II controlled substance oxycodone. Nor were any other required records found or produced by Respondent during the inspection, to include biennial inventories, dispensing logs and invoices for controlled substances. (Tr. 139–40.)

Respondent's statement during the December 2, 2009 audit that the dispensing records were located within his patient records was found to be inaccurate. Even if true, the patient records would not substitute for required copies of DEA Form 222 relating to the Schedule II controlled substance oxycodone, among other recordkeeping requirements. Respondent's attempt to produce relevant patient records during the audit to support his claim was also revealing. Respondent initially produced patient records that were outside the scope of the inspection period, and was redirected by the diversion investigators to produce relevant files. (Tr. 142.) Respondent then produced a ''printout of patient names.'' (Tr. 143.) At that point, the diversion investigators identified a random sample of patient files by name within the time frame of the audit, which upon production and review were found to contain no dispensing records. (*Id.*)

I find by a preponderance of the evidence that Respondent unlawfully failed to make, keep or furnish required records relating to his handling of controlled substances, in violation of 21 U.S.C. 842(a)(5) and 827(a) and applicable regulations.[40]

The Government also alleged and offered evidence of Respondent's failure to properly report the theft of controlled substances, in violation of 21 CFR 1301.76(b). During the December 2, 2009 audit, Respondent stated to diversion investigators that there were two separate occasions within the preceding two years in which Respondent believed that hydrocodone which had been placed on his desk had come up missing. (Tr. 148, 150.) Respondent was also certain that neither incident had been reported to DEA. (Tr. 149.) The applicable regulation unambiguously requires a registrant to notify the ''Field Division Office of [DEA] in writing, of the theft or significant loss of any controlled substances within one business day of discovery * * *.'' 21 CFR 1301.76(b). In this case, Respondent's violation was not a *de minimis* one, such as missing the one business day deadline or notifying the wrong office in writing. Rather, Respondent stated that on one occasion he recalls law enforcement was not notified at all, and the second he ''thought law enforcement had been contacted by one of his staff, but he wasn't certain of that.'' (Tr. 149.) Notably, Respondent's failure to maintain any required records precluded DI Windsor from determining the amount of the loss. (Tr. 152–53.)

I find by a preponderance of the evidence that Respondent failed to timely notify DEA of the theft or loss of controlled substances on two separate occasions between 2007 and 2009, in violation of 21 U.S.C. 1301.76(b).

The Government also offered evidence of Respondent's unlawful use of his surrendered DEA registration to issue a prescription for lorazepam in January 2010. This evidence centered on the testimony of patient [GS], along with the testimony of DI Windsor, as corroborated by a pharmacy copy of the filled prescription. The evidence at hearing clearly documented Respondent's voluntary surrender of his DEA registration on December 2, 2009.[41] (Gov't Ex. 2.) In relevant part, the surrender form states: ''I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substance activities whatever, until such time as I am again properly registered.'' (*Id.*)

In addition to the actual notice Respondent received as to his lack of authority to handle controlled substances on and after December 2, 2009, applicable law and regulations provide clear guidance. ''Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally * * * to * * * dispense[] a controlled substance.'' 21 U.S.C. 841(a). Moreover, ''[e]very person who dispenses * * * any controlled substance, shall obtain from the Attorney General a registration,''[42] 21 U.S.C. 822(a)(2), with the exception of ''[a]n agent or employee of any registered * * * dispenser of any controlled substance if such agent or employee is acting in the usual course of his business or employment,'' *id.* 822(c)(1). ''Every person who manufactures, distributes, dispenses, imports or exports any controlled substance or who proposes to [do so] * * * shall obtain a registration unless exempted by law or pursuant to 1301.22–1301.26.'' 21 CFR 1301.11(a) (2010). Although a person may apply for registration at any time, ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person.'' 21 CFR 1301.13(a) (2010).[43] Respondent did not submit an application for a new DEA registration until approximately January 27, 2010. (Gov't Ex. 1.)

The uncontroverted evidence of record reflects that notwithstanding his lack of DEA registration, Respondent unlawfully prescribed the Schedule IV controlled substance lorazepam to patient [GS] on January 16, 2010. Patient [GS] credibly testified to being treated by Respondent for an infected tooth beginning in December 2009 and further testified that in the latter part of January 2010, Respondent performed a root canal on [GS]. (Tr. 38.) [GS] specifically recalls Respondent prescribing lorazepam on a third office visit, recalling the time frame as the latter part of January or February 2010. (Tr. 39.) Corroborating [GS]'s testimony, the

[40] Respondent argues for the first time in his post-hearing brief that Ms. Muratalla and counsel for the Government had copies at the hearing of Respondent's biennial inventories and invoices for controlled substances. (Resp't Br. 6.) This unsworn assertion by Respondent is neither evidence nor is it supported by testimonial or documentary evidence of record. In fact, evidence of controlled substance shipments to Respondent that post-date Ms. Muratalla's access to the records plainly refutes the assertion. Moreover, Respondent had the opportunity to cross-examine Ms. Muratalla at hearing and declined to offer any evidence to support his claim. I therefore find that Respondent's argument, that required records did in fact exist, is without factual support.

[41] DI Windsor testified in relevant part that Respondent's surrender of his registration included an oral discussion between Respondent and investigators, as well as a written surrender form (DEA–104) that Respondent read and signed. (Tr. 154–59.) DI Windsor also testified in response to Respondent's question about his state of mind at the time of surrender, that he appeared ''overwhelmed'', but Respondent offered no testimony or documentary evidence to contradict the voluntariness of his surrender. I find by a preponderance of the evidence that Respondent's surrender of registration on December 2, 2009, was in fact voluntary.

[42] *See also* 21 CFR 1301.11 (2010).

[43] Applicable California law also prohibits the prescribing of controlled substances without ''current registration from the appropriate federal agency as provided by law. Cal. Health & Safety Code 11155. ''No person shall issue a prescription that is false or fictitious in any respect.'' *Id.* 11157.

evidence included a pharmacy copy of a phoned-in prescription for [GS] issued in Respondent's name dated January 16, 2010, using Respondent's surrendered DEA registration number, prescribing ''Amox'' and ''Lorazepam'', the latter being a Schedule IV controlled substance. (Gov't Ex. 6; Tr. 163.)

I find by a preponderance of the evidence that Respondent violated federal and state law by prescribing a Schedule IV controlled substance on January 16, 2010, knowing that he lacked a DEA registration and was prohibited from prescribing any controlled substance.[44]

Another issue in this case concerns Respondent's prescribing practices with regard to hydrocodone and phentermine, which the Government alleges were not prescribed pursuant to a legitimate medical purpose or within the usual course of professional practice, contrary to 21 CFR 1306.04(a) (2010). (Gov't PHS at 7.) Evaluation of Respondent's prescribing conduct in this case is governed by applicable federal and state law. The applicable standard under federal law is whether a prescription for a controlled substance 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). The standard of care refers to that generally recognized and accepted in the medical community rather than a standard unique to the practitioner. *Robert L. Dougherty, M.D.,* 76 FR. 16,823, 16,832 (DEA 2011) (citing *Brown* v. *Colm,* 11 Cal.3d 639, 642–43 (1974)). Although it is recognized that state law is a relevant factor in determining whether a practitioner is acting in the ''usual course of professional practice,'' it is also appropriate in the context of an inquiry under federal law to also consider ''generally recognized and accepted medical practices'' in the United States. *Bienvenido Tan, M.D.,* 76 FR. 17,673, 17,681 (DEA 2011).

The applicable standards under California law may be found in various provisions of the California Business and Professional Code as well as the California Health and Safety Code. Mirroring federal law in substantial part, California law provides that

> [a] prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

Cal. Health & Safety Code 11153(a).

Turning to the evidence of record, with regard to Respondent's prescribing practices for hydrocodone, no specific evidence was offered other than the evidence discussed above as to a complete lack of documentation. The evidence pertaining to Respondent's prescribing practices for phentermine and related diet pills included Respondent's admission on December 2, 2009, that ''he had ordered diet pills for his wife [Ms. Muratalla] and he had also said that she ordered them for herself.'' (Tr. 146.) The evidence with regard to the 2200 tablets of diet pills that formed the basis of the investigation of Respondent after Harvard's June 11, 2009 Suspicious Order Report was minimal, as DI Windsor testified that she did not recall specifically discussing with Respondent the diet pills Adipex, Fastin, phentermine or Tenuate, with reference to a specific time frame for the orders. (Tr. 146–47.) Ms. Muratalla testified that she ordered diet pills on Respondent's behalf prior to July 2008, but is certain she did not order any after that date. (Tr. 64.) Ms. Savarese testified that she ordered phentermine from Ms. Muratalla, recalling placing two separate orders prior to 2007. (Tr. 94; 99–100.)

Although the foregoing evidence is vague as to time frames and mixed as to who placed each order, there is no ambiguity in the evidence that Respondent ordered and dispensed the Schedule IV controlled substances phentermine, Adipex-P, Fastin and Tenuate in or before December 2009, without a legitimate medical purpose and not in the usual course of his professional practice. Respondent admitted on December 2, 2009, that he had ordered diet pills for his wife and knew that she had ordered them for herself. Ms. Savarese also credibly testified that she received two separate orders of phentermine from Ms. Muratalla in exchange for cash, without a prescription between 2006 and 2007. The evidence of record reflects a shipment of phentermine, Adipex, Fastin, and Tenuate to Respondent in June 2009, none of which was present or accounted for at Respondent's registered location in December 2009.

Accordingly, I find by a preponderance of the evidence that Respondent violated applicable federal and state law in ordering and prescribing Schedule IV controlled substances without a legitimate medical purpose and outside the usual course of professional practice at various times between 2006 and December 2, 2009. Additionally, Respondent's handling of these controlled substances failed to comply with any of the mandated record keeping requirements under the CSA, discussed above.[45]

Respondent elected not to testify in this case and the Government suggests summarily in its post-hearing brief that ''DEA may draw an adverse interest (sic) that Respondent presented no testimony on his own behalf.'' (Gov't Br. at 20; *see* Tr. 201–05.) Agency precedent permits but does not require the drawing of an adverse inference from a Respondent's silence in the face of accusation, ''since it is assumed in such circumstances [one] would be more likely than not to dispute an untrue accusation.'' *Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005) (citing *United States* v. *Hale,* 422 U.S. 171, 176 (1975)). Although Respondent's decision not to testify could arguably support an adverse inference in the face of accusation as to some allegations, I decline to do so on the facts of this case, other than in the context of Respondent's failure to accept responsibility for his misconduct.[46]

The evidence of Respondent's experience in dispensing controlled substances and compliance with applicable law and regulations weighs heavily in favor of a finding that Respondent's registration would be inconsistent with the public interest under Factors Two and Four.

Factor 5: Such Other Conduct Which May Threaten the Public Health and Safety

Under Factor Five, the Deputy Administrator is authorized to consider ''other conduct which may threaten the public health and safety.'' 5 U.S.C. 823(f)(5). The Agency has accordingly

[44] *See* 21 U.S.C. 841(a)(1); 21 CFR 1301.11(a); 1301.13(a); Cal. Health & Safety Code 11155 & 11157.

[45] *See* 21 U.S.C. 841(a)(1), 827(a) and (b); 21 CFR 1306.04(a); Cal. Health & Safety Code 11153(a).

[46] The Government's invitation to draw an adverse inference does not refer to any particular allegation, leaving open to question whether the request was intended to apply to all allegations noticed in the OSC and prehearing proceedings. For example, the Government alleged and proffered that ''Respondent had been hospitalized in August 2008 for alcohol and cocaine abuse.'' (Gov't Supp. Preh'g Statement (SPHS) at 4.) The proffered testimony at hearing by Ms. Muratalla directly contradicted that allegation and was consistent with Respondent's unsworn statements during the hearing that he was hospitalized due to an assault and related trauma. (*Compare* Tr. 67–68, *with* Tr. 74.) Respondent's testimonial silence as to that allegation does not seem to make the allegation any truer. I also note that the Government listed Respondent as a witness, but chose not to call him at hearing. (Gov't PHS at 3; Tr. 201.) In light of the foregoing, I find that drawing an adverse inference in this case is unwarranted, particularly given the lack of focus to the Government's request.

held that ''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,* 74 FR. 20,727, 20,734 (DEA 2009).[47] A respondent's acceptance of responsibility must be ''clear and manifest.'' *Mark De La Lama, P.A.,* 76 FR. 20,011, 20,020 n.19 (DEA 2011). A ''[r]espondent's lack of candor and inconsistent explanations'' may serve as a basis for denial of a registration. *John Stanford Noell, M.D.,* 59 FR. 47,359, 47,361 (DEA 1994). Additionally, ''[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).

The Government alleged ''other conduct'' relevant to Factor Five during the course of prehearing procedures in the form of a February 24, 2011 Motion to Include Dental Board of California Complaint. The proposed document is entitled: ''In the Matter of the Accusation Against'' [Respondent], brought on behalf of the Dental Board of California, and dated January 31, 2011. (Gov't Ex. 10.) The California Dental Board allegations relevant to Factor Five include obtaining, possessing or administering to oneself, cocaine between May and October 2008, and marijuana between March and April 2010, citing California Health and Safety Code 11054 and 11055; and using alcohol in a dangerous manner in or about January 8, 2010, citing California Business and Professions Code 1681(b). The Government's prehearing notice of evidence to support the above issues consisted of a supplemental prehearing statement dated January 21, 2011, stating in relevant part ''Ms. Murutalla (sic) will testify that she told the DEA that the Respondent had been hospitalized in August 2008 for alcohol and cocaine abuse.'' (Gov't SPHS at 4.)

At hearing, I excluded Ms. Muratalla's proposed testimony on the limited issue of alcohol and cocaine abuse based in part on lack of adequate notice, particularly given the brevity of the noticed testimony and variance from allegations of the California Dental Board. I did allow the Government to proffer in detail Ms. Muratalla's proposed testimony, which produced even greater variance from the alleged conduct.[48] Even if Ms. Muratalla's proposed testimony had been adequately noticed, her proffered testimony at hearing provided no substantive basis to support the allegations by the California Dental Board pertaining to cocaine, alcohol and marijuana. (*See* Tr. 73–74.) I do take note of Respondent's admission in a February 9, 2011 prehearing filing that he used marijuana one time ''during a dark day in April'' of 2010, while intoxicated, which he states he did while unemployed and not seeing patients.[49]

Agency precedent has ''long held that a practitioner's self-abuse of a controlled substance is a relevant consideration under factor five and has done so even when there is no evidence that the registrant abused his prescription writing authority.'' *Tony T. Bui, M.D.,* 75 FR. 49,979, 49,989 (DEA 2010). Respondent's admitted misuse of marijuana while intoxicated is a relevant consideration as to whether granting Respondent a DEA COR would be consistent with the public interest. *See David E. Trawick, D.D.S.,* 53 FR. 5326, 5326 (DEA 1988) (holding that ''offences or wrongful acts committed by a registrant outside of his professional practice, but which relate to controlled substances may constitute sufficient grounds'' for denying relief favorable to respondent, where respondent had history of alcohol and controlled substance abuse).

Although I have considered Respondent's prehearing admission of a single instance of marijuana use while intoxicated in April 2010, I give it little overall weight for purposes of this Recommended Decision, particularly given the absence of any other credible evidence of record to support allegations of other drug or alcohol abuse by Respondent at any other time.

Conclusion and Recommendation

I find by a preponderance of the evidence that the Government has met its burden to establish a prima facie case based on substantial evidence of record. After considering all of the relevant factors, the evidence is fully consistent with a denial of Respondent's application for a DEA COR as a practitioner, because Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4). Because the Government has made out a prima facie case against Respondent, a remaining issue in this case is whether Respondent has adequately accepted responsibility for his past misconduct such that his registration might nevertheless be consistent with the public interest. *See Patrick W. Stodola,* 74 FR. 20,727, 20,734 (DEA 2009).

Respondent has not sustained his burden in this regard. Respondent did not testify and did not accept responsibility for his past misconduct. Moreover, Respondent presented no credible evidence to demonstrate that he has learned from his past mistakes or to demonstrate that he would now handle controlled substances properly if granted a registration.

In light of the foregoing, Respondent's evidence as a whole fails to sustain his burden to accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct. I find that Factor Five strongly weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest.

Accordingly, I recommend denial of Respondent's application for a COR. I find the evidence as a whole demonstrates that Respondent has not accepted responsibility, and Respondent's registration would be inconsistent with the public interest.

Dated: May 19, 2011

Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2011–27985 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 5, 2011, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North

[47] *See also Hoxie* v. *DEA,* 419 F.3d 477, 484 (6th Cir. 2005) (decision to revoke registration ''consistent with the DEA's view of the importance of physician candor and cooperation.'')

[48] *See* Gov't SPHS at 4. At hearing and consistent with Respondent's prehearing objection to the issue, Respondent timely objected to the testimony related to his hospitalization. (Tr. 65.) I requested the Government to proffer the proposed testimony of Ms. Muratalla given the very limited disclosure of proposed testimony contained in the Government's SPHS. The proffer was similarly brief in content and varied somewhat from the SPHS insofar as the proffer lacked a reference to alcohol. (Tr. 69.) Following argument, I excluded the testimony based on notice and relevance issues. (Tr. 71.) At the Government's request, I did allow the Government to question Ms. Muratalla by way of proffer regarding the alleged August 2008 hospitalization. Notably, Ms. Muratalla's proposed testimony made no reference to cocaine, alcohol or any other substance abuse, nor was any other testimonial evidence on the topic offered by the Government at hearing. (Tr. 73–74.)

[49] Respondent's Reply Regarding Government Request for Motion dated February 9, 2011.

Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture marihuana, and cocaine derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 27, 2011.

Dated: October 20, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–28013 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David T. Koon, M.D.; Revocation of Registration

On July 24, 2009, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to David T. Koon (hereinafter, Registrant), of Summerton, South Carolina. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BK4092350, as a practitioner, and the denial of any applications to renew or modify the registration, on the ground that he does not ''have authority to practice medicine or handle controlled substance in the [S]tate of South Carolina, the [S]tate in which [he is] registered with DEA'' because ''of actions by the South Carolina Board of Medical Examiners and the South Carolina Bureau of Drug Control.'' *Id.* at 1 (citing 21 U.S.C. 824(a)(3)).

On August 1, 2009, the Show Cause Order, which also advised Registrant of his right to request a hearing on the allegations or to file a written statement in lieu of a hearing, the procedures for doing either, and the consequence for failing to do so, was served by certified mail sent to him at his home address as established by the signed return-receipt card. *Id.* at 2. Since that time, neither Respondent, nor anyone purporting to represent him, has requested a hearing or submitted a statement. Because more than thirty days have passed since service of the Show Cause Order, I conclude that Respondent has waived his right to either request a hearing or to submit a written statement. 21 CFR 1301.43. I therefore issue this Decision and Final Order without a hearing based on relevant material contained in the record submitted by the Government and make the following findings.

Findings

Respondent is the holder of DEA Certificate of Registration, BK4092350. Respondent's registration was last renewed on January 2, 2009, and does not expire until December 31, 2011.

On March 31, 2009, the South Carolina Board of Medical Examiners ordered that Respondent's medical license be ''temporarily suspended, effective immediately, until further Order of the Board.'' Order of Temporary Suspension, *In re David Thomas Koon,* OIE# 2009–46, 2008–217 (S.C. Bd. Med. Exam'rs, Mar. 31, 2009). Moreover, according to the Board's Web site, Registrant's medical license expired on September 30, 2009; the Web site also indicates Registrant's ''Credential Status'' as ''Suspended.'' In addition, according to the South Carolina Department of Health and Environmental Control, Bureau of Drug Control, Registrant's South Carolina Controlled Substances Registration expired on May 12, 2009.

Discussion

DEA does not have statutory authority to grant or maintain a DEA registration if the applicant or registrant lacks authority to handle controlled substances under the laws of the State in which he is engaged in professional practice. *See* 21 U.S.C. 802(21) (defining the term ''practitioner'' as a person ''licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, dispense * * * [or] administer * * * a controlled substance''); *id.* § 823(f) (''The Attorney General shall register practitioners * * * to dispense * * * controlled substances * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). As these provisions make plain, possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration.

Accordingly, DEA has held repeatedly that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). *See also* 21 U.S.C. 824(a)(3) (authorizing the revocation of a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances'').

Moreover, the Agency has interpreted the CSA to require the revocation of a registration upon a practitioner's loss of state authority ''not only where a registrant's authority has been suspended or revoked, but also where a practitioner * * * has lost his state authority for reasons other than through formal disciplinary action of a State board.'' *John B. Freitas,* 74 FR 17524, 17525 (2009). Thus, even when a registrant ceases to possess authority to handle controlled substance in the State in which he practices through the expiration of a medical license or separate state controlled substances registration (when required), the Agency has revoked the practitioner's registration. *James Stephen Ferguson,* 75 FR 49994, 49995 (2010); *Mark L. Beck,* 64 FR 40899, 40900 (1999); *Charles H. Ryan,* 58 FR 14430 (1993).

Because Registrant is no longer licensed to practice medicine and to dispense controlled substances in South Carolina, the State in which he is registered with DEA, under the CSA, he is no longer entitled to hold his registration. Accordingly, his registration will be revoked and any pending applications will be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration, BK4092350, issued to David T. Koon, M.D., be, and it hereby is, revoked. I further order that any pending application of David T. Koon, M.D., to renew or modify his registration, be, and it hereby is, denied.

This Order is effective November 28, 2011.

Dated: October 17, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–28010 Filed 10–27–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Forging Machines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Forging Machines,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before November 28, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under regulations 29 CFR 1910.218, it is mandatory for covered employers to conduct and to document periodic inspections of forging machines, guards, and point-of-operation protection devices and to mark manually controlled valves and switches. These requirements reduce workers' risks of death or serious injury by ensuring that forging machines used by them are in safe operating condition and that the workers are able to identify manually operated valves and switches.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0228. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 24, 2011 (76 FR 30200).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0228. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title of Collection: Forging Machines.

OMB Control Number: 1218–0228.

Affected Public: Private Sector—businesses or other for-profits and not for profit institutions.

Total Estimated Number of Respondents: 27,700.

Total Estimated Number of Responses: 1,440,788.

Total Estimated Annual Burden Hours: 187,264.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 24, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–27904 Filed 10–27–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Development of the U.S. Department of Labor, Employment and Training Administration's Five-Year Research and Evaluation Strategic Plan for 2010–2015; Request for Public Comment

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Notice is hereby given on the development of the U.S. Department of Labor (Department), Employment and Training Administration's (ETA) Five-Year Research and Evaluation Strategic Plan for 2010–2015, hereafter referred to as the ''Research Plan.'' The Research Plan is required under the Workforce Investment Act (WIA) of 1998 (29 U.S.C. 2916(a)). The Research Plan sets a research agenda by identifying high priority topics for potential pilot, demonstration, multiservice, multistate, research, and evaluation efforts that should be examined over the next five years. The draft Research Plan was based on a consultation process of internal and external stakeholders. This request for public comment is another opportunity for ETA to receive additional stakeholder feedback as part of its process in finalizing the Research Plan and transmitting it to Congress.

To download a copy of the full draft report as a PDF, visit the ETA Research Web site at *http://www.doleta.gov/reports/fiveyear_researchplan.cfm.*

DATES: Submit comments on or before November 14, 2011.

ADDRESSES: You may submit comments and/or suggestions by any one of the following methods:

- Regulations.gov Federal Portal *http://www.regulations.gov*, identified by Docket ID Number ETA–2011–0003. Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to DOL/ETA, Office of Policy Development and Research, Attn: ETA Research Plan, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210. Be advised that mail delivery in the Washington, DC area may be delayed due to security concerns. Hand-delivered comments will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the date specified above.
- *Facsimile:* Please fax comments to (202) 693–2766 attention to ''ETA Research Plan.''
- *Email:* Please send comments to *eta.research@dol.gov* with subject line ''ETA Research Plan.''

Please submit your comments by only one method. The Department will not review comments received by means other than those listed above or that are received after the comment period has closed. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is a Federal portal, and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments as such submitted information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site. For access to the docket to read background documents or comments received, go to the Regulations.gov Federal portal at *http://www.regulations.gov* and enter Docket ID: ETA–2011–0003 in the search field. The Department will also make all the comments it receives available for public inspection during normal business hours at the ETA Office of Policy Development and Research at the above address.

If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the notice available, upon request, in large print and as an electronic file on computer disk. The Department will consider providing the notice in other formats upon request. To schedule an appointment to review the comments and/or obtain the draft research plan in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: Janet Javar, Employment and Training Administration, Office of Policy Development and Research, Room N–5641, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–3677 (this is not a toll-free number); fax: (202) 693–2766; email: *javar.janet@dol.gov.*

SUPPLEMENTARY INFORMATION: Under Section 171 of WIA, the Secretary of Labor is required to submit, every two years, a plan that describes priorities for pilot, demonstration, multiservice, multistate, and research projects. The Research Plan provides ETA with an extensive literature review of prior research, a summary of current research, and an identification of research topics related to workforce development programs and policies that should be taken into consideration over the next five years, from 2010–2015. In addition to ETA-funded studies, this Research Plan includes a number of studies and research efforts funded by other public and private organizations, such as state and local agencies, other Federal agencies, foundations and other non-profits, universities, and other stakeholders, to gain a better understanding of the gaps in employment and training research in order to identify high priority topics for research.

The Research Plan is composed of five chapters:

- Chapter I introduces the role of the plan in informing the decision-making process for carrying out research and evaluation.
- Chapter II identifies significant recently completed research and evaluation projects conducted in the years from 2005–2010.
- Chapter III identifies current and ongoing research and evaluation efforts.
- Chapter IV recommends five high priority topic areas for research.
- Chapter V summarizes the role of the plan.

In the development of the Research Plan, WIA calls for the consultation of interested parties to address national employment and training problems. With support from ETA, an extensive effort was made by the John J. Heldrich Center of Rutgers University to engage both internal and external stakeholders in the process of identifying research gaps and high priority topics for the public workforce system. The Heldrich Center produced a paper summarizing the findings from these efforts entitled *Identifying Gaps and Setting Priorities for Employment and Training Research.* This paper was a critical source for the Research Plan, and information from the paper was adopted as core parts of Chapters II, III, IV, and the appendices in the Research Plan. ETA is also accepting comments about the Research Plan in response to this notice. ETA will use this additional feedback to finalize the Research Plan before ultimately transmitting the plan to Congress.

Signed at Washington, DC, this 17th day of October, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–27905 Filed 10–27–11; 8:45 am]

BILLING CODE 4510–FM–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–106)]

NASA Advisory Council; Technology and Innovation Committee; Meeting

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council (NAC). The meeting will be held for the purpose of reviewing the status of the Space Technology programs; the status of activities within the Office of the Chief Technologist; and the status of the Draft NASA Space Technology Roadmaps being reviewed by National Research Council.

DATES: Friday, November 18, 2011, 8 a.m. to 3:15 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room MIC–6A (6H45), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update

—Space Technology programs/projects Updates

—Update on review of Draft NASA Space Technology Roadmaps by National Research Council

—Discussions on possible recommendations concerning commercialization, technology transfer and licensing activities within NASA

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Mr. Mike Green via email at *g.m.green@nasa.gov* or by telephone at (202) 358–4710.

Dated: October 24, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–28005 Filed 10–27–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (11–107)]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, November 21, 2011, 3 p.m. to 4:30 p.m., Local Time.

ADDRESSES: This meeting will take place telephonically and by WebEx. Any interested person may call the USA toll free conference call number (800) 857–9696, pass code APS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com,* meeting number 999 042 608, and password APS@Nov212011.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. The agenda for the meeting includes the following topic:

—Astrophysics Division Update

—Results from Acting Astrophysics Division Director discussions with the European Space Agency on Euclid

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: October 25, 2011.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2011–28009 Filed 10–27–11; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; 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: LIGO Annual Review Site Visit at Hanford Observatory for Physics (1208).

Date and Time:

Wednesday, November 16, 2011; 8 a.m.–6:30 p.m.

Thursday, November 17, 2011; 8 a.m.–5:30 p.m.

Friday, November 18, 2011; 8 a.m.–11 a.m.

Place: LIGO site at Hanford, WA.

Type of Meeting: Partially Closed.

Contact Person: Thomas Carruthers, Program Director, Division of Physics, National Science Foundation, (703) 292–7373.

Purpose of Meeting: To provide an evaluation of the project construction for implementation of the AdvLIGO project to the National Science Foundation.

Agenda:

Wednesday, November 16, 2011

8 a.m.–8:15 a.m. Open—Sign In
8:45 a.m.–9:15 a.m. Closed—Executive Session
9:15 a.m.–11:45 a.m. Open—Welcome, LIGO status, Reporting Metrices
11:45 Lunch
12:45 p.m.–2:45 p.m. Open—S6 Science run, performance, risk reduction
3:15 p.m.–4:30 p.m. Data Management, LIGO Australia, LSC status
5 p.m. Closed—Executive Session

Thursday, November 17, 2011

8 a.m.–8:15 a.m. Open—Sign in
9 a.m.–10 a.m. Closed—Executive Session
10:15 a.m.–11:45 Open –Review of AdvLIGO MREFC, EPO, diversity
11:45 a.m. Lunch
12:45 p.m.–4:15 p.m. Open—Project discussions, tour
5 p.m. Closed—Executive Session

Friday, November 18, 2011

8 a.m.–10:30 a.m. Closed—Executive Session report writing
10:30 a.m.–11 a.m. Closed—Executive Session—closing address

Reason For Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: October 25, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–27902 Filed 10–27–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–033; NRC–2008–0566]

Detroit Edison Company; Notice of Availability of Draft Environmental Impact Statement for a Combined License for Unit 3 at the Enrico Fermi Atomic Power Plant Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC)

and the U.S. Army Corps of Engineers, Detroit District, have published NUREG–2105, ''Draft Environmental Impact Statement for the Combined License (COL) for Enrico Fermi Unit 3.'' The site is located in Monroe County, Michigan. The application for the COL was submitted by letter dated September 18, 2008, pursuant to Title 10 of the *Code of Federal Regulations,* part 52. A notice of receipt and availability of the application, which included the environmental report, was published in the **Federal Register** on October 10, 2008. A notice of acceptance for docketing of the COL application was published in the **Federal Register** on November 25, 2008. A notice of intent to prepare a draft environmental impact statement (EIS) and to conduct the scoping process was published in the **Federal Register** on December 10, 2008 (73 FR 75142).

Any interested party may submit comments on the draft EIS for consideration by the NRC staff. To be considered, comments on the draft EIS must be received by January 11, 2012. The NRC Staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2008–0566 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–2008–0566. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *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 email to *pdr.resource@nrc.gov.* The accession numbers for the draft EIS are available electronically under ADAMS Accession Numbers ML11287A108 and ML11287A109.

• *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–2008–0566.

In addition, the draft EIS can be accessed online at the NRC's Fermi Unit 3 specific Web page at *http://www.nrc.gov/reactors/new-reactors/col/fermi.html.* The Ellis Reference & Information Center, Monroe County Libraries, located at 3700 South Custer Road, Monroe, Michigan 48161–9716, has also agreed to make the draft EIS available to the public.

The NRC staff will hold two public meetings to present an overview of the draft EIS and to accept public comments on the document on Thursday, December 15, 2011, at the Monroe County Community College, La-Z-Boy Center Meyer Theater, 1555 South Raisinville Road, Monroe, Michigan 48161. The first meeting will convene at 1 p.m. and will continue until 4 p.m., as necessary. The second meeting will convene at 7 p.m., with a repeat of the overview portions of the first meeting, and will continue until 10 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft EIS; and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. To be considered, comments must be provided during the transcribed public meeting either orally or in writing. Additionally, the NRC and Corps staff will host informal discussions one hour before the start of each meeting during which members of the public may meet and talk with staff members on an informal basis. No formal comments on the draft EIS will be accepted during the informal discussions.

In the event that the La-Z-Boy Center Meyer Theater is closed due to weather conditions on December 15, 2011, the open houses and public meetings would be held on Monday, December 19, 2011, during the same hours as listed above.

Persons may pre-register to attend or present oral comments at the meetings by contacting Mr. Bruce Olson by telephone at 1-(800) 368–5642, extension 3731, or via email to *Fermi3.COLEIS@nrc.gov* no later than December 8, 2011. Members of the public may also register to speak at the meetings within 15 minutes of the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak if time permits. If special equipment or accommodations are needed to attend or present information at the public meetings, the need should be brought to Mr. Bruce Olson's attention no later than December 8, 2011, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Olson, Project Manager, Environmental Projects Branch 2, Division of Site and Environmental Reviews, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 415–1677; *email: Bruce.Olson@nrc.gov.*

Dated at Rockville, Maryland, this 20th day of October, 2011.

For the Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2011–27919 Filed 10–27–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting

DATE: Week of October 31, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of October 31, 2011

Tuesday, November 1, 2011

8:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Final Rule: U.S. Advanced Boiling-Water Reactor Aircraft Impact Design Certification Amendment (RIN 3150–AI84) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969, or send an email to *darlene.wright@nrc.gov.*

Dated: October 25, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–28063 Filed 10–26–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–15; Order No. 916]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Jenkinjones, West Virginia 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: November 1, 2011: *Administrative record due (from Postal Service);* November 14, 2011, 4:30 p.m., Eastern Time: *Deadline for notices to intervene. 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 October 17, 2011, the Commission received a petition for review of the Postal Service's determination to close the Jenkinjones post office in Jenkinjones, West Virginia. The petition for review was filed by Mrs. Thomas Vinyard, Jr. (Petitioner) and is postmarked October 6, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–15 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 November 21, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to provide substantial evidence in support of the determination. *See* 39 U.S.C. 404(d)(5)(c).

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 November 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 1, 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 November 14, 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 November 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 1, 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

October 17, 2011	Filing of Appeal.
November 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 1, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 21, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 12, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 27, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 3, 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).
February 3, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27903 Filed 10–27–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–14; Order No. 915]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Witter, Arkansas 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):* November 1, 2011; *deadline for notices to intervene:* November 14, 2011, 4:30 p.m., eastern time. *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 October 17, 2011, the Commission received a petition for review of the Postal Service's determination to close the Witter post office in Witter, Arkansas. The petition for review was filed by Joy Russell (Petitioner) and is postmarked October 6, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–14 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 November 21, 2011.

Issues apparently raised. Petitioner contends that: (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those 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 November 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 1, 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 November 14, 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 November 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 1, 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

October 17, 2011	Filing of Appeal.
November 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 1, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 21, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 12, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 27, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 3, 2012	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).
February 3, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27893 Filed 10–27–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–13; Order No. 914]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the New Hampton, Missouri 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):* November 1, 2011; *deadline for notices to intervene:* November 14, 2011, 4:30 p.m., eastern time. *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 October 17, 2011, the Commission received a petition for review of the Postal Service's determination to close the New Hampton post office in New Hampton, Missouri. The petition for review was filed by Darrol Lofgren (Petitioner) and is postmarked September 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–13 to consider Petitioner's appeal. If Petitioner would like to further explain his 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 November 21, 2011.

Issue 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 November 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by

the Postal Service to this notice is November 1, 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 November 14, 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 November 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 1, 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

October 17, 2011	Filing of Appeal.
November 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 1, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 21, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 12, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 27, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 3, 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 27, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27877 Filed 10–27–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–16; Order No. 917]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Adona, Arkansas 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: November 1, 2011: *Administrative record due (from Postal Service);* November 14, 2011, 4:30 p.m., Eastern Time: *Deadline for notices to intervene.*

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 October 17, 2011, the Commission received a petition for review of the Postal Service's determination to close the Adona post office in Adona, Arkansas. The petition for review was filed by Bill D. Greene, Mayor of the City of Adona (Petitioner) and is postmarked October 11, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–16 to consider Petitioner's appeal. If Petitioner would like to further explain his 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 November 21, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community. *See* 39 U.S.C. 404(d)(2)(A)(iii).

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 November 1, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this notice is November 1, 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 November 14, 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 November 1, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 1, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich 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

October 17, 2011	Filing of Appeal.
November 1, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 1, 2011	Deadline for the Postal Service to file any responsive pleading.
November 14, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 21, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 12, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 27, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 3, 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).
February 8, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27909 Filed 10–27–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–3305; File No. S7–42–11; October 24, 2011]

Order Approving Filing Fees for Exempt Reporting Advisers and Private Fund Advisers

Section 204(c) of the Investment Advisers Act of 1940 (''Advisers Act'') authorizes the Securities and Exchange Commission (''Commission'') to require investment advisers to file applications and other documents through an entity that the Commission designates and to pay the reasonable costs associated with such filings. The Commission recently adopted a new rule requiring exempt reporting advisers to file portions of Form ADV on a periodic basis.[1] As with

[1] ''Exempt reporting advisers'' are investment advisers relying on the exemption from registration under section 203(l) or 203(m) of the Advisers Act. The Commission adopted new rule 204–4 on June 22, 2011. *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. IA–3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) (''Implementing Adopting Release'').

registered advisers, exempt reporting advisers must file Form ADV through the Investment Adviser Registration Depository (''IARD''), which is operated by the Financial Industry Regulatory Authority (''FINRA'').

In addition, the Commission recently proposed a new rule that would require any adviser registered with the Commission and managing one or more private funds (a ''private fund adviser'') to file proposed Form PF on a periodic basis.[2] On September 30, 2011, the Commission issued notice of its determination that, if the Form PF proposal is adopted, FINRA will develop and maintain the filing system for Form PF as an extension of the existing IARD (the ''Notice'').[3]

Following discussions with Commission staff, FINRA recommended a schedule of filing fees for exempt reporting advisers and private fund advisers.[4] With respect to exempt reporting advisers, FINRA recommended a filing fee of $150 for each initial and annual report on Form ADV. With respect to private fund advisers, FINRA recommended filing fees of $150 for the proposed quarterly filings of Form PF and $150 for the proposed annual filings.[5] In the Notice, the Commission indicated its intent to approve filing fees for these filings consistent with these recommendations.

The Notice also explained that the fee for exempt reporting advisers filing Form ADV would apply starting with the date on which this order is published in the **Federal Register** and, if the Form PF proposal is adopted, the fees applicable to private fund advisers would apply starting with the effective date of rule 204(b)–1.

The Notice gave interested persons an opportunity to request a hearing and stated that an order approving these filing fees would be issued unless a hearing were ordered. No request for a hearing has been filed, and no hearing has been ordered.

It is therefore ordered, pursuant to Section 204(c) of the Advisers Act, that:

For initial reports and annual updating amendments on Form ADV filed on or after October 28, 2011, the filing fee due from exempt reporting advisers is $150.

For quarterly reports on Form PF filed on or after the effective date of rule 204(b)–1 under the Advisers Act, the filing fee due from private fund advisers is $150.

For annual reports on Form PF filed on or after the effective date of rule 204(b)–1 under the Advisers Act, the filing fee due from private fund advisers is $150.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–27935 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

[2] The Commission proposed new rule 204(b)–1 on January 26, 2011. *See* section II.C of *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Advisers Act Release No. 3145 (January 26, 2011), 76 FR 8068 (February 11, 2011) (''Form PF Proposing Release''). ''Private fund'' is defined in section 202(a)(29) of the Advisers Act.

[3] *See Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers,* Investment Advisers Act Release No. 3297 (Sept. 30, 2011), 76 FR 62100 (Oct. 6, 2011).

[4] FINRA letter dated September 28, 2011, available at *http://www.sec.gov/rules/other/2011/finraletter092811-pferafees.pdf.*

[5] Under the proposal, advisers managing $1 billion or more in hedge fund assets, combined liquidity fund and registered money market fund assets or private equity fund assets would file Form PF on a quarterly basis. All other private fund advisers would file on an annual basis. *See* sections II.B and II.C of the Form PF Proposing Release.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 3306; File No.: 801–35969]

Investment Advisers Act of 1940; In the Matter of Creative Investment Research, Inc., 1050 17th Street, NW., Suite 1000, Washington, DC 20036; Notice of Intention To Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

October 24, 2011

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Creative Investment Research, Inc., hereinafter referred to as the registrant.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is relying on rule 203A–2(b) to register with the Commission, which, at the time of the filing, provided an exemption from the prohibition on registration for a pension consultant if it provided investment advice to plans described in the rule that had an aggregate value of at least $50,000,000 in assets.[1] The Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, provide investment advice to plans that have a sufficient aggregate asset value under the rule, and that it is therefore prohibited from registering as an investment adviser under section 203A of the Act. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by November 18, 2011, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

At any time after November 18, 2011, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Jennifer Porter, Senior Counsel at (202) 551–6787 (Office of Investment Adviser Regulation).

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. Rule 203A–2 provides exemptions from the prohibition on Commission registration in section 203A of the Act. Effective September 19, 2011, rule 203A–2(b) was renumbered as rule 203A–2(a), and advisers relying on the rule to remain registered with the Commission are required to advise plans with an aggregate value of at least $200,000,000. *See Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011), *available at http://www.sec.gov/rules/final/2011/ia-3221.pdf.*

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27900 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65604; File No. SR–NASDAQ–2011–143]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to Amending the By-Laws of The NASDAQ OMX Group, Inc.

October 21, 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 October 11, 2011, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

NASDAQ is filing this proposed rule change with respect to an amendment to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed amendments will be implemented upon approval by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.[3] The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

NASDAQ expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including NASDAQ, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. (''NASD''). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, NASDAQ was formed as a subsidiary [sic] The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[5] in particular, in that the proposal enables NASDAQ to be so

[2] 17 CFR 200.30–5(e)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ IM–4605–3. [sic]

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(1), (5).

organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and NASDAQ rules, and is 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, 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.

NASDAQ believes that the proposed amendments are non-controversial. The proposal to modify the compositional requirements of the NASDAQ OMX Audit Committee and Nominating & Governance Committee will provide the NASDAQ OMX Board of Directors with greater flexibility to determine the appropriate size for these committees, while maintaining compliance with applicable listing standards. NASDAQ expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. The proposed changes also delete an obsolete provision from the by-laws and correct a typographical error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 shall: (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 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–NASDAQ–2011–143 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–NASDAQ–2011–143. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. 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 publicly available. All submissions should refer to File Number SR–NASDAQ–2011–143 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27895 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65613; File No. SR–BSECC–2011–003]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

October 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on October 11, 2011, Boston Stock Exchange Clearing Corporation (''BSECC'' or the ''Corporation'') 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 BSECC. 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

BSECC is filing this proposed rule change with respect to an amendment to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The text of the proposed rule change is available on the Corporation's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Corporation, and at the Commission's Public Reference Room. The proposed amendments will be implemented upon approval by the Commission.

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 Corporation included statements concerning the purpose of and basis for the proposed rule change. The text of

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

these statements may be examined at the places specified in Item IV below. The Corporation 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

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.[3] The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

BSECC expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including BSECC, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. (''NASD''). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, The NASDAQ Stock Market LLC (''NASDAQ'') was formed as a subsidiary of The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

BSECC believes that that the proposed rule change is consistent with provisions of Section 17A of the Act.[4] BSECC believes that the proposed amendments are non-controversial. The proposal to modify the compositional requirements of the NASDAQ OMX Audit Committee and Nominating & Governance Committee will provide the NASDAQ OMX Board of Directors with greater flexibility to determine the appropriate size for these committees, while maintaining compliance with applicable listing standards. BSECC expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. The proposed changes also delete an obsolete provision from the by-laws and correct a typographical error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 shall: (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 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

[3] NASDAQ IM–5605–3.

[4] 15 U.S.C. 78q–1.

• Send an email to rule-comments@sec.gov. Please include File Number SR–BSECC–2011–003 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–BSECC–2011–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Corporation. 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–BSECC–2011–003 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27898 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65614; File No. SR–SCCP–2011–03]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

October 24, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 11, 2011, Stock Clearing Corporation of Philadelphia (''SCCP'' or the ''Corporation'') 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 SCCP. 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

SCCP is filing this proposed rule change with respect to an amendment to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The text of the proposed rule change is available on the Corporation's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/sccp*, at the principal office of the Corporation, and at the Commission's Public Reference Room. The proposed rule change will be implemented upon approval by the Commission.

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 Corporation included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Corporation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.[3] The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

SCCP expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee

[3] NASDAQ IM–5605–3.

supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including SCCP, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. (''NASD''). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, The NASDAQ Stock Market LLC (''NASDAQ'') was formed as a subsidiary of The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

SCCP believes that that the proposed rule change is consistent with provisions of Section 17A of the Act.[4] SCCP believes that the proposed amendments are non-controversial. The proposal to modify the compositional requirements of the NASDAQ OMX Audit Committee and Nominating & Governance Committee will provide the NASDAQ OMX Board of Directors with greater flexibility to determine the appropriate size for these committees, while maintaining compliance with applicable listing standards. SCCP expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. The proposed changes also delete an obsolete provision from the by-laws and correct a typographical error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation 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 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 shall: (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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–SCCP–2011–03 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–SCCP–2011–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Corporation. 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–SCCP–2011–03 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27899 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65612; File No. SR–CME–2011–13]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules To Reflect the Change in Regulatory Status of Eris Exchange, LLC From an EBOT to a DCM

October 24, 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 October 18, 2011, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to adopt revisions to certain CME rules in connection with its clearing of contracts listed by the Eris Exchange, LLC (''Eris'') to reflect the pending change in regulatory status of Eris from an ''EBOT'' to a designated contract market. CME is also at the same time amending its Manual of Operations to reflect the proposed rule changes related to Eris. The text of the proposed rule change in the CME rulebook is available at the CME's Web site at *http://www.cmegroup.com,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to adopt revisions to CME Rules 8F001 (Scope of Chapter) and 8F004 (OTC Clearing Member Obligations and Qualifications) and to the CME Clearing House Manual of Operations in connection with its clearing of contracts listed by Eris Exchange, LLC (''Eris''). CME began acting as the clearing house for Eris in 2010, at which time Eris became an exempt board of trade (''EBOT''). Initially, with respect to customer positions, Eris contracts were cleared in the Regulation 30.7/secured origin, and since October 2010, they have been cleared in the Cleared OTC Derivatives Account Class/sequestered origin. Because of its status as an EBOT, Eris has been referenced in Chapter 8–F (Over-the-Counter Derivative Clearing) of CME's rule book.

After passage of the Dodd-Frank Act, Eris applied for registration with the Commodity Futures Trading Commission as a designated contract market (''DCM''). CME understands that Eris expects to begin operating as a DCM in or around mid October, 2011. To reflect Eris's change in regulatory status from an EBOT to a DCM, and the related requirement that customer positions and collateral be maintained in the futures account class/segregated origin, CME proposes to remove references to Eris from Chapter 8–F of CME's rule book. CME also proposes to make related revisions to the section on Eris in CME's Clearing House Manual of Operations.

All proposed revisions will become effective immediately but will not become operational earlier than the date on which the Commodity Futures Trading Commission grants Eris's DCM application. CME notes that it has also certified the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC'').

The proposed CME rule amendments are intended to facilitate CME's activities as a derivatives clearing organization clearing the futures transactions of a DCM. As such, the proposed CME rule amendments do not significantly affect the security-based swap clearing operations of CME or any related rights or obligations of CME security-based swap clearing participants. The proposed rule change is therefore properly filed under Section 19(b)(3)(A) and Rule 19b–4(f)(4)(ii) thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(2) of Rule 19b–4 and became effective on filing. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2011–13 on the subject line.
- Paper comments should be sent 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–CME–2011–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

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 principal office of CME. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CME–2011–13 and should be submitted on or before November 18, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27897 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65610; File No. SR–Phlx–2011–141]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Introduce the Minimum Life Order as a New Order Type

October 24, 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 October 12, 2011, NASDAQ OMX PHLX LLC (''PHLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by PHLX. 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

PHLX is filing this proposed rule change to introduce a new order type—the Minimum Life Order—for use in the NASDAQ OMX PSX (''PSX'') system. PHLX proposes to implement the rule change as soon as practicable following Commission approval. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/phlx*, at PHLX'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PHLX proposes to introduce a new order type—the Minimum Life Order—for use on PSX. Today's cash equities markets are characterized by high levels of automation and speed, both in the systems employed by exchanges and by their market participants. In such an environment, the degree to which displayed orders reflect committed trading sentiment has become less predictable, because many entered orders are rapidly cancelled. Market participants that seek to interact with orders that are cancelled before they can execute may ultimately achieve less favorable executions than would have been the case if the order had not cancelled or if they had directed their own order elsewhere. The more often a market participant pursues displayed liquidity at a particular venue that is no longer available by the time its order arrives, the more likely it is that the market participant will pursue liquidity at another venue. Conversely, if an exchange's fill rates are good, market participants will direct liquidity-seeking orders to it with greater confidence.

PSX was developed to provide an alternative to traditional price-time markets that reward market participants whose systems are quickest to post at a given price. Through its unique price-size-pro rata algorithm, PSX instead allocates execution opportunities based on the size of posted orders. The Exchange has devised the Minimum Life Order as a further enhancement to this market model, designed to provide market participants with a means to signal that their order will not be cancelled within a given time frame, and thereby encourage removers of liquidity to route orders to PSX in the expectation of receiving higher fill rates. The Exchange believes that the order type may also enhance price discovery by allowing a market participant to signal its commitment to trade at a particular price.

Once entered, a Minimum Life Order may not be cancelled for a period of time established in advance by the Exchange. If a market participant entering a Minimum Life Order submits a cancel message with respect to a Minimum Life Order at the same time as the order, or at any point during the ''no cancel'' window, the cancel message will not be rejected, but will be effected only following the expiration of the window (assuming the order has not already been executed). Thus, a market participant that wished to use the order type but that was concerned about the potential for keeping its order on the book too long would have a readily available mechanism for cancelling the order at the end of the window. The initial ''no cancel'' window will be 100 milliseconds. The Exchange reserves the right to change the duration of the no cancel window by submitting a proposed rule change to do so. All Minimum Life Orders must be designated as Displayed Orders.

Through a separate filing, the Exchange will establish pricing for the order. Because the Exchange believes that the order type may enhance PSX's market quality through improved fill rates, the Exchange expects to propose to offer an enhanced liquidity provider rebate of $0.0026 per share executed for Minimum Life Orders that provide liquidity after posting to the book. This rebate is the same as the rebate offered with respect to displayed orders with an initial size of 2,000 shares or more, and compares favorably to the rates of $0.0024 per share executed for displayed orders with a smaller size and $0.0010 per share executed for non-displayed orders.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(5) of the Act,[4] in particular, in that the proposal is 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, 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. The Exchange believes that the order will enhance PSX's market quality by providing a means for market participants to signal commitment to trade at the stated price of the order for a defined period of time. The Exchange believes that the use of such orders will benefit other market participants by increasing the certainty of execution, and benefit the Exchange and all of its participants by attracting additional order flow and increasing order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Rather, the change will promote greater competition by enhancing the functionality offered by PSX. Use of the order type is entirely voluntary.

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.

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange stated that it will submit an amendment to the proposed rule change upon its approval by the Board of Directors of PHLX.[5] The Exchange consented to an extension of the period of time specified in Section 19(b)(2) of the Act[6] until forty-five days after the Exchange files an amendment to this filing reflecting approval of the provisions of the proposed rule change by the Board of Directors of PHLX.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–141 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–141. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–141 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27888 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] *See* Item 2 of the Form 19b–4 filed by the Exchange on October 12, 2011.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Item 6 of the Form 19b–4 filed by the Exchange on October 12, 2011.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65603; File No. SR–BX–2011–071]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change With Respect to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

October 21, 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 October 11, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

BX is filing this proposed rule change with respect to an amendment to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed amendments will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

be implemented upon approval by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.[3] The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

BX expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including BX, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. (''NASD''). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, The NASDAQ Stock Market LLC (''NASDAQ'') was formed as a subsidiary [sic] The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[5] in particular, in that the proposal enables BX to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and BX rules, and is 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, 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.

BX believes that the proposed amendments are non-controversial. The proposal to modify the compositional requirements of the NASDAQ OMX Audit Committee and Nominating & Governance Committee will provide the NASDAQ OMX Board of Directors with greater flexibility to determine the appropriate size for these committees, while maintaining compliance with applicable listing standards. BX expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. The proposed changes also delete an obsolete provision from the by-laws and correct a typographical error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 Act.

[3] NASDAQ IM–4605–3. [sic]

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(1), (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 shall: (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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–071 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–BX–2011–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of BX. 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 publicly available. All submissions should refer to File Number SR–BX–2011–071 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27887 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65605; File No. SR–PHLX–2011–140]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Amend the By-Laws of The NASDAQ OMX Group, Inc.

October 21, 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 October 11, 2011, NASDAQ OMX PHLX LLC (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

PHLX is filing this proposed rule change with respect to an amendment to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room. The proposed amendments will be implemented upon approval by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing amendments to provisions of its by-laws pertaining to the composition of committees of the NASDAQ OMX Board of Directors. First, NASDAQ OMX is amending the compositional requirements of its Audit Committee in Section 4.13(g) to provide that the committee shall include three or more directors. Currently, the provision provides that the Audit Committee shall be composed of either four or five directors. The change will provide the NASDAQ OMX Board of Directors, which has authority to establish the size of each committee of the Board of Directors, with flexibility to increase or decrease the size of the committee, as long as the committee includes at least three directors. The listing standards of the NASDAQ Stock Market, which apply to NASDAQ OMX as a listed company, require that NASDAQ OMX's Audit Committee must have at least three members.[3] The amendment would not change any of the other compositional requirements of the Audit Committee, including independence requirements.

Similarly, NASDAQ OMX is proposing to amend the compositional requirements of the Nominating & Governance Committee in Section 4.13(h) to replace a requirement that the committee comprise four or five members with a requirement to include two or more members, thereby creating flexibility to populate a larger or a

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ IM–4605–3. [sic]

smaller committee than is currently the case. NASDAQ Stock Market listing standards do not regulate the size of a listed company's nominating committee. The amendment would not change any of the other compositional requirements of the Nominating & Governance Committee, including independence requirements.

PHLX expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. It is likely that the authority would be used to reduce the size of these committees below their current levels only in the event of a reduction in the overall size of the NASDAQ OMX Board of Directors (which currently has 16 members). The Audit Committee supervises the audit function with respect to NASDAQ OMX and all of its subsidiaries, including PHLX, but the Nominating & Governance Committee does not perform a nominating function with respect to NASDAQ OMX's subsidiaries.

Third, NASDAQ OMX proposes to delete a paragraph of the by-laws (Section 4.13(k)) that pertains to the qualifications of committee members who are not directors. This provision was originally adopted by NASDAQ OMX's predecessor corporation, The Nasdaq Stock Market, Inc., when it was a subsidiary and facility of the National Association of Securities Dealers, Inc. (''NASD''). In that capacity, The Nasdaq Stock Market, Inc. appointed committees that included non-directors and that exercised authority provided for under NASD rules. For example, at that time, the Board of Directors of The Nasdaq Stock Market, Inc. appointed the Nasdaq Listing and Hearing Review Council, a committee composed of non-directors with authority to review listing decisions with respect to companies with securities listed on The Nasdaq Stock Market, which was then a facility of NASD.

In 2005, The NASDAQ Stock Market LLC (''NASDAQ'') was formed as a subsidiary [sic] The Nasdaq Stock Market, Inc., and in 2006, NASDAQ was registered as a national securities exchange. The Nasdaq Stock Market, Inc., which had already issued stock to the public, became a holding company, and in 2007, it ceased operating as a facility of NASD or NASDAQ. Subsequently, following the acquisition of OMX AB, The Nasdaq Stock Market, Inc. became NASDAQ OMX. As a public holding company, NASDAQ OMX no longer appoints committees that include non-directors. Accordingly, the provision with respect to the qualifications of non-directors is obsolete and may appropriately be deleted.

Finally, NASDAQ OMX is correcting a typographical error in the numbering of the provisions of Section 4.13(h) of the by-laws.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[5] in particular, in that the proposal enables PHLX to be so organized and to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and PHLX rules, and is 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, 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.

PHLX believes that the proposed amendments are non-controversial. The proposal to modify the compositional requirements of the NASDAQ OMX Audit Committee and Nominating & Governance Committee will provide the NASDAQ OMX Board of Directors with greater flexibility to determine the appropriate size for these committees, while maintaining compliance with applicable listing standards. PHLX expects that the NASDAQ OMX Board of Directors will, in the immediate future, use the modified authority to increase the size of the Nominating & Governance Committee to six directors, but will not modify the size of the Audit Committee at this time. The proposed changes also delete an obsolete provision from the by-laws and correct a typographical error.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 Act.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(1), (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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 shall: (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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PHLX–2011–140 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–PHLX–2011–140. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–PHLX–2011–140 and should be submitted on or before November 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–27936 Filed 10–27–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Praesidian Capital Opportunity Fund III, LP License No. 02/02–0647; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Praesidian Capital Opportunity Fund III, LP, 419 Park Avenue South, New York, NY 10016, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration Rules and Regulations (13 CFR 107.730). Praesidian Capital Opportunity Fund III, LP proposes to provide debt financing to JPB Marketing Enterprises, Inc. d/b/a DisplayWorks (''DW''). The financing is contemplated for recapitalization purposes following the consummation of an acquisition.

The financing is brought within the purview of § 107.730(a)(4) of the Regulations because Praesidian Capital Investors II, LP, Associate of Praesidian Capital Opportunity Fund III, LP, holds a debt investment and warrant position in DW, both of which will be extinguished as a result of the recapitalization. Therefore the transaction is considered as financing to discharge an obligation to an Associate, requiring prior written exemption from the Small Business Administration.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: October 19, 2011.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2011–27819 Filed 10–27–11; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 7667]

Culturally Significant Object Imported for Exhibition Determinations: ''La Surprise''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''La Surprise,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Frick Collection, New York, New York, from on or about October 31, 2011, until on or about October 31, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: October 25, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–27943 Filed 10–27–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice to Manufacturers of Airport Avian Radar Systems

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice to Manufacturers of Airport Avian Radar Systems.

SUMMARY: Projects funded under the Airport Improvement Program (AIP) must meet the requirements of 49 U.S.C. 50101, Buy American Preferences. The Federal Aviation Administration (FAA) is considering issuing waivers to foreign manufacturers of airport avian radar systems that meet the requirements of FAA Advisory Circular (AC) 150/5220–25, Airport Avian Radar Systems. This notice requests information from manufacturers of systems meeting the technical requirements to determine whether a waiver to the Buy American Preferences should be issued.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) manages a Federal grant program for airports called the Airport Improvement Program (AIP). AIP grant recipients must follow 49 U.S.C. 50101, Buy American Preferences.

Under 49 U.S.C. 50101(b)(3), the Secretary of Transportation may waive the Buy American Preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.

On November 23, 2010, FAA published Advisory Circular (AC) 150/5220–25, Airport Avian Radar Systems. The AC specified the technical requirements for avian radar systems at airports. The FAA is seeking to determine if there is a sufficient quantity of airport avian radar system manufacturers that are capable of meeting the AC requirements produced in the United States. If the FAA cannot find that there are USA manufacturers, it will issue a nationwide waiver to the

[6] 17 CFR 200.30–3(a)(12).

foreign manufacturers that it has identified as being capable of meeting the technical requirements.

The purpose of this notice is to request manufacturers, both domestic and foreign, to advise FAA of the system that they manufacture and whether it can meet the technical requirements. The detailed instructions for submitting the qualifications statement, including forms, may be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, Airport Avian Radar System Request for Qualifications.

After review, the FAA may issue a nationwide waiver to Buy American Preferences for the foreign manufacturers. This ''nationwide waiver'' allows the equipment to be used on airport projects without having to receive separate project waivers. Having a nationwide waiver allows projects to start quickly without have to wait for the Buy American analysis to be completed for every project, while still assuring the funds used for airport projects under the Act are being directed to U.S. manufacturers.

The items that have been granted a ''nationwide waiver'' can be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, Equipment Meeting Buy American Requirements.

Issued in Washington, DC, October 11, 2011.

Frank J. San Martin,

Manager, Airports Financial Assistance Division.

[FR Doc. 2011–26787 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice to Manufacturers of Airport In-Pavement Stationary Runway Weather Information Systems

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice to Manufacturers of In-Pavement Stationary Runway Weather Information Systems.

SUMMARY: Projects funded under the Airport Improvement Program (AIP) must meet the requirements of 49 U.S.C. 50101, Buy American Preferences. The Federal Aviation Administration (FAA) is considering issuing waivers to foreign manufacturers of Active or Passive In-Pavement Stationary Runway Weather Information Systems that meet the requirements of FAA Advisory Circular (AC) 150/5220–30, Airport Winter Safety and Operations. This notice requests information from manufacturers of systems meeting the technical requirements to determine whether a waiver to the Buy American Preferences should be issued.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy S. Williams, Airports Financial Assistance, APP 501, Room 619, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) manages a Federal grant program for airports called the Airport Improvement Program (AIP). AIP grant recipients must follow 49 U.S.C. 50101, Buy American Preferences.

Under 49 U.S.C. 50101(b)(3), the Secretary of Transportation may waive the Buy American Preference requirement if the goods are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.

The purpose of this notice is to request manufacturers of both passive and active in-pavement runway surface condition sensor systems, both domestic and foreign, to advise FAA of the system that they manufacture and whether it can meet the FAA Advisory Circular technical requirements. The detailed instructions for submitting the qualifications statement, including forms, may be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, In-Pavement Runway Surface Condition Sensor Systems Request For Qualifications.

The FAA wants to determine if there is sufficient quantity of domestic manufacturers capable of meeting the FAA technical requirements. If the FAA cannot find that there are USA manufacturers, it will issue a nationwide waiver to the foreign manufacturers identified as being capable of meeting the technical requirements.

Technical Requirements: FAA Advisory Circular (AC) 150/5220–30, Airport Winter Safety and Operations recommends that in-pavement runway sensor systems comply with the performance and installation requirements of SAE Aerospace Recommended Practice 5533, Stationary Runway Weather Information System (In-pavement). The SAE specification is available for purchase at *http://www.sae.org.* Because the recommendations in an Advisory Circular become mandatory for airports using AIP grant funds, an in-pavement runway surface condition sensor system project that includes any AIP grant funding must meet the requirements of SAE ARP5533.

After review, the FAA may issue a nationwide waiver to Buy American Preferences for foreign manufacturers or United States manufacturers that do not meet the Buy American Preference requirements. Waivers will not be issued for manufacturers that do not fully meet the technical requirements. This ''nationwide waiver'' allows equipment to be used on airport projects without having to receive separate project waivers. Having a nationwide waiver allows projects to start quickly without have to wait for the Buy American analysis to be completed for every project, while still assuring the funds used for airport projects under the Act are being directed to U.S. manufacturers.

Items that have been granted a ''nationwide waiver'' can be found on the FAA Web site at: *http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/* at the tab entitled, Equipment Meeting Buy American Requirements.

Issued in Washington, DC, October 11, 2011.

Frank J. San Martin,

Manager, Airports Financial Assistance Division.

[FR Doc. 2011–26791 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Public Teleconference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Teleconference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a teleconference of the Space Transportation Operations Working Group (STOWG) of the Commercial Space Transportation Advisory Committee (COMSTAC). The teleconference will take place on Thursday, November 17, 2011, starting at 11 a.m. Eastern Standard Time. Individuals who plan to participate should contact Susan Lender, DFO, (the Contact Person listed below) by phone or email for the teleconference call in

number. The proposed agenda for this teleconference is to follow up on issues raised during the October 13, 2011, STOWG meeting. These issues include:

- Gathering best practice guidelines on the long-term sustainability of space for consideration by the UN Office of Outer Space Affairs; and
- Collecting COMSTAC's suggestions for revisions to Title 14 of the Code of Federal Regulations (14 CFR) part 420.

Interested members of the public may submit relevant written statements for the COMSTAC working group members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above or additional issues that may be relevant for the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact Susan Lender, DFO, (the Contact Person listed below) in writing (mail or email) by November 14, 2011, so that the information can be made available to COMSTAC members for their review and consideration before the November 17, 2011, teleconference. Written statements should be supplied in the following formats: one hard copy with original signature or one electronic copy via email.

An agenda will be posted on the FAA Web site at *http://www.faa.gov/go/ast.*

Individuals who plan to participate and need special assistance should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Susan Lender (AST–5), Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–8029; Email *susan.lender@faa.gov.* Complete information regarding COMSTAC is available on the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/advisory_committee/.*

Issued in Washington, DC, October 24, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–27951 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty-Seventh: RTCA Special Committee 159: Global Positioning System (GPS)

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

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS) 87th meeting.

DATES: The meeting will be held November 14–18, 2011, from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a Special Committee 159, Global Positioning System (GPS). The agenda will include the following:

November 14–17, 2011

- *Working Group Sessions*
- November 14—Working Group 2C, GPS/Inertial
- November 15—Working Group 2, GPS/WAAS
- November 16—Working Group 2, GPS WAAS and Working Group 4, Precision Landing Guidance (GPS/LAAS)
- November 17—Working Group 4, Precision Landing Guidance (GPS/LAAS)

November 18, 2011

- *Plenary Session*
- Chairman's Introductory Remarks
- Approval of Summary of the 86th Meeting held June 17th, 2011, RTCA Paper No. 202–11/SC159–997
- Review Working Group (WG) Progress and Identify Issues for Resolution
- GPS/3nd Civil Frequency (WG–1)
- GPS/WAAS (WG–2)
- GPS/GLONASS (WG–2A)
- GPS/Inertial (WG–2C)
- GPS/Precision Landing Guidance (WG–4)
- GPS/Airport Surface Surveillance (WG–5)
- GPS/Interference (WG–6)
- GPS/Antennas (WG–7)
- Review of EUROCAE Activities
- SC–159 Ad Hoc—Discussion—Matrix Report
- Assignment/Review of Future Work
- Other Business
- Date and Place of Next Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011–27923 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Tenth Meeting: RTCA Special Committee 224, Airport Security Access Control

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

ACTION: Notice of RTCA Special Committee 224, Airport Security Access Control.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 224, Airport Security Access Control.

DATES: The meeting will be held November 17, 2011, from 9:30 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a Special Committee 224, Airport Security Access Control. The agenda will include the following:

November 17, 2011

- Welcome, Introductions and Administrative Remarks
- Review and Approve Summary of Ninth Meeting
- Propose Structure Overview
- Sub Section Workgroup Reports
- Document Structure Finalization
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 24, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011–27924 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Final Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Availability of the Final Environmental Impact Statement.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), announces the availability of the Final Environmental Impact Statement for the 6th Street Viaduct Seismic Improvement Project in Los Angeles County, California.

DATES: The comment period for the 6th Street Viaduct Seismic Improvement Project will end 30 days after publication of the NOA in the **Federal Register**.

ADDRESSES: A hard copy of the document may be viewed at the following locations:

- City of Los Angeles Bureau of Engineering, Bridge Improvement Program, 1149 South Broadway, Suite 750, Los Angeles, CA 90015
- Caltrans, District 7, 100 S Main St, Los Angeles CA 90012
- Benjamin Franklin City Library, 2200 E 1st St., Los Angeles, CA 90033
- Little Tokyo Branch City Library, 244 S. Alameda St., Los Angeles, CA 90012
- Los Angeles City Council District 14, 1870 E 1st Street, Los Angeles, CA 90033

The report can also be accessed through the project Web site at *http://www.la6thstreetviaduct.org*; City Web site at *http://eng.lacity.org/techdocs/emg/Environmental_Review_Documents.htm;* and Caltrans Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/*.

FOR FURTHER INFORMATION CONTACT: Carlos J. Montez, Branch Chief, Division of Environmental Planning, Caltrans District 7, 100 S. Main Street, Los Angeles, CA 90012, *Telephone:* (213) 897–9116.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency has prepared a Final EIS on a proposal for 6th Street Viaduct Seismic Improvement project in Los Angeles County, California.

The City of Los Angeles (City) and the California Department of Transportation (Caltrans) propose to undertake the seismic improvement of the 6th Street Viaduct over the Los Angeles River (Bridge No. 53C–1880) and the 6th Street Overcrossing, which spans the US 101 Hollywood Freeway (Bridge No. 53–0595). These two bridges comprise a single structure—the 6th Street Viaduct. The project limits would extend along 6th Street from west of southbound (SB) Interstate 5 (I–5) on the east side of the Los Angeles River to Mill Street on the west side of the river.

The project alternatives consist of two Build Alternatives (Alternative 2, Viaduct Retrofit; Alternative 3, Viaduct Replacement) and one No Action Alternative (Alternative 1). Alternative 3, Viaduct Replacement, has been selected as the Preferred Alternative. Under the replacement alternative, the proposed project would correct geometric design and structural detailing deficiencies of the existing viaduct by constructing the replacement to current standards set forth by American Association of State Highway and Transportation officials (AASHTO) and the City of Los Angeles Department of Transportation (LADOT).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 18, 2011.

Jacob Waclaw,

Senior Transportation Engineer, Federal Highway Administration, Los Angeles, California.

[FR Doc. 2011–27692 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 67]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Meeting.

SUMMARY: FRA announces the forty-fifth meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics will include opening remarks from the FRA Administrator, and status reports will be provided by the Electronic Device Distraction, Critical Incident, Track Safety Standards, Dark Territory, Passenger Safety, and Medical Standards Working Groups. This agenda is subject to change, including the possible addition of further proposed tasks under the Rail Safety Improvement Act of 2008.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. on Thursday, December 8, 2011, and will adjourn by 4:30 p.m.

ADDRESSES: The RSAC meeting will be held at the National Housing Center, 1201 15th Street NW., Washington DC 20005. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Woolverton, RSAC Program Manager, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Mr. Robert Lauby, Deputy Associate Administrator for Regulatory and Legislative Operations, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6474.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The RSAC was established

to provide advice and recommendations to FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. See the RSAC Web site for details on prior RSAC activities and pending tasks at: *http://rsac.fra.dot.gov/.* Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for additional information about the RSAC.

Issued in Washington, DC, on October 25, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–27969 Filed 10–27–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the ''CDFI Fund'') within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award (''BEA'') Program Application.

DATES: Written comments should be received on or before December 27, 2011 to be assured of consideration.

ADDRESSES: Direct all comments to Mia Sowell, Policy and Program Officer, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South, Washington, DC 20005, by email to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–7754. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: The BEA Program application may be obtained from the BEA page of the CDFI Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Mia Sowell, Policy and Program Officer, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street NW., Suite 200 South, Washington, DC 20005, or call (202) 622–6355. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Title: Bank Enterprise Award Program Application.

OMB Number: 1559–0005.

Abstract: The purpose of the BEA Program is to provide an incentive to insured depository institutions to increase their activities in the form of loans, investments, services, and technical assistance, within distressed communities and provide financial assistance to community development financial institutions through grants, stock purchases, loans, deposits, and other forms of financial and technical assistance. The CDFI Fund will make awards through the BEA Program to insured depository institutions, based upon such institutions' completion of certain qualified activities, as reported in the application. The application will solicit information concerning: applicants' eligibility to participate in the BEA Program; the quantity (value) of applicants' activities, and the extent to which such activities may be qualified activities; and appropriate supporting documentation. The questions that the application contains, and the information generated thereby, will enable the CDFI Fund to evaluate applicants' activities and determine the extent of applicants' eligibility for a BEA Program award.

Current Actions: Renewed collection.

Type of Review: Regular Review.

Affected Public: FDIC insured depository institutions.

Estimated Number of Respondents: 75.

Estimated Annual Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 1,125 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and will be published on the CDFI Fund Web site at *http://www.cdfifund.gov*.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713, 4717; 31 U.S.C. 321; 12 CFR part 1806.

Dated: October 21, 2011.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2011–27973 Filed 10–27–11; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of an Assisted Living Facility in Newington, CT

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 5.0-acre parcel of land at the VA Connecticut Healthcare System, Newington campus in Newington, Connecticut. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain an assisted living facility; provide preference and priority placement for senior and disabled Veterans and their families; and provide a supportive services program.

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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27915 Filed 10–27–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Transitional Housing Facility in Pineville, LA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 7.0-acre parcel of land at the Alexandria VA Medical Center in Pineville, Louisiana. The selected lessee will finance, design, develop, construct, renovate, manage, operate and maintain the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a transitional housing facility; provide preference and priority placement for Veterans and their families; and provide a supportive services program for resident Veterans.

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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27908 Filed 10–27–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Permanent Housing Facility in Northampton, MA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 9.0-acre parcel of land at the Northampton VA Medical Center in Northampton, Massachusetts. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain a permanent housing facility and provide preference and priority placement for Veterans, as well as a supportive services program.

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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27910 Filed 10–27–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for a Mixed-Use Development Including a Permanent Housing Facility in Knoxville, IA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on 3 parcels of land (163 acres) that comprise the entire Knoxville campus of the VA Central Iowa Healthcare System. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate, and maintain a mixed use development that includes integrated residential, commercial, agricultural and technology components. The residential component will contain a permanent housing facility for homeless and at-risk Veterans and their families where the lessee will give preference and priority placement to Veterans and provide supportive services to Veterans.

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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27911 Filed 10–27–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development of a Senior Housing Facility in Kerrville, TX

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 5.0-acre parcel of land at the VA South Texas Healthcare System—Kerrville campus in Kerrville, Texas. The selected lessee will finance, design, develop, construct, manage, maintain and operate the EUL development. As consideration for the lease, the lessee will be required to construct, renovate, operate and maintain a senior housing facility; provide preference and priority placement for senior and disabled Veterans and their families; and provide a supportive services program.

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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27912 Filed 10–27–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease (EUL) of Department of Veterans Affairs (VA) Real Property for the Development at the Roseburg VA Medical Center (VAMC) in Roseburg, OR

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease (EUL).

SUMMARY: The Secretary of VA intends to enter into an EUL on an approximately 9.3-acre parcel of land at the Roseburg VAMC in Roseburg, Oregon. 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 permanent and transitional 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 independence and 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: October 21, 2011.

Eric K. Shinseki,

Secretary of Veterans Affairs.

[FR Doc. 2011–27907 Filed 10–27–11; 8:45 am]

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Part II

Federal Trade Commission

Department of Justice

Antitrust Division

Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program; Notice

FEDERAL TRADE COMMISSION

DEPARTMENT OF JUSTICE

Antitrust Division

Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program

AGENCIES: FTC, DOJ.

ACTION: Final Policy Statement.

SUMMARY: The FTC and DOJ (the ''Agencies'') are issuing the final *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program* (the ''Policy Statement'') in conjunction with the final rule issued today by the Centers for Medicare and Medicaid Services (''CMS'') under Section 3022 of the Affordable Care Act (the Patient Protection and Affordable Care Act, Public Law 111–48, 124 Stat. 119 (2010), and the Health Care and Education Reconciliation Act of 2010, Public Law 111–52, 124 Stat. 1029 (2010)).

The final Policy Statement differs from the proposed Policy Statement issued earlier this year, 76 FR 21,894 (Apr. 19, 2011), in two significant respects. First, the entire final Policy Statement—with the exception of the voluntary expedited antitrust review—applies to all collaborations among otherwise independent providers and provider groups that are eligible and intend, or have been approved, to participate in the Medicare Shared Savings Program (the ''Shared Savings Program''); its applicability is no longer limited to those collaborations formed after March 23, 2010, the date on which the Patient Protection and Affordable Care Act was enacted. Second, because the Shared Savings Program final rule will no longer require a mandatory antitrust review for certain collaborations as a condition of entry into the Shared Savings Program, the final Policy Statement no longer contains provisions relating to mandatory antitrust review. However, as discussed in the final rule, the Agencies will continue to protect competition in markets served by accountable care organizations (''ACOs'') that participate in the Shared Savings Program, aided by data and information from CMS that will assist the Agencies in monitoring the competitive effects of ACOs. Specifically, CMS will provide the Agencies with aggregate claims data regarding allowed charges and fee-for-service payments for all ACOs accepted into the Shared Savings Program and also with copies of all of the applications to the Shared Savings Program of ACOs formed after March 23, 2010. The Agencies will vigilantly monitor complaints about an ACO's formation or conduct and take whatever enforcement action may be appropriate. Additionally, upon request, the Agencies will provide an expedited 90 day review for newly formed ACOs that wish to obtain additional antitrust guidance.

SUPPLEMENTARY INFORMATION:

Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program

I. Introduction

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (collectively, the ''Affordable Care Act'') seek to improve the quality and reduce the costs of health care services in the United States by, among other things, encouraging physicians, hospitals, and other health care providers to become accountable for a patient population through integrated health care delivery systems.[1] One delivery system reform is the Affordable Care Act's Medicare Shared Savings Program (the ''Shared Savings Program''), which promotes the formation and operation of Accountable Care Organizations (''ACOs'' [2]) to serve Medicare fee-for-service beneficiaries.[3] Under this provision, ''groups of providers of services and suppliers meeting criteria specified by the [Department of Health and Human Services] Secretary may work together to manage and coordinate care for Medicare fee-for-service beneficiaries through an [ACO].'' [4] An ACO may share in some portion of any savings it creates if the ACO meets certain quality performance standards established by the Secretary of Health and Human Services through the Centers for Medicare and Medicaid Services (''CMS''). The Affordable Care Act requires an ACO that wishes to participate in the Shared Savings Program to enter into an agreement with CMS for not less than three years.[5]

Recent commentary suggests that some health care providers are likely to create and participate in ACOs that serve both Medicare beneficiaries and commercially insured patients.[6] The Federal Trade Commission and the Antitrust Division of the Department of Justice (the ''Agencies'') recognize that ACOs may generate opportunities for health care providers to innovate in both the Medicare and commercial markets and achieve for many other consumers the benefits Congress intended for Medicare beneficiaries through the Shared Savings Program. Therefore, to maximize and foster opportunities for ACO innovation and better health for patients, the Agencies wish to clarify their antitrust enforcement policy regarding collaborations among independent providers that seek to become ACOs in the Shared Savings Program. The Agencies recognize that not all such ACOs are likely to benefit consumers, and under certain conditions ACOs could reduce competition and harm consumers through higher prices or lower quality of care. Thus, the antitrust analysis of ACO applicants to the Shared Savings Program seeks to protect both Medicare beneficiaries and commercially insured patients from potential anticompetitive harm while allowing ACOs the opportunity to achieve significant efficiencies.

To achieve these goals, the Agencies have developed this *Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program* (the ''Policy Statement''). The Policy Statement is intended to ensure that health care providers have the antitrust clarity and guidance needed to form procompetitive ACOs that participate in both the Medicare and commercial markets. The Policy Statement describes (1) the ACOs to which the Policy Statement will apply; [7] (2) when the Agencies will apply rule of reason treatment to those ACOs; (3) an antitrust safety zone; and (4) additional antitrust guidance for ACOs that are outside the safety zone, including a voluntary expedited

[1] Health Care and Education Reconciliation Act of 2010, Public Law 111–52, 124 Stat. 1029 (2010); Patient Protection and Affordable Care Act, Public Law 111–48, 124 Stat. 119 (2010).

[2] As used in this document, ''ACO'' refers to Accountable Care Organizations under the Medicare Shared Savings Program, which also may operate in commercial markets. Patient Protection and Affordable Care Act 3022, 124 Stat. at 395–99.

[3] *Id.*

[4] *Id.* at 395.

[5] *Id.* at 396.

[6] Fed. Trade Comm'n & Dep't of Health and Human Serv., Workshop Regarding Accountable Care Organizations, and Implications Regarding Antitrust, Physician Self-Referral, Anti-Kickback, and Civil Monetary Penalty (CMP) Laws (Oct. 5, 2010).

[7] The analytical principles underlying the Policy Statement also would apply to various ACO initiatives undertaken by the Innovation Center within CMS as long as those ACOs are substantially clinically or financially integrated.

antitrust review process for newly formed ACOs.[8]

II. Applicability of the Policy Statement

The Policy Statement applies to collaborations among otherwise independent providers and provider groups[9] that are eligible and intend, or have been approved, to participate in the Shared Savings Program. For ease of reference, the Policy Statement refers to such collaborations as ACOs, although they may not yet have been approved to participate as ACOs in the Shared Savings Program. The Policy Statement refers to the otherwise independent providers and provider groups that constitute the ACO as ACO participants.[10] The Policy Statement does not apply to mergers. Merger transactions, including transactions that meet the criteria set forth in Section 1.3 of the *Antitrust Guidelines for Collaborations Among Competitors,*[11] will be evaluated under the Agencies' *Horizontal Merger Guidelines.*[12] The Policy Statement also does not apply to single, fully integrated entities.

III. The Agencies Will Apply Rule of Reason Analysis to ACOs That Meet Certain Conditions

The antitrust laws treat naked price-fixing and market-allocation agreements among competitors as per se illegal. Joint price agreements among competing health care providers are evaluated under the rule of reason, however, if the providers are financially or clinically integrated and the agreement is reasonably necessary to accomplish the procompetitive benefits of the integration.

A rule of reason analysis evaluates whether the collaboration is likely to have anticompetitive effects and, if so, whether the collaboration's potential procompetitive efficiencies are likely to outweigh those effects. The greater the likely anticompetitive effects, the greater the likely efficiencies must be for the collaboration to pass muster under the antitrust laws. The Agencies have articulated the standards for both financial and clinical integration in various policy statements, speeches, business reviews, and advisory opinions. For example, the Agencies' *Statements of Antitrust Enforcement Policy in Health Care* (the ''Health Care Statements'') explain that where participants in physician or multiprovider joint ventures have agreed to share substantial financial risk as defined in the Health Care Statements, their risk-sharing arrangement generally establishes both an overall efficiency goal for the venture and the incentives for the participants to meet that goal.[13] Accordingly, the setting of price is integral to the venture's use of such an arrangement and therefore warrants evaluation under the rule of reason.[14] The Health Care Statements provide examples of financial risk-sharing arrangements that can satisfy this standard, but also recognize that other acceptable financial risk-sharing arrangements might develop.[15]

The Health Care Statements further explain that provider joint ventures also may involve clinical integration sufficient to ensure that the venture is likely to produce significant efficiencies.[16] Clinical integration can be evidenced by the joint venture implementing an active and ongoing program to evaluate and modify practice patterns by the venture's providers and to create a high degree of interdependence and cooperation among the providers to control costs and ensure quality.[17] Federal Trade Commission staff advisory opinions discuss evidence that appears sufficient to demonstrate clinical integration in specific factual circumstances.[18]

The Affordable Care Act provides that CMS may approve ACOs that meet certain eligibility criteria, including (1) a formal legal structure that allows the ACO to receive and distribute payments for shared savings; (2) a leadership and management structure that includes clinical and administrative processes; (3) processes to promote evidence-based medicine and patient engagement; (4) reporting on quality and cost measures; and (5) coordinated care for beneficiaries.[19] CMS has further defined these eligibility criteria through regulations.[20]

By contrast, the Agencies have not previously listed specific criteria required to establish clinical integration, but instead have responded to detailed proposals from health care providers who have decided on specific ways to integrate their health care delivery systems to improve quality and lower costs.[21] The Agencies have chosen to avoid prescribing how clinical integration should take place. Nonetheless, the Agencies recognize that health care providers seeking to create ACOs in the context of the Shared Savings Program could benefit from additional antitrust guidance in evaluating whether an ACO that satisfies the CMS eligibility criteria could be subject to an antitrust investigation and potential challenge as engaging in per se illegal conduct.

The Agencies have determined that CMS's eligibility criteria are broadly consistent with the indicia of clinical integration that the Agencies previously set forth in the Health Care Statements and identified in the context of specific proposals for clinical integration from health care providers.[22] The Agencies also have determined that organizations meeting the eligibility requirements for the Shared Savings Program are reasonably likely to be bona fide arrangements intended to improve the quality, and reduce the costs, of providing medical and other health care

[8] The Policy Statement provides guidance to assist ACOs in determining whether they are likely to present competitive concerns. It does not reflect the full analysis that the Agencies may use in evaluating ACOs or any other transaction or course of conduct. ''Newly formed ACOs'' are defined *infra* at note 23.

[9] A ''collaboration'' comprises an agreement or set of agreements, other than merger agreements, among otherwise independent entities jointly to engage in economic activity, and the resulting economic activity. U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors 1.1 (2000) [hereinafter Collaboration Guidelines], *available at http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.*

[10] An ACO participant can be an independent physician solo practice, a fully integrated physician group practice, an inpatient facility, or an outpatient facility. The Policy Statement's definition of ACO participant may differ from CMS's use of the term.

[11] Collaboration Guidelines, *supra* note 9, 1.3.

[12] U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (rev. ed. 2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf.*

[13] U.S. Dep't of Justice & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care, Statements 8 and 9 (1996) [hereinafter Health Care Statements], *available at http://www.ftc.gov/reports/hlth3s.pdf.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See,* e.g., Christine A. Varney, Assistant Attorney Gen., Antitrust Div., U.S. Dep't of Justice, Antitrust and Healthcare at 12 (May 24, 2010), *available at http://www.justice.gov/atr/public/speeches/258898.pdf.*

[18] *See* Fed. Trade Comm'n, Advisory Opinions (1982–2010), available at *http://www.ftc.gov/bc/healthcare/industryguide/advisory.htm#2010.*

[19] Patient Protection and Affordable Care Act, Public Law 111–48, 3022, 124 Stat. 119, 395–99 (2010).

[20] Medicare Program; Medicare Shared Savings Program: Accountable Care Organizations, 42 CFR part 425 (2011) [hereinafter CMS ACO Rule].

[21] *See generally* FTC Staff Advisory Opinions (2002–Present), *available at http://www.ftc.gov/bc/healthcare/industryguide/opinionguidance.htm; see also* U.S. Dep't of Justice & Fed. Trade Comm'n, Improving Health Care: Another Dose of Competition ch. 2 at 34–41 (July 2004), *available at http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf.*

[22] *Id. See also, e.g.,* TriState Health Partners, Inc. Advisory Opinion from FTC Staff (Apr. 13, 2009) (evaluating TriState Health Partners' proposal and stating that, if implemented as proposed, FTC staff would not recommend that the Commission challenge the proposed program), *available at http://www.ftc.gov/os/closings/staff/090413tristateaoletter.pdf.*

services through their participants' joint efforts.

To assess whether an ACO has improved quality and reduced costs to Medicare, CMS will collect and evaluate cost, utilization, and quality metrics relating to each ACO's performance in the Shared Savings Program. The results of this monitoring will help the Agencies determine whether the CMS eligibility criteria have required a sufficient level of clinical integration to produce cost savings and quality improvements, and may help inform the Agencies' future analysis of ACOs and other provider organizations.

In light of CMS's eligibility criteria, and its monitoring of each ACO's results, the Agencies will treat joint negotiations with private payers as reasonably necessary to an ACO's primary purpose of improving health care delivery, and will afford rule of reason treatment to an ACO that meets CMS's eligibility requirements for, and participates in, the Shared Savings Program and uses the same governance and leadership structures and clinical and administrative processes it uses in the Shared Savings Program to serve patients in commercial markets. The Agencies further note that CMS's regulations allow an ACO to propose alternative ways to establish clinical management and oversight of the ACO, and the Agencies are willing to consider other proposals for clinical integration as well.

IV. The Agencies' Antitrust Analysis of ACOs That Meet CMS Eligibility Criteria

The following Sections provide additional antitrust guidance for ACOs that are eligible and intend, or have been approved, to participate in the Shared Savings Program, including those ACOs that also plan to operate in the commercial market. Section A sets forth a safety zone for certain ACOs that are highly unlikely to raise significant competitive concerns and, therefore, will not be challenged by the Agencies under the antitrust laws, absent extraordinary circumstances.

The Agencies emphasize that ACOs outside the safety zone may be procompetitive and legal. An ACO that does not impede the functioning of a competitive market will not raise competitive concerns. The creation of a safety zone reflects the view that ACOs that fall within the safety zone are highly unlikely to raise significant competitive concerns; it does not imply that ACOs outside the safety zone necessarily present competitive concerns.

Section B offers options for ACOs that seek additional antitrust guidance. It describes certain conduct all ACOs generally should avoid, other conduct that ACOs with high Primary Service Area (''PSA'') shares or other possible indicia of market power may wish to avoid, and the process by which a newly formed ACO [23] may obtain a voluntary expedited antitrust review.

A. The Antitrust Safety Zone for ACOs in the Shared Savings Program

This Section sets forth an antitrust safety zone for ACOs that meet the CMS eligibility criteria for and intend, or have been approved, to participate in the Shared Savings Program and are highly unlikely to raise significant competitive concerns. The Agencies will not challenge ACOs that fall within the safety zone, absent extraordinary circumstances.[24]

To determine whether it falls within the safety zone, an ACO should evaluate the ACO's share of services in each ACO participant's PSA. Although a PSA does not necessarily constitute a relevant antitrust geographic market, it nonetheless serves as a useful screen for evaluating potential competitive effects.

The Policy Statement focuses on PSA shares for three major categories of services: physician specialties, major diagnostic categories (''MDCs'') for inpatient facilities, and outpatient categories, as defined by CMS, for outpatient facilities.[25] Although these services are useful in evaluating potential anticompetitive effects, they do not necessarily constitute relevant antitrust product markets. The Appendix to the Policy Statement describes how to calculate an ACO's shares of these services in the relevant PSAs, identifies data sources available for these calculations, and provides illustrative examples.[26]

For an ACO to fall within the safety zone, independent ACO participants that provide the same service (a ''common service'') must have a combined share of 30 percent or less of each common service in each participant's PSA, wherever two or more ACO participants provide that service to patients from that PSA.[27] As noted above, a service is defined as a primary specialty for physicians, an MDC for inpatient facilities, or an outpatient category for outpatient facilities. The PSA for each participant is defined as ''the lowest number of postal zip codes from which the [ACO participant] draws at least 75 percent of its [patients],'' [28] separately for all physician, inpatient, or outpatient services. Thus, for purposes of determining whether the ACO is eligible for the safety zone, each independent physician solo practice, each fully integrated physician group practice, each inpatient facility (even if part of a hospital system), and each outpatient facility will have its own PSA. In addition, each inpatient facility hospital will have separate PSAs for its (1) inpatient services, (2) outpatient services, and (3) physician services provided by its physician employees, if any.[29]

As described below, the availability of the PSA safety zone differs in some cases depending on whether an ACO participant is exclusive or non-exclusive to the ACO. To participate in an ACO on a non-exclusive basis, a participant must be allowed to contract with private payers through entities other than the ACO, including contracting individually or through other ACOs or analogous collaborations. The ACO must be non-exclusive in fact and not just in name. Exclusivity may be present explicitly or implicitly, formally or informally, through a written or de facto agreement as shown by conduct.[30]

Hospitals and Ambulatory Surgical Centers. Any hospital or ambulatory surgery center (''ASC'') participating in

[23] ''Newly formed ACOs'' are those ACOs that, as of March 23, 2010, the date on which the Patient Protection and Affordable Care Act was enacted, had not yet signed or jointly negotiated any contracts with private payers, and have not yet participated in the Shared Savings Program. Patient Protection and Affordable Care Act, Public Law 111–48, 124 Stat. 119 (2010). An ACO is not newly formed if it comprises only the same, or a subset of the same, providers that signed or jointly negotiated contracts with private payers on or before March 23, 2010.

[24] Extraordinary circumstances could include, for example, ACO participants engaging in collusion or improper exchanges of price information or other competitively sensitive information with respect to their sale of competing services outside the ACO. *See infra* IV(B)(1)(a).

[25] The Policy Statement does not apply to other types of providers (e.g., clinical laboratories or nursing homes). Nonetheless, the Agencies recognize that those providers may participate in ACOs.

[26] The ACO may send questions regarding PSA share calculations to *aco_psa_questions@ftc.gov*.

[27] Thus, if two otherwise independent physician group practices form an ACO and each includes cardiologists and oncologists, each physician group practice would be an independent participant in the ACO, and cardiology and oncology would be common services. If, on the other hand, one physician group practice consists only of cardiologists and the other only of oncologists, then there would be no common services and the ACO would fall within the safety zone regardless of its share, subject to the dominant participant limitation described below.

[28] Medicare Program: Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II), 69 FR 16,094 (Mar. 26, 2004).

[29] *See* Appendix to the Policy Statement.

[30] The Health Care Statements further explain the indicia of non-exclusivity that the Agencies consider relevant to this evaluation. Health Care Statements, *supra* note 13, at 66–67.

an ACO must be non-exclusive to the ACO to fall within the safety zone, regardless of its PSA share.

Physicians. The safety zone for physicians (regardless of whether the physicians are hospital employees) does not differ based on whether the physicians are exclusive or non-exclusive to the ACO, unless they fall within the rural exception or dominant participant limitation described below.

1. Rural Exception

An ACO that exceeds the 30 percent PSA share may still fall within the safety zone if it qualifies for this rural exception. The rural exception allows such an ACO to include one physician or physician group practice [31] per specialty from each rural area [32] on a non-exclusive basis and still fall within the safety zone, provided the physician's or physician group practice's primary office is in a zip code that is classified as ''isolated rural'' or ''other small rural.'' [33] Thus, an ACO may qualify for the safety zone as long as it includes only one physician or physician group practice per specialty for each county that contains at least one ''isolated rural'' or ''other small rural'' zip code, even if the inclusion of these physicians causes the ACO's share of any common service to exceed 30 percent in any ACO participant's PSA.

Likewise, an ACO may include Rural Hospitals [34] on a non-exclusive basis and qualify for the safety zone, even if the inclusion of a Rural Hospital causes the ACO's share of any common service to exceed 30 percent in any ACO participant's PSA.

2. Dominant Participant Limitation

The dominant participant limitation applies to any ACO that includes a participant with a greater than 50 percent share in its PSA of any service that no other ACO participant provides to patients in that PSA. Under these conditions, the ACO participant must be non-exclusive to the ACO for the ACO to fall within the safety zone.[35] In addition, to fall within the safety zone, an ACO with a dominant participant cannot require a private payer to contract exclusively with the ACO or otherwise restrict a private payer's ability to contract or deal with other ACOs or provider networks.

* * * * *

The safety zone will remain in effect for the duration of an ACO's agreement with CMS, provided the ACO continues to meet the safety zone's requirements. An ACO will not lose its safety zone status solely because it attracts more patients.

B. ACOs Outside the Safety Zone

ACOs that fall outside the safety zone may be procompetitive and lawful. An ACO that does not impede the functioning of a competitive market will not raise competitive concerns.[36]

Nonetheless, there may be circumstances in which an ACO would raise competitive concerns. This section describes some types of conduct by an ACO that, under certain circumstances, may raise competitive concerns and outlines how an ACO may obtain further antitrust guidance from the Agencies.

1. Conduct To Avoid

a. Improper Sharing of Competitively Sensitive Information

Regardless of an ACO's PSA shares or other indicia of market power, significant competitive concerns can arise when an ACO's operations lead to price-fixing or other collusion among ACO participants in their sale of competing services outside the ACO. For example, improper exchanges of prices or other competitively sensitive information among competing participants could facilitate collusion and reduce competition in the provision of services outside the ACO, leading to increased prices or reduced quality or availability of health care services.[37] ACOs should refrain from, and implement appropriate firewalls or other safeguards against, conduct that may facilitate collusion among ACO participants in the sale of competing services outside the ACO.[38]

b. Conduct by ACOs With High PSA Shares or Other Possible Indicia of Market Power That May Raise Competitive Concerns

For ACOs with high PSA shares or other possible indicia of market power, the Agencies identify four types of conduct that may raise competitive concerns.[39] The Agencies recognize that

[31] To qualify for the rural exception, the physician group practice must be treating patients as a fully integrated practice group as of the date of the Policy Statement. The practice group can add or eliminate physicians and still remain in the safety zone, as long as the number of full-time equivalent physicians in the practice group does not increase during the ACO's Shared Savings Program agreement period. For the purposes of the Policy Statement, Federally Qualified Health Centers and Rural Health Clinics, as defined by the Social Security Act, are considered physician group practices. 42 U.S.C. 1396d (2006); 42 U.S.C. 1395x(aa) (2006). A physician or physician group practice that qualifies for the rural exception may obtain ''call coverage'' from other physicians in the same rural area without losing its safety zone status as long as those physicians do not participate in the ACO.

[32] For the purposes of the Policy Statement, a ''rural area'' means any county containing at least one zip code that has been classified as ''isolated rural,'' or ''other small rural,'' according to the WWAMI Rural Health Research Center of the University of Washington's seven category classification. *http://depts.washington.edu/uwruca/ruca-maps.php.* These are zip codes that have a Rural Urban Commuting Area (''RUCA'') code of 10.0, 10.2–10.6, 8.0, 8.2–8.4, or 9.0–9.2 as developed by the WWAMI Rural Health Research Center of the University of Washington and the U.S. Department of Agriculture's Economic Research Service. *http://www.ers.usda.gov/briefing/Rurality/RuralUrbanCommutingAreas/.* The RUCA code for any particular zip code can be found at *http://depts.washington.edu/uwruca/ruca-download.php.*

[33] A physician's or physician group practice's primary office is the office in which the majority of the physician's or physician group practice's patient visits take place. If no office serves a majority of a physician's patients, the majority of patient visits must take place in offices located in ''isolated rural'' or ''other small rural'' zip codes to qualify for the rural exception.

[34] For the purposes of the Policy Statement, a Rural Hospital is defined as a Sole Community Hospital, a Critical Access Hospital, or any other acute care hospital located in a rural area that has no more than 50 acute care inpatient beds and is located at least 35 miles from any other inpatient acute care hospital. A Sole Community Hospital is a hospital that is paid under the Medicare hospital inpatient prospective payment system and meets the criteria for Sole Community Hospital status as specified at 42 CFR 412.92. *See also* Dep't of Health and Human Servs., Ctrs. for Medicare & Medicaid Servs., Sole Community Hospital, Rural Health Fact Sheet Series (Oct. 2010), *available at https://www.cms.gov/MLNProducts/downloads/SoleCommHospfctsht508-09.pdf;* Social Security Act, 42 U.S.C. 1395ww(d)(5)(D)(iii) (2006). A Critical Access Hospital is a hospital that has been certified as a Medicare Critical Access Hospital, as described in 42 CFR part 485 subpart F. *See* also 42 U.S.C. 1395i–4(c)(2).

[35] For example, a physician group participating in the ACO may comprise a specialty not found in any other ACO participant. In this case, the ACO may be eligible for the safety zone even if the physician group's share exceeds 50 percent, but only if the physician group participates in the ACO on a non-exclusive basis and the ACO does not restrict a private payer's ability to contract or deal with other ACOs or provider groups.

[36] The Agencies emphasize that PSA shares are useful as a screening device and that alternative data and information also may be useful in evaluating the likely competitive significance of a particular ACO. The Agencies recognize that an ACO may have reliable evidence other than PSA shares from which the ACO may reasonably conclude that the ACO is unlikely to raise competitive concerns.

[37] Health Care Statements 4, 5, and 6 relate to the sharing of data and information among competing providers. The Health Care Statements set forth safety zones for providers' collective provision of fee- and non-fee-related information to health care purchasers and participation in exchanges of price and cost information. The Health Care Statements also provide further guidance on the distinctions between legitimate information sharing and information sharing that may facilitate collusion or otherwise raise competitive concerns. Health Care Statements, *supra* note 13, at 40–52.

[38] ACOs within the safety zone should also refrain from this conduct. *See supra* note 24.

[39] ACOs with high PSA shares or other possible indicia of market power also should consider the

Continued

some of the conduct described in (1) through (4) below may be competitively neutral or even procompetitive, depending on the circumstances, including whether the ACO has market power. For example, an ACO that requires its participants to contract exclusively through the ACO to increase the ACO's efficiency is generally less likely to raise competitive concerns the greater the number of competing ACOs or independent providers available to contract with private payers or to participate in competing ACOs or other analogous collaborations.

An ACO with high PSA shares or other possible indicia of market power may wish to avoid the conduct set forth in (1) through (4) below. Depending on the circumstances, the conduct identified below may prevent private payers from obtaining lower prices and better quality service for their enrollees:

1. Preventing or discouraging private payers from directing or incentivizing patients to choose certain providers, including providers that do not participate in the ACO, through ''anti-steering,'' ''anti-tiering,'' ''guaranteed inclusion,'' ''most-favored-nation,'' or similar contractual clauses or provisions.

2. Tying sales (either explicitly or implicitly through pricing policies) of the ACO's services to the private payer's purchase of other services from providers outside the ACO (and vice versa), including providers affiliated with an ACO participant (e.g., an ACO should not require a purchaser to contract with all of the hospitals under common ownership with a hospital that participates in the ACO).

3. Contracting on an exclusive basis with ACO physicians, hospitals, ASCs, or other providers, thereby preventing or discouraging those providers from contracting with private payers outside the ACO, either individually or through other ACOs or analogous collaborations.[40]

4. Restricting a private payer's ability to make available to its health plan enrollees cost, quality, efficiency, and performance information to aid enrollees in evaluating and selecting providers in the health plan, if that information is similar to the cost, quality, efficiency, and performance measures used in the Shared Savings Program.

2. Availability of Expedited Voluntary Antitrust Review

Any newly formed ACO[41] that desires further antitrust guidance regarding its formation and planned operation can seek expedited 90 day review from the Agencies.[42] During expedited review, the reviewing Agency will examine whether the ACO will likely harm competition by increasing the ACO's ability or incentive profitably to raise prices above competitive levels or reduce output, quality, service, or innovation below what likely would prevail in the absence of the ACO.[43] To the extent possible in the 90 day review period, the Agency will consider factors in the rule of reason analysis as explained in the *Antitrust Guidelines for Collaborations Among Competitors* and the Health Care Statements.[44]

The ACO should submit its request for expedited review, along with a completed cover sheet (available on the Agencies' Web sites), to both Agencies before its entrance into the Shared Savings Program, and the Agencies will then promptly determine, and notify the applicant, which Agency will be the reviewing Agency.[45] As soon as the Agencies notify the applicant which Agency will be the reviewing Agency, the applicant should provide all of the documents and information listed below to the reviewing Agency. The Agencies shall establish a Federal Trade Commission/Department of Justice ACO Working Group to collaborate and discuss issues arising out of the ACO reviews. This process will allow ACOs to rely on the expertise of both Agencies and ensure efficient, cooperative, and expeditious reviews.[46]

To start the 90 day review, the reviewing Agency must receive all of the following documents and information:[47]

1. The application and all supporting documents that the ACO plans to submit, or has submitted, to CMS, including a sample of each type of participation agreement and each type of document that reflects a financial arrangement between or among the ACO and its participants, as well as the ACO's bylaws and operating policies.

2. Documents discussing

a. the ACO's business strategies or plans to compete in the Medicare and commercial markets, including those relating to the ACO's likely impact on the prices, cost, or quality of any service provided by the ACO to Medicare beneficiaries, commercial health plans, or other payers; and

b. the level and nature of competition among participants in the ACO, and the competitive significance of the ACO and ACO participants in the markets in which they provide services.

3. Information sufficient to show the following:

a. The common services that two or more ACO participants provide to patients from the same PSA, as described in the Appendix, and the identity of the ACO participants or providers providing those services.

b. The PSA of each ACO participant, and either PSA share calculations the ACO may have performed or other data that show the current competitive significance of the ACO or ACO participants, including any data that describe the geographic service area of each participant and the size of each participant relative to other providers serving patients from that area.

c. Restrictions that prevent ACO participants from obtaining information regarding prices that other ACO participants charge private payers that do not contract through the ACO.

d. The identity, including points of contact, of the five largest commercial health plans or other private payers, actual or projected, for the ACO's services.

e. The identity of any other existing or proposed ACO known to operate, or

likely competitive effects of other types of conduct in which they engage.

[40] Note that, although CMS requires the physician practice through which physicians bill for primary care services and to which Medicare beneficiaries are assigned to contract exclusively with one ACO for the purposes of beneficiary assignment, CMS does *not* require either those individual physicians or physician practices to contract exclusively through the same ACO for the purposes of providing services to private health plans' enrollees. CMS ACO Rule, *supra* note 20.

[41] *See supra* note 23.

[42] When the Federal Trade Commission is the reviewing Agency, Commission staff will perform the ACO review pursuant to the Commission's authorization of its staff in 16 CFR 1.1(b). When the Antitrust Division is the reviewing Agency, the Assistant Attorney General in charge of the Antitrust Division or the Assistant Attorney General's delegate will sign the review letter. 28 CFR 50.6.

[43] *See* Collaboration Guidelines, *supra* note 9, 1.2.

[44] *See id.* 3.3; Health Care Statements, *supra* note 13, Statements 8 and 9.

[45] A request for an expedited review must be submitted in writing to either (1) the Office of the Assistant Attorney General, Antitrust Division, Department of Justice, Main Justice Building, Room 3109, 950 Pennsylvania Avenue NW., Washington, DC 20530 (for non-U.S. Postal Service deliveries, use ZIP code 20004), and to the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, Room 303, 600 Pennsylvania Avenue NW., Washington, DC 20580 or (2) *acorequest@usdoj.gov* and *acorequest@ftc.gov.*

[46] For example, it has been standard practice for the Agencies to share with each other their proposed health care business review and staff advisory opinion letters before issuing them in final form to ensure application of consistent standards of antitrust review.

[47] The ACO must represent in writing that it has undertaken a good-faith search for the documents and information specified in the Policy Statement and, where applicable, provided all responsive material. Moreover, the Agencies may request additional documents and information where necessary to evaluate the ACO. A request for additional documents and information, however, will not extend the 90 day review period.

known to plan to operate, in any market in which the ACO will provide services.

Moreover, the ACO may submit any other documents and information that it believes may be helpful to the Agency in assessing the ACO's likely impact on competition. The documents and information may include anything that may establish a clearer picture of competitive realities in the market, including:

1. evidence that the ACO is not likely to have market power in the relevant market;

2. any substantial procompetitive justification for why the ACO needs its proposed composition to provide high-quality, cost-effective care to Medicare beneficiaries and patients in the commercial market; and

3. if relevant, an explanation as to why the ACO engaging in any of the four types of conduct listed in Section IV.B of the Policy Statement would not be anticompetitive or might even be procompetitive.

Within 90 days of receiving all of the above documents and information,[48] the reviewing Agency will advise the ACO that the ACO's formation and operation, as described in the documents and information provided to the Agency,

1. does not likely raise competitive concerns or, if appropriate, does not likely raise competitive concerns conditioned on the ACO's written agreement to take specific steps to remedy concerns raised by the Agency;

2. potentially raises competitive concerns; or

3. likely raises competitive concerns.

As is current practice, both the request letter and the reviewing Agency's response will be made public consistent with applicable confidentiality provisions.[49] Also, consistent with current practice, if it appears that an ACO's formation or conduct may be anticompetitive, the Agency may investigate the ACO and, if appropriate, take enforcement action at any time before or during the ACO's participation in the Shared Savings Program.

Appendix

This Appendix explains how to calculate the PSA shares of common services discussed in the Policy Statement.[50] There are three steps:

1. Identify each service provided by at least two independent ACO participants (i.e., each common service). A service is defined as follows:

a. For physicians, a service is the physician's primary specialty, as designated on the physician's Medicare Enrollment Application. Each specialty is identified by its Medicare Specialty Code (''MSC''), as defined by CMS.[51]

b. For inpatient facilities (*e.g.*, hospitals), a service is an MDC.[52]

c. For outpatient facilities (*e.g.*, ASCs or hospitals), a service is an outpatient category, as defined by CMS.[53]

2. Identify the PSA(s) for each participant (*e.g.,* physician group, inpatient facility, or outpatient facility) in the ACO that provides any common service. For each participant, the PSA is defined as the lowest number of postal zip codes from which the participant draws at least 75 percent of its patients.[54] Each independent physician solo practice, each fully integrated physician group practice, each inpatient facility (even if part of a hospital system), and each outpatient facility will have its own PSA. In addition, each inpatient facility will have a separate PSA for inpatient services, outpatient services, and physician services provided by its physician employees.

3. Separately for each common service, calculate the ACO's PSA share in the PSA of each participant that provides that service if at least two participants provide that service to patients from that PSA. If an entity owned by an ACO participant provides services in a PSA, those services should be included in the share calculation regardless of whether the affiliated organization participates in the ACO.

a. For physician services, the ACO should calculate its shares of Medicare fee-for-service allowed charges (*i.e.*, the amount that a provider is entitled to receive for the service provided) during the most recent calendar year for which data are available. CMS will make public the data necessary to identify the full range of services and the aggregate fee-for-service allowed charges for each service, by zip code.

b. For inpatient services, the ACO should calculate its shares of inpatient discharges, using state-level all-payer hospital discharge data where available, for the most recent calendar year for which data are available. For ACOs located in a state where all-payer hospital discharge data are not available, the ACO should calculate its shares of Medicare fee-for-service payments during the most recent federal fiscal year for which data are available. CMS will make public the data necessary to identify the full range of services and the aggregate fee-for-service payments for each service, by zip code.

c. For outpatient services, the ACO should calculate its shares of Medicare fee-for-service payments for hospitals and fee-for-services allowed charges for ASCs during the most recent calendar year for which data are available, or the ACO can use state-level all-payer claims data, if available. CMS will make public the data necessary to identify the full range of services and the aggregate fee-for-service payments and allowed charges for each service, by zip code.

For those services that are rarely used by Medicare beneficiaries (*e.g.*, pediatrics, obstetrics, gynecology, and neonatal care) and for which all-payer data are not available, the ACO may use other available data to determine the relevant shares. For example, for those services, data on the number of active physicians within the specialty and located within the PSA may be a reasonable alternative for the purposes of calculating shares of physician services.

Example of How To Calculate an ACO's PSA Shares

The following example illustrates how to calculate the ACO's relevant PSA shares. Assume that two independent physician practices, two independent hospitals, and an ASC propose to form an ACO. For purposes of this example, further assume that the hospitals do not directly employ physicians. If they do, then services provided by the hospitals' employed physicians would need to be taken into account in determining the PSA and calculating the ACO's shares for each common physician service where at least two participants provide that service to patients from the same PSA.

For the physician groups:

1. Identify the physician groups' common MSCs. In this example, Physician Group A (''PG A'') has physicians with general surgery (MSC 02) and orthopedic surgery specialties (MSC 20). Physician Group B (''PG B'') has physicians with orthopedic surgery (MSC 20) and cardiology (MSC 06) specialties. The only common service is orthopedic surgery, not general surgery or cardiology, because PG A does not have cardiologists and PG B does not have general surgeons.

2. Identify the zip codes that make up the PSA for each physician group. In this example, there will be two PSAs: one for PG A (''PSA A'') and one for PG B (''PSA B'').

3. Determine the ACO's share in each of the PSAs. In this example, both PG A's and PG B's orthopedic surgeons serve patients

[48] Upon the applicant's request, the reviewing Agency may extend the review beyond 90 days, subject to the availability of resources or other discretionary considerations.

[49] The provisions regarding public access to review information, non-disclosure of competitively sensitive or business confidential information, and retention of review information set forth in 28 CFR 50.6 (2010) (U.S. Department of Justice business review letters) and 16 CFR 1.1–1.4 (2010) (FTC advisory opinions) will generally apply to the expedited review process. Requesters should follow applicable Agency procedures governing the designation of competitively sensitive business information and other information the requesters wish not to be made public in connection with a review request. *See* 28 CFR 50.56 (U.S. Department of Justice procedures); 16 CFR 4.2, 4.9, and 4.10 (FTC procedures).

[50] Any ACO participant that wants to determine whether it meets the dominant participant limitation of the safety zone should calculate its PSA share in a similar manner.

[51] CMS will make publicly available the most current list of applicable specialties. Specialty Codes 01 (general practice), 08 (family practice), 11 (internal medicine), and 38 (geriatric medicine) are considered ''Primary Care'' specialties, and are treated as a single service for the purposes of the Policy Statement.

[52] CMS will make publicly available the most current list of MDCs.

[53] CMS will make publicly available a list of applicable outpatient categories as well as data necessary to assign procedure codes to the appropriate category.

[54] This PSA calculation is based on the Stark II regulations. Medicare Program: Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II), 69 FR 16,094 (Mar. 26, 2004).

located in both PSAs. Thus, shares need to be calculated in PSA A and PSA B. The ACO's share of orthopedic surgery in PSA A would be the total Medicare allowed charges for claims billed by the ACO's orthopedic surgeons (which are PG A's and PG B's total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA A's zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA A. Likewise, the ACO's share of orthopedic surgery services in PSA B would be the total Medicare allowed charges for claims billed by the ACO's orthopedic surgeons (which are PG A's and PG B's total allowed charges for claims billed by orthopedic surgeons for Medicare beneficiaries in PSA B's zip codes) divided by the total allowed charges for orthopedic surgery for all Medicare beneficiaries in PSA B.

For the inpatient services:

1. Identify the hospitals' common MDCs. In this example, Hospital 1 and Hospital 2 each provide services in 10 MDCs, but only two are common services: cardiac care (i.e., services related to diseases and disorders of the circulatory system—MDC 05) and orthopedic care (i.e., services related to diseases and disorders of the musculoskeletal system and connective tissue—MDC 08).

2. Identify the zip codes that make up the PSA for inpatient services for each hospital. In this example, there will be two PSAs: Hospital 1's PSA and Hospital 2's PSA.

3. Determine the ACO's share in each of the PSAs. In this example, Hospital l and Hospital 2 both serve cardiac patients located in each hospital's PSA and both serve orthopedic patients in each hospital's PSA. Thus, shares need to be calculated in both PSAs, resulting in four shares. This hypothetical ACO is located in a state for which all-payer hospital discharge data are available, so the ACO's share of cardiac care in Hospital 1's PSA would be the ACO's total number of inpatient discharges for MDC 05 (which are Hospital 1's and Hospital 2's total inpatient discharges for cardiac care in Hospital l's PSA) divided by the total number of inpatient discharges for MDC 05 for all residents of this PSA. Use the analogous process to calculate the ACO's share of cardiac care in Hospital 2's PSA, the ACO's share of orthopedic care in Hospital 1's PSA, and the ACO's share of orthopedic care in Hospital 2's PSA.

For the outpatient services:

1. Identify the hospitals' and ASC's common outpatient categories. In this example, Hospital 1 does not provide outpatient services, while Hospital 2 and the ASC each provide services in 10 outpatient categories, but only two are common services: cardiovascular tests/procedures (outpatient category 2) and musculoskeletal procedures (outpatient category 5).

2. Identify the zip codes that make up the PSA for outpatient services for Hospital 2 and the ASC. In this example, there will be two PSAs: Hospital 2's PSA for outpatient services and the ASC's PSA.

3. Determine the ACO's share in each of the PSAs. In this example, Hospital 2 and the ASC both provide cardiovascular tests/procedures to patients located in each facility's PSA, and both provide musculoskeletal procedures to patients located in each facility's PSA. Thus, shares need to be calculated in both PSAs, resulting in four shares. The ACO's share of cardiovascular tests/procedures in Hospital 2's PSA would be the ACO's total Medicare fee-for-service payments/charges for outpatient category 2 (which are Hospital 2's total payments and the ASC's total allowed charges for outpatient cardiovascular tests/procedures for Medicare beneficiaries in Hospital 2's PSA) divided by the total payments/charges for outpatient category 2 for all Medicare beneficiaries in this PSA. Use the analogous process to calculate the ACO's share of cardiovascular tests/procedures in the ASC's PSA, the ACO's share of musculoskeletal procedures in Hospital 2's PSA, and the ACO's share of musculoskeletal procedures in the ASC's PSA.

Application to the Safety Zone: In this example, the ACO would calculate ten PSA shares. If all of the shares are 30 percent or below, and the hospitals and the ASC are non-exclusive to the ACO, then the ACO would fall within the safety zone. In other words, the 30 percent threshold must be met in each relevant PSA for each common service. If that condition is not met, then the ACO does not fall within the safety zone, unless it qualifies for the rural exception.

For the Antitrust Division of the Department of Justice.

Sharis A. Pozen,

Acting Assistant Attorney General.

For the Federal Trade Commission.

Donald S. Clark,

Secretary.

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Part III

The President

Proclamation 8741—To Take Certain Actions Under the African Growth and Opportunity Act

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8741 of October 25, 2011

To Take Certain Actions Under the African Growth and Opportunity Act

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an ''eligible sub-Saharan African country'' if the President determines that the country meets certain eligibility requirements.

3. Section 112(c) of the AGOA, as added in section 6002 of the Africa Investment Incentive Act of 2006 (Division D, title VI of Public Law 109–432) (19 U.S.C. 3721(c)), provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

4. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Republic of Côte d'Ivoire (Côte d'Ivoire), the Republic of Guinea (Guinea), and the Republic of Niger (Niger) meet the eligibility requirements set forth or referenced therein, and I have decided to designate Côte d'Ivoire, Guinea, and Niger as eligible sub-Saharan African countries and as beneficiary sub-Saharan African countries.

5. Côte d'Ivoire, Guinea, and Niger each satisfy the criterion for treatment as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(c) of the AGOA.

6. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 104 of the AGOA (19 U.S.C. 3703), and title V and section 604 of the 1974 Act (19 U.S.C. 2461–67, 2483), do hereby proclaim that:

(1) Côte d'Ivoire, Guinea, and Niger are designated as eligible sub-Saharan African countries and as beneficiary sub-Saharan African countries.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Republic of Côte d'Ivoire'', ''Republic of Guinea'', and ''Republic of Niger''.

(3) For purposes of section 112(c) of the AGOA, Côte d'Ivoire, Guinea, and Niger are lesser developed beneficiary sub-Saharan African countries.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of October, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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H.R. 2832/P.L. 112–40

To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

H.R. 3080/P.L. 112–41

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