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FEDERAL REGISTER

Vol. 77 Wednesday,

No. 21 February 1, 2012

Pages 4885–5154

OFFICE OF THE FEDERAL REGISTER

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

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA80

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Rural Business-Cooperative Service is making several technical amendments to correct the Rural Business Investment Program (RBIP) regulation, including one to conform to the 2008 Farm Bill provision that allows a Rural Business Investment Company two years to raise its capital.

DATES: *Effective date.* This rule is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Foore, U.S. Department of Agriculture, 1400 Independence Ave. SW., Washington, DC 20250; telephone number: (202) 690–4730; e-mail: *michael.foore@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Need for Correction

On June 8, 2004, the Agency published an Interim Rule for the Rural Business Investment Program (RBIP) (69 FR 32200). Since then, the Food, Conservation, and Energy Program of 2008 (the 2008 Farm Bill) was enacted. The 2008 Farm Bill affects several provisions of the RBIP rule, including the amount of time a RBIC has to raise its regulatory capital. Specifically, section 6027(c) requires RBICs to have a period of two years to meet the capital requirements.

On December 23, 2011 (76 FR 80217), the Agency published an amended RBIP Interim Rule, with request for comment, which addressed, among other items, the provisions of the 2008 Farm Bill. One of those changes was adding a new paragraph (§ 4290.210(c)) that addresses the time frame that each RBIC will have to meet the capital requirements. However, the Agency did not make a conforming change to § 4290.390(a)(1), where a 12-month period for raising the regulatory capital is referenced. Through this Notice, the Agency is conforming § 4290.390(a)(1) to the 2008 Farm Bill by removing reference to the 12-month period.

In addition, the Agency is:

• Replacing ''debenture'' with ''licensure'' in the table of contents to 7 CFR 4290 and in the title to § 4290.3041;

• Correcting § 4290.3003 to reference the ''Small Business Administration'' rather than the ''Small Business Association'' and removing an unnecessary reference to the Small Business Administration; and

• Correcting the cross-reference to § 4290.340(d) in § 4290.3010 to § 4290.340(a) and limiting its applicability to ensuring that applicants are evaluated in a fair and consistent manner.

List of Subjects in 7 CFR Part 4290

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, part 4290 of Chapter XLII of Title 7 of the Code of Federal Regulations is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (RBIC) PROGRAM

■ 1. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2099cc *et seq.*

■ 2. Paragraph (a)(1) of § 4290.390 is revised to read as follows:

§ 4290.390 Licensing as a RBIC.

(a) * * *

(1) Raise the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (see § 4290.210 for additional information).

* * * * *

■ 3. Section 4290.3003 is revised to read as follows:

§ 4290.3003 Responsibilities for implementing Non-leveraged RBICs.

Section 4290.45 does not apply to Non-leveraged RBICs. Instead, for the purposes of this part as it applies to Non-leveraged RBICs, all authorities and responsibilities assigned to the Secretary under this part shall be carried out by the Secretary. Thus, when applying subparts A through N of this part to Non-leveraged RBICs, all references to the Small Business Administration (SBA) or Administrator on behalf of USDA shall be read as the Secretary. All forms shall be submitted to USDA or its designee.

■ 4. Paragraph (b) of § 4290.3010 is revised to read as follows:

§ 4290.3010 Application and Approval Process for RBIC licensing without leverage.

* * * * *

(b) The provision for evaluating applicants on a competitive basis, as specified in § 4290.340(a), does not apply to this subpart.

* * * * *

■ 5. The section heading of § 4290.3041 is revised to read as follows:

§ 4290.3041 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of licensure.

* * * * *

Dated: January 22, 2012.

Dallas Tonsager,

Under Secretary, Rural Development.

[FR Doc. 2012–1969 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF ENERGY

10 CFR Part 780

RIN 1990–AA33

Patent Compensation Board Regulations

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending its Patent

Compensation Board regulations to provide that the Secretary of Energy, or a person acting in that position, shall appoint, as needed, a three member panel to serve as the Patent Compensation Board to hear and decide cases falling under the subject matter jurisdiction of the Board. The Secretary of Energy shall further designate one member as the chairman. This action is made necessary by the abolishment of the Department of Energy Board of Contract Appeals, which had previously served as the Patent Compensation Board.

DATES: This final rule is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave. SW., Washington, DC 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION:

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II. Final Action
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I. Discussion

The DOE regulations at 10 CFR part 780 establish the procedures, terms, and conditions for the DOE Patent Compensation Board. The Patent Compensation Board was established by section 157 of the Atomic Energy Act of 1954 (the ''Act'') (42 U.S.C. 2187). Under section 157, the Board is given authority to determine reasonable royalty fees and to resolve issues involving the grant of awards. In addition, the Board has authority: (a) To hear and make decisions as to compensation under section 173 of the Act (42 U.S.C. 2223) and the Invention Secrecy Act (35 U.S.C. 183); (b) to hear and make decisions as to whether a specific patent is affected with the public interest pursuant to section 153a of the Act (42 U.S.C. 2183(a)); (c) to hear and make decisions as to whether a specific patent license should be granted under sections 153b(2) and 153e of the Act (42 U.S.C. 2183(b)(2), (e)); (d) to give notices, hold hearings and take such other actions as may be necessary under section 153; and (e) to exercise all powers available under the Act and necessary for the performance of these duties, including the issuance of such rules of procedure as may be necessary.

Part 780 has several outdated sections that need amending because of the abolishment of the Energy Board of Contract Appeals (EBCA). The EBCA served as the Patent Compensation Board under the current regulations. DOE is amending certain sections of 10 CFR part 780 that related to the EBCA operating as the Patent Compensation Board. DOE is also amending the regulations to provide that the Secretary of Energy, or a person acting in that position, appoint a three member panel to serve as the Patent Compensation Board. The Secretary of Energy shall further designate one member as the chairman. None of these changes are substantive.

II. Final Action

DOE is publishing this final rule without prior notice and opportunity for public comment, and is making the rule effective upon publication in the **Federal Register**, because the Administrative Procedure Act exempts rules of procedure from its notice and comment and delayed effective date requirements (5 U.S.C. 553(b)(3)(A) and (d)).

III. Regulatory Review

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this final rule was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because a general notice of proposed rulemaking is not required by any law, the analytical provisions of the Regulatory Flexibility Act do not apply, and DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–08), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, DOE has determined that today's regulatory action is strictly procedural (Categorical Exclusion A6). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

D. Review Under the Paperwork Reduction Act

This final rule contains no new collection of information requiring OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O.12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does not have a substantial direct effect on the states, on

the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104)–4) requires a federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to state, local or tribal governments, or to the private sector. This rulemaking does not impose a federal mandate on state, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule will have no impact on family, the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policy Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR Part 780

Administrative practice and procedure, Inventions and patents.

Issued in Washington, DC, on December 23, 2011.

Daniel B. Poneman,

Deputy Secretary of Energy.

For the reasons set forth in the preamble, DOE amends Chapter III of Title 10 of the Code of Federal Regulation as set forth below:

PART 780—PATENT COMPENSATION BOARD REGULATIONS

■ 1. The authority citation for part 780 continues to read as follows:

Authority: 42 U.S.C. 7151, 7254; 42 U.S.C. 5814, 5815; 42 U.S.C. 2183, 2187, 2223; 35 U.S.C. 183; North American Free Trade Agreement, Article 1709(10), as implemented by the North American Free Trade Agreement Implementation Act, Pub. L. 103–182.

■ 2. Section 780.4 is revised to read as follows:

§ 780.4 Filing and service of documents.

(a) All communications regarding proceedings subject to this part should be addressed to: Chairman, Patent Compensation Board, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All documents offered for filing shall be accompanied by proof of service upon all parties to the proceeding or their attorneys of record as required by law, rule, or order of the Department. Service on the Department shall be by mail or delivery to: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

(b) Filing by mail will be deemed to be complete as of the time of deposit in the United States mail.

■ 3. Revise § 780.9 to read as follows:

§ 780.9 Make-up of the Patent Compensation Board.

The DOE Secretary of Energy, or a person acting in that position, shall appoint a three member panel to serve as the Patent Compensation Board to hear and decide cases falling under the subject matter jurisdiction set forth in § 780.3 of this part. The Secretary of Energy shall further designate one member as the chairman. The Board may be appointed to hear cases on an ad hoc basis, or on other such term of service deemed appropriate by the Secretary. All proceedings shall be conducted pursuant to rules of procedure provided by the Board.

[FR Doc. 2012–2159 Filed 1–31–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 781

RIN 1990–AA41

DOE Patent Licensing Regulations

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its patent licensing regulations to remove outdated sections and provide for the creation of a new appeal authority to serve as the Invention Licensing Appeal Board. Under the new regulations, the DOE Deputy General Counsel for Technology Transfer and Procurement shall hear and decide appeals relating to licensing of federally-owned inventions; and to copyright licenses granted in works created under management and operating (M & O) contracts with DOE, but not including M & O contracts administered by the National Nuclear Security Administration (NNSA) for NNSA facilities. The NNSA Deputy General Counsel for Procurement shall hear and decide appeals under management and operating contracts administered by NNSA for NNSA facilities.

DATES: *Effective Date:* This final rule is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 586–2802.

SUPPLEMENTARY INFORMATION:

I. Discussion
II. Final Action
III. Regulatory Review

I. Discussion

The DOE regulations at 10 CFR part 781 were promulgated to establish the procedures, terms, and conditions upon which licenses may be granted in inventions covered by patents or patent applications vested in the United States of America, as represented by or in the custody of DOE. Pursuant to the authority of 35 U.S.C. 206, the Department of Commerce since issued regulations on licensing of government-owned inventions, which are codified at 37 CFR part 404. Those regulations currently supersede, to the extent inconsistent, the DOE regulations at 10 CFR part 781 and similarly prescribe the terms, conditions, and procedures upon which a federally-owned invention may be licensed. 10 CFR part 781 has served to supplement 37 CFR part 404 to include, among other things, provisions for appeals, referencing procedures of the DOE Board of Contract Appeals. The DOE Board of Contract Appeals has since been terminated. That board served as the Invention Licensing Appeal Board under the current DOE regulations at 10 CFR part 781. Accordingly, several sections of part 781 contain language that has become outdated since the codification of the DOE patent licensing regulations.

Also, since the original codification of the patent licensing regulations at 10 CFR part 781, DOE has promulgated the regulations at 48 CFR part 970, which govern its M & O contracts. Those regulations provide that M & O contractors may with agency permission assert copyright in works first produced in performance of their contracts. However, where the contractor has not made a satisfactory demonstration that it or any of its licensees is pursuing commercialization, DOE may require that licenses be granted to other responsible applicants. Pursuant to 48 CFR 970.5227–2(e)(3)(vi), M & O contractors may appeal such decisions to the Invention Licensing Appeal Board.

DOE takes this opportunity to amend its regulations at 10 CFR part 781 to remove outdated sections and provide for the creation of a new appeal authority to serve as the Invention Licensing Appeal Board. Under the new regulations, the DOE Deputy General Counsel for Technology Transfer and Procurement shall hear and decide appeals arising under: (1) 37 CFR 404.11, relating to licensing of federally-owned inventions; and (2) 48 CFR 970–5227–2(e)(3)(vi), relating to copyright licenses granted in works created under M & O contracts with DOE, but not including M & O contracts administered by NNSA for NNSA facilities. The NNSA Deputy General Counsel for Procurement shall hear and decide appeals under 48 CFR 970–5227–2(e)(3)(vi) arising under M & O contracts administered by NNSA for NNSA facilities.

II. Final Action

DOE is publishing this final rule without prior notice and opportunity for public comment, and is making the rule effective upon publication in the **Federal Register**, because the Administrative Procedure Act exempts rules of procedure from its notice and comment and delayed effective date requirements (5 U.S.C. 553(b)(3)(A) and (d)).

III. Regulatory Review

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this final rule was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because a general notice of proposed rulemaking is not required by any law, the analytical provisions of the Regulatory Flexibility Act do not apply, and DOE has not prepared a regulatory flexibility analysis for this rulemaking.

C. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–08), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, DOE has determined that today's regulatory action is strictly procedural (Categorical Exclusion A6). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

D. Review Under the Paperwork Reduction Act

This final rule contains no new collection of information requiring OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of E.O. 12988.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999) imposes

certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to state, local or tribal governments, or to the private sector. This rulemaking does not impose a Federal mandate on state, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule will have no impact on family, the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policy Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR Part 781

Administrative practice and procedure, Inventions and patents.

Issued in Washington, DC, on December 23, 2011.

Daniel B. Poneman,

Deputy Secretary of Energy.

For the reasons set forth in the preamble, DOE amends Chapter III of Title 10 of the Code of Federal Regulations as set forth below:

PART 781—DOE PATENT LICENSING REGULATIONS

■ 1. The authority citation for Part 781 is revised to read as follows:

Authority: 42 U.S.C. 2186, 42 U.S.C. 2201(g), and 35 U.S.C. 207–209.

■ 2. Section 781.1 is revised to read as follows:

§ 781.1 Scope.

The regulations of this part supplement the U.S. Department of Commerce regulations, entitled LICENSING OF GOVERNMENT OWNED INVENTIONS, at 37 CFR Part 404.

■ 3. Section 781.2 is revised to read as follows:

§ 781.2 Policy.

(a) It is the policy of this regulation to use the patent system to promote the utilization of inventions arising from Department of Energy supported research and development.

(b) Decisions as to grants or denials of any license application will, in the discretion of the Secretary of Energy, be based on the Department of Energy's view of what is in the best interests of the United States and the general public under the provisions of these regulations. Decisions of the Department of Energy under these regulations may be made on the Secretary of Energy's behalf by the Assistant General Counsel for Technology Transfer and Intellectual Property, except where otherwise delegated.

§ 781.3 [Removed and Reserved]

■ 4. Remove and reserve § 781.3.

■ 5. Section 781.4 is revised to read as follows:

§ 781.4 Communications.

All communications concerning the regulations in this part, including applications for licenses, should be addressed or delivered to the General Counsel, Attention: Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

§§ 781.51 and 781.52 [Removed and Reserved]

■ 6. Remove and reserve §§ 781.51 and 781.52.

■ 7. Section 781.53 is revised to read as follows:

§ 781.53 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Department of Energy from granting additional nonexclusive, or exclusive, or partially exclusive licenses for inventions covered by this part when the Department of Energy determines that to do so would provide for an equitable exchange of patent rights. The following circumstances are examples in which such licenses may be granted:

(a) In consideration of the settlement of interferences or other administrative

proceedings before the U.S. Patent and Trademark Office;

(b) In consideration of a release of any claims;

(c) In exchange for or as a part of the consideration for a license under adversely held patents;

(d) As necessary for meeting obligations of the U.S. under any treaty, international agreement arrangement or cooperation, memorandum of understanding or similar arrangement; or

(e) In consideration for the settlement or resolution of any proceeding under the Department of Energy Organization Act or other law.

§§ 781.61, 781.62, 781.63, and 781.64 [Removed and Reserved]

■ 8. Remove and reserve §§ 781.61, 781.62, 781.63, and 781.64.

■ 9. Section 781.65 is revised to read as follows:

§ 781.65 Appeals.

(a) Standing. The following parties have the right to appeal under this part:

(1) Pursuant to 37 CFR 404.11:

(i) A person whose application for a license has been denied;

(ii) A licensee whose license has been modified or terminated, in whole or in part;

(iii) A person who timely filed a written objection in response to the notice required by 37 CFR 404.7(a)(1)(i) or (b)(1)(i) and who can demonstrate to the satisfaction of the Federal agency that such person may be damaged by the agency action; or

(2) A management and operating contractor appealing an agency decision to grant a copyright license to a third party pursuant to the Rights in Data-Technology Transfer clause for DOE management and operating contracts per 48 CFR part 970.

(b) Notice of Appeal. Appeal under paragraph (a) of this section shall be initiated by filing a Notice of Appeal with the Secretary, ATTN: Deputy General Counsel for Technology Transfer and Procurement (''Deputy General Counsel''), within thirty (30) days from the date of receipt of a written notice by the Department of Energy of an action set forth in paragraph (a) of this section. The Notice of Appeal shall specify the portion of the decision from which the appeal is taken. A statement of fact and argument in the form of a brief in support of the appeal shall be submitted with the Notice of Appeal or within thirty (30) days thereafter.

(c) Procedure. Appeals under this section shall be conducted pursuant to rules of procedure provided by the Deputy General Counsel.

(d) Within sixty (60) days of receiving appellant's brief pursuant to paragraph (b) of this section or such other time period set by the Deputy General Counsel, the Office of the Assistant General Counsel for Technology Transfer and Intellectual Property shall submit to the Deputy General Counsel a response brief and shall timely serve a copy of the response brief to appellant.

(e) The Deputy General Counsel shall consider the facts and arguments submitted in appellant's brief submitted under paragraph (b) of this section, as well as those presented by the Assistant General Counsel for Technology Transfer and Intellectual Property. An appeal by a licensee under paragraph (a)(1)(ii) of this section may include a hearing, upon request of the licensee, to address a dispute over any relevant fact. Such request for a hearing must be received by the Deputy General Counsel within thirty (30) days of appellant's receipt of the response brief.

(f) The Deputy General Counsel shall issue a written decision, which shall constitute the final action of the Department on the matter.

(g) The parties may agree to Alternate Dispute Resolution in lieu of an appeal.

(h) Appeals Arising Under National Nuclear Security Administration (NNSA) Management and Operating Contracts. For appeals pursuant to paragraph (a)(2) of this section arising under management and operating contracts administered by NNSA for NNSA facilities, the NNSA Deputy General Counsel for Procurement shall be designated as the appeal authority (Deputy General Counsel) pursuant to paragraphs (b) through (f) of this section.

§§ 781.66, 781.71, and 781.81 [Removed and Reserved]

■ 10. Remove and reserve §§ 781.66, 781.71 and 781.81.

[FR Doc. 2012–2162 Filed 1–31–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. FAA–2009–0660; Amdt. Nos. 27–47A, 29–54A; and Docket No. FAA–2009–0413; Amdt. No. 29–55A]

RIN 2120–AJ52, 2120–AJ51

Damage Tolerance and Fatigue Evaluation for Composite Rotorcraft Structures, and Damage Tolerance and Fatigue Evaluation for Metallic Structures; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting two final rules, ''Damage Tolerance and Fatigue Evaluation for Composite Rotorcraft Structures'' (76 FR 74655), published December 1, 2011, and ''Damage Tolerance and Fatigue Evaluation for Metallic Structures'' (76 FR 75435), published December 2, 2011. In the ''Composite Rotorcraft Structures'' rule, the FAA amended its regulations to require evaluation of fatigue and residual static strength of composite rotorcraft structures using a damage tolerance evaluation, or a fatigue evaluation if the applicant establishes that a damage tolerance evaluation is impractical. In the ''Metallic Structures'' rule, the FAA amended its regulations to address advances in structural fatigue substantiation technology for metallic structures to provide an increased level of safety by avoiding or reducing the likelihood of the catastrophic fatigue failure of a metallic structure. This document corrects errors in the preamble of those two documents by adding a statement advising that affected parties do not need to comply with the information collection requirements until the Office of Management and Budget (OMB) approves the collections.

DATES: This correction is effective February 1, 2012. The ''Composite Rotorcraft Structures'' final rule becomes effective January 30, 2012. The ''Metallic Structures'' final rule becomes effective January 31, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Sharon Y. Miles, Regulations and Policy Group, Rotorcraft Directorate, ASW–111, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137; telephone (817) 222–5122; facsimile (817) 222–5961; email

sharon.y.miles@faa.gov. For legal questions concerning this action, contact Steve C. Harold, Directorate Counsel, ASW–7G, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, telephone (817) 222–5099; facsimile (817) 222–5945, email steve.c.harold@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2011, the FAA published the final rule entitled, ''Damage Tolerance and Fatigue Evaluation for Composite Rotorcraft Structures'' (76 FR 74655). On December 2, 2011, the FAA published the final rule entitled, ''Damage Tolerance and Fatigue Evaluation for Metallic Structures'' (76 FR 75435).

In the ''Composite Rotorcraft Structures'' final rule, the FAA amended its regulations to require evaluation of fatigue and residual static strength of composite rotorcraft structures using a damage tolerance evaluation, or a fatigue evaluation if the applicant establishes that a damage tolerance evaluation is impractical.

In the ''Metallic Structures'' final rule, the FAA amended its regulations to address advances in structural fatigue substantiation technology for metallic structures. This provides an increased level of safety by avoiding or reducing the likelihood of the catastrophic fatigue failure of a metallic structure. These increased safety requirements help ensure that should serious accidental damage occur during manufacturing or within the operational life of the rotorcraft, the remaining structure could withstand, without failure, any fatigue loads that are likely to occur, until the damage is detected or the part is replaced.

Both final rules included information collection requirements. However, the FAA inadvertently neglected to include a statement advising affected parties that they are not required to comply with these portions of the regulations until the Office of Management and Budget (OMB) approves the collections and assigns control numbers under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control numbers assigned by OMB when these information collection requirements are approved.

Corrections

In FR Doc. 2011–30945, beginning on page 74655 in the **Federal Register** of December 1, 2011, make the following correction:

On page 74655, in the second column, after ''Dates: Effective January 30, 2012.'', insert ''Affected parties, however, are not required to comply with the information collection requirement in §§ 27.573 and 29.573 until the Office of Management and Budget (OMB) approves the collection and assigns a control number under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement.''

In FR Doc. 2011–30941, beginning on page 75435 in the **Federal Register** of December 2, 2011, make the following correction:

On page 75435, in the second column, after ''Dates: Effective January 31, 2012.'', insert ''Affected parties, however, are not required to comply with the information collection requirement in § 29.571 until the Office of Management and Budget (OMB) approves the collection and assigns a control number under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement.''

Issued in Washington, DC, on January 26, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–2170 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1b, 2, 3a, 4, 5, 11, 12, 131, 157, 284, 376, 380, and 385

[Docket No. RM11–30–000; Order No. 756]

Technical Corrections to Commission Regulations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing this Final Rule to make minor changes to its regulations. This Final Rule revises a number of references that have become outdated for various reasons or contain typographical errors. Generally, these changes add or delete language in the current regulations by eliminating obsolete information, incorporating reference to updated electronic filing options, modernizing language, and correcting incorrect citations and clerical mistakes. The revisions are intended to be ministerial and/or informational in nature.

DATES: *Effective Date:* The rule will become effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth Yu, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8482.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued January 19, 2012.

I. Introduction

1. The Commission is issuing this Final Rule to make minor changes to its regulations. This Final Rule revises a number of references that have become outdated for various reasons or contain typographical errors. Generally, these changes add or delete language in the current regulations by eliminating obsolete information, incorporating reference to updated electronic filing options, modernizing language, and correcting incorrect citations and clerical mistakes. The revisions are intended to be ministerial and/or informational in nature.

II. Discussion

A. Minor Revisions To Correct References and Outdated Nomenclature

2. In Part 3a of Title 18 of the *Code of Federal Regulations,* this Final Rule corrects references, where appropriate, to the ''FPC'' and the ''Federal Power Commission'' (the predecessor to the Federal Energy Regulatory Commission) to read ''FERC'' or ''Federal Energy Regulatory Commission.'' Additionally, the Commission's contact information is updated and corrected in Part 380.

3. In Parts 2, 3a, 4, 12, and 284, references to outdated titles, positions, and technologies are revised.

4. In Parts 1b, 2, 4, 5, 131, 157, 284, 376, and 380, multiple outdated and incorrect references to Commission regulations, guidelines, the **Federal Register**, and Federal statutes are removed or corrected.

B. Corrections to Grammatical, Typesetting, and Typographical Mistakes

5. In Parts 1b, 2, 4, 157, 380, and 385, this Final Rule corrects grammatical, typesetting, and typographical mistakes in the Commission's regulations to improve the clarity and accuracy of the regulations.

C. Renumbering of Disjointed Section Numbering

6. As a result of the deletions and corrections made to references to the Commission's regulations in this and previous rulemakings, the ordering and numbering of regulations in Part 5 are disjointed. This Final Rule corrects this problem.

D. Minor Revisions By Referencing to Web site Language

7. Part 11 of the Commission's regulations pertain to annual charges. In § 11.2(b), reference is made to the outdated fee schedule for FY 2010. Therefore, in order to reference the most current fee schedule, the Final Rule removes outdated language from the regulations and replaces it with reference to the current language provided on the Commission's Web site.

III. Information Collection Statement

8. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[1] This Final Rule contains no new information collections and makes no changes to existing information collections that would require a formal OMB review.[2] Therefore, the Commission will submit this Final Rule to OMB for informational purposes only.

IV. Environmental Analysis

9. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[3] Excluded from this requirement are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[4] Because this Final Rule only eliminates obsolete information, incorporates updated electronic filing options, clarifies ambiguous language, and corrects clerical and citation references, it is not an action that has a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. This rule is procedural in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act Certification

10. The Regulatory Flexibility Act of 1980 (RFA)[5] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Because this Final Rule only provides clarification and corrects the Commission's regulations, the Commission does not anticipate that it will have an impact on any small entities. Therefore, the Commission certifies that this Final Rule will not have significant economic impact on a substantial number of small entities.

VI. Document Availability

11. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Web site (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern Standard Time) at 888 First Street NE., Room 2A, Washington, DC 20426.

12. From the Commission's homepage on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

13. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *ferconlinesupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (email at *public.referenceroom@ferc.gov*).

VII. Effective Date and Congressional Notification

14. These regulations are effective on the date of issuance. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective immediately. It makes minor revisions with respect to matters of internal operations and is unlikely to affect the rights of persons appearing before the Commission. There is therefore no reason to make this rule effective at a later time.

15. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this Final Rule because this Final Rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

16. The Commission is issuing this Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

List of Subjects

18 CFR Part 1b

Investigations.

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 3a

Classified information.

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements, Water resources.

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 11

Administrative practice and procedure, Dams, Electric power, Public lands, Reporting and recordkeeping requirements, Water resources.

18 CFR Part 12

Administrative practice and procedure, Dams, Electric power, Public

[1] *See* 5 CFR 1320.12.

[2] Two changes to Commission regulations are made to conform them to current Commission practice. First, the rule removes 18 CFR 4.34(b)(5)(iv) concerning new requests for water quality certification if an application to amend an existing license or an application to amend a pending application for a license would have a material adverse impact on the water quality in the discharge from the project or proposed project. The Commission has not enforced the information collection requirement in § 4.34(b)(5)(iv) for many years based on current practice and court precedent (*Alabama Rivers Alliance* v. *FERC,* 325 F.3d 290 (DC Cir. 2003)). Second, the modification to § 284.270 reflects current practice for submitting the required documentation since the telegraph is no longer used. Therefore, the changes to the regulations are being made to reflect current practice.

[3] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[4] *See* 18 CFR 380.4(a)(2).

[5] 5 U.S.C. 601–12.

lands, Reporting and recordkeeping requirements, Water resources.

18 CFR Part 131

Accounting, Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 284

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 376

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 380

Administrative practice and procedure, Electric power, Historic preservation, Natural gas, Natural resources, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is amending Parts 1b, 2, 3a, 4, 5, 11, 12, 131, 157, 284, 376, 380, and 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 1b—RULES RELATING TO INVESTIGATIONS

■ 1. The authority citation for Part 1b is revised to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988); E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 2. In § 1b.11, remove the last sentence.

■ 3. In § 1b.12, remove the last sentence.

■ 4. In § 1b.14(a), remove the phrase ''shall be made be the investigating officer'' and add the phrase ''shall be made by the investigating officer'' in its place.

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 5. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 4321–4370h, 7101–7352.

§ 2.1 [Amended]

■ 6. In § 2.1:

■ a. In paragraph (a)(1)(xi)(E), remove the phrase ''pursuant to § 3.5(a)(26) of this subchapter''.

■ b. In paragraph (a)(1)(xi)(F), correct the reference ''§ 3.75.302(j)'' to read ''§ 385.2008''.

■ 7. In § 2.9, revise the last sentence of paragraph (a), and revise paragraph (b) to read as set forth below, and remove paragraph (c).

§ 2.9 Conditions in preliminary permits and licenses—list of and citations to ''P—'' and ''L—'' forms.

(a) * * * The forms and their revisions are published on the Commission's Web site (*www.ferc.gov/industries/hydropower/gen-info/comp-admin/l-forms.asp*).

(b) Forms currently in use may be obtained on the Commission's Web site or from Federal Energy Regulatory Commission, Washington, DC 20426.

§ 2.13 [Amended]

■ 8. In § 2.13:

■ a. Redesignate paragraph (c) as paragraph (b).

■ b. In newly designated paragraph (b), remove the phrase ''including compliance with the Commission's 'Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities' ''.

PART 3a—NATIONAL SECURITY INFORMATION

■ 9. The authority citation for Part 3a is revised to read as follows:

Authority: 15 U.S.C. 717o; 16 U.S.C. 825h.

§§ 3a.1, 3a.12, and 3a.51 [Amended]

■ 10. Remove the words ''Federal Power Commission'' and add, in their place, the words ''Federal Energy Regulatory Commission'' in the following places:

■ a. Section 3a.1;

■ b. Section 3a.12(c)(2); and

■ c. Section 3a.51(a).

§§ 3a.12, 3a.13, 3a.22, 3a.23, 3a.41, 3a.71, 3a.81 [Amended]

■ 11. Remove the word ''FPC'' and add, in its place, the word ''FERC'' wherever it appears in the following places:

■ a. Section 3a.12(e);

■ b. Section 3a.13(a) and (f);

■ c. Section 3a.22(a), (c), (d), (f) introductory text, (f)(2), and (g)(3)(i);

■ d. Section 3a.23(a), (e), (f), and (i);

■ e. Section 3a.41(d);

■ f. Section 3a.71(c), (d) introductory text, and (d)(3); and

■ g. Section 3a.81(a), (c), (d), (e) introductory text, and (g).

§ 3a.23 [Amended]

■ 12. In § 3a.23:

■ a. In paragraph (b), remove the words ''Office of the Secretary, Federal Power Commission, Washington, DC 20426'' and add the words ''Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426'' in their place. Footnote 1 in the phrase is also removed.

■ b. In paragraphs (b), (c), (g), and (h), remove the words ''FPC Review Committee'' and add, in their place, the words ''FERC Review Committee'' wherever they appear.

§ 3a.51 [Amended]

■ 13. In § 3a.51(a), remove the words ''FPC Security Officer'' and add, in their place, the words ''FERC Security Officer''.

§ 3a.61 [Amended]

■ 14. In § 3a.61(c)(3), remove the words ''FPC Top Secret Control Officer'' and add, in their place, the words ''FERC Top Secret Control Officer''.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 15. The authority citation for Part 4 is revised to read as follows:

Authority: 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

§ 4.32 [Corrected]

■ 16. In § 4.32:

■ a. In paragraph (a)(4)(i), correct the reference ''paragraph (a)(3)(ii)'' to read ''paragraph (a)(4)(ii)''.

■ b. In paragraph (c)(1), correct the words ''Every application for a licensee'' to read ''Every applicant for a license'' and correct the reference ''§ 4.38(b)(1)(vi)'' to read ''§ 4.38(b)(2)(vi)''.

§ 4.34 [Amended]

■ 17. Remove § 4.34(b)(5)(iv).

§ 4.35 [Corrected]

■ 18. In § 4.35(a), correct the phrase ''the amendment to the applicant was filed'' to read ''the amendment to the application was filed''.

§ 4.38 [Corrected]

■ 19. In § 4.38(a)(1), correct the reference ''paragraph (a)(4)'' to ''paragraph (a)(6)''.

§ 4.39 [Amended]

■ 20. In § 4.39, add the phrase ''Each map must have:'' after the last sentence in paragraph (b) introductory text.

§ 4.81 [Amended]

■ 21. In § 4.81(b)(5), correct the reference ''paragraph (e)(3)'' to read ''paragraph (d)(3)(i)'' and add the words ''(FERC Form 587)'' after the words ''such lands must be identified on a completed land description form'' in the second sentence.

§ 4.106 [Corrected]

■ 22. In § 4.106,

■ a. In paragraph (h) introductory text, remove the phrase ''is subject to the following provisions of 18 CFR part 12, as it may be amended'' and add, in its place, the phrase ''is subject to Part 12 of the Commission's regulations, part 12 of this title (as they may be amended from time to time)''.

■ b. Remove paragraphs (h)(1) through (h)(5).

■ c. In paragraph (i), add the heading ''*Article 9.''* to the beginning of the paragraph.

§ 4.201 [Corrected]

■ 23. In § 4.201(d)(1), correct the words ''If an applicant for license'' to read ''If an applicant for license amendment,'' correct the reference ''§ 385.207(c)(4)'' to read ''§ 385.207'' and correct the term ''Division by Hydropower Licensing'' to read ''Division of Hydropower Compliance and Administration''.

§ 4.301 [Corrected]

■ 24. In § 4.301(b), correct the reference ''§ 4.38(b)(2)(iv)'' to read ''§ 4.38(c)(5)''.

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

■ 25. The authority citation for Part 5 is revised to read as follows:

Authority: 16 U.S.C. 792–828c, 2601–2645; 42 U.S.C. 7101–7352.

§ 5.17 [Corrected]

■ 26. In § 5.17(e)(1), correct the reference ''§ 4.38(b)(1)(vi)'' to read ''§ 4.38(b)(2)(vi)''.

§ 5.18 [Amended]

■ 27. In § 5.18, remove the designation ''(2)'' from the paragraph following paragraph (b)(5)(ii)(H) and redesignate it as paragraph (b)(5)(iii).

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

■ 28. The authority citation for Part 11 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352.

§ 11.2 [Amended]

■ 29. In § 11.2(b), remove the words ''as set out in Appendix A of this part'' and add, in their place, the words ''as set out on the Commission's Web site (*http://www.ferc.gov*)''.

Appendix A to Part 11 [Removed]

■ 30. Remove Appendix A to Part 11—Fee Schedule for FY 2010.

PART 12—SAFETY OF WATER POWER PROJECTS AND PROJECT WORKS

■ 31. The authority citation for Part 12 is revised to read as follows:

Authority: 16 U.S.C. 792–828c; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 12.4 [Corrected]

■ 32. In § 12.4(a), correct the words ''Director of the Office of Energy Projects Licensing'' to read ''Director of the Office of Energy Projects''.

PART 131—FORMS

■ 33. The authority citation for Part 131 is revised to read as follows:

Authority: 16 U.S.C. 792–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 131.70 [Corrected]

■ 34. In § 131.70, correct the reference ''§ 11.24'' to read ''§ 11.6''.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 35. The authority citation for Part 157 is revised to read as follows:

Authority: 15 U.S.C. 717–717z.

§ 157.6 [Corrected]

■ 36. In § 157.6(a)(5), correct the reference ''§§ 385.213 and 385.214'' to read ''§§ 385.215 and 385.216''.

§ 157.21 [Corrected]

■ 37. In § 157.21(a)(1), correct the reference ''33 U.S.C. 127.007'' to read ''33 CFR 127.007''.

§ 157.37 [Corrected]

■ 38. In § 157.37, correct the word ''necessity'' to read ''necessary''.

■ 39. In § 157.205, correct the first sentence of paragraph (e)(1) to read as follows:

§ 157.205 Notice procedure.

* * * * *

(e) Any person or the Commission's staff may file a protest prior to the deadline. * * *

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 40. The authority citation for Part 284 is revised to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

§ 284.102 [Amended]

■ 41. In § 284.102(c), remove the phrase ''and § 284.106''.

§ 284.122 [Corrected]

■ 42. In § 284.122(a), correct the words ''Subject to paragraphs (d) and (e) of this section'' to read ''Subject to paragraph (d) of this section''.

§ 284.270 [Amended]

■ 43. In § 284.270:

■ a. In paragraph (a) introductory text, remove the word ''telegraph'' and add, in its place, the words ''email, facsimile''.

■ b. In paragraphs (b) introductory text and (c) introductory text, remove the word ''telegram'' and add, in its place, the words ''email, facsimile''.

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; OPERATIONS DURING EMERGENCY CONDITIONS

■ 44. The authority citation for Part 376 continues to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142

§ 376.209 [Corrected]

■ 45. In § 376.209(e) introductory text, correct the reference ''section 6(e) of the Interstate Commerce Act'' to read ''section 6(3) of the Interstate Commerce Act''.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

■ 46. The authority citation for Part 380 is revised to read as follows:

Authority: 42 U.S.C. 4321–4370h, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.1 [Amended]

■ 47. In § 380.1, add the word ''(NEPA)'' after the words ''the National Environmental Policy Act of 1969'' in the first sentence and remove the year ''(1986)'' from the second sentence.

§ 380.3 [Corrected]

■ 48. In § 380.3(a)(1), correct the word ''and'' to read ''an''.

§ 380.4 [Corrected]

■ 49. In § 380.4(a)(27), correct the word ''requires'' to read ''require''.

§ 380.5 [Corrected]

■ 50. In § 380.5(b)(7), correct the reference ''§§ 4.30(b)(27) and 4.101–4.106'' to read ''§§ 4.30(b)(29) and 4.101–4.108''.

§ 380.6 [Corrected]

■ 51. In § 380.6(a)(3), correct the words ''right-of-way'' to read ''rights-of-way''.

§ 380.8 [Amended]

■ 52. In § 380.8, remove the words ''Council on Environmental Quality'' and add, in their place, the word ''Council'' and remove the telephone number ''(202) 219–8700'' and add, in its place, the telephone number ''(202) 502–8700''.

§ 380.12 [Amended]

■ 53. In § 380.12:
■ a. In paragraphs (b)(1) and (b)(5), remove the period at the end of the sentence for each paragraph and add, in their place, a semi-colon.
■ b. In paragraph (e)(3), correct the phrase ''affected acreage'' to read ''acreage''.
■ c. In paragraph (f) introductory text, correct the words ''In order to prepare'' to read ''In preparing''.
■ d. In paragraph (f)(2) introductory text, change the ''D'' in the word ''Documentation'' to a lower case letter ''d''.
■ e. In paragraph (i)(5), move the comma following the closing quotation mark for the phrase ''*Upland Erosion Control, Revegetation and Maintenance Plan*'' inside the closing quotation mark to read as ''*Upland Erosion Control, Revegetation and Maintenance Plan,*''.
■ f. In paragraph (o)(12), remove the word ''of'' from the words ''Identify of all codes''.

§ 380.14 [Corrected]

■ 54. In § 380.14(a) introductory text, correct the words ''Commission take'' to read ''Commission to take''.

§ 380.15 [Corrected]

■ 55. In § 380.15(f)(5), correct the word ''above-ground'' to read ''aboveground''.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 56. The authority citation for Part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 792–828c, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

§ 385.2201 [Corrected]

■ 57. In § 385.2201(c)(1), italicize the words ''Contested on-the-record proceeding''.

[FR Doc. 2012–1307 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 529, and 558

[Docket No. FDA–2011–N–0003]

New Animal Drugs; Chloramphenicol, Diethylcarbamazine Citrate, Hygromycin B, Methoxyflurane, Neomycin Sulfate, Penicillin G, Phenylbutazone, Pyrantel Tartrate, Tylosin Phosphate, and Sulfamethazine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of 20 new animal drug applications (NADAs).

DATES: Withdrawal of approval is effective February 13, 2012.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212),Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, email: *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The sponsors of the 20 approved NADAs listed in table 1 of this document have requested that FDA withdraw approval because the products are no longer manufactured or marketed:

TABLE 1—VOLUNTARY REQUESTS FOR WITHDRAWAL OF APPROVAL (WOA) OF 20 NADAS

Application No.	Trade name (drug)	Applicant
NADA 014–485	METOPHANE Inhalation (methoxyflurane)	Medical Developments, International, Ltd., P.O. Box 21, Sandown Village, 3171 VIC Australia.
NADA 032–322	LIQUISONE F with Cerumene (hexamethyltetracosane, prednisolone, tetracaine, neomycin sulfate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 044–655	NEOMYCANE Ophthalmic Ointment (neomycin sulfate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 045–288	OPTISONE (neomycin sulfate, prednisolone acetate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 049–890	NORCO T–2 Pre-Pak (tylosin phosphate)	Norco Mills of Norfolk, Inc., P.O. Box 56, Norfolk, NE 68701.
NADA 055–034	CHLORASOL (chloramphenicol)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 055–052	Chlora-Tabs 100 (chloramphenicol)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 065–158	CHLORICOL (chloramphenicol)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 065–259	CHLORASONE Ophthalmic Ointment (chloramphenicol, prednisolone acetate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.

TABLE 1—VOLUNTARY REQUESTS FOR WITHDRAWAL OF APPROVAL (WOA) OF 20 NADAS—Continued

Application No.	Trade name (drug)	Applicant
NADA 065–488	BENZA–PEN (penicillin G benzathine, penicillin G procaine).	Walco International, Inc., 15 West Putnam, Porterville, CA 93257.
NADA 095–953	MOORMABOOST TY 4000 Medicated (tylosin phosphate).	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 100–689	DIFIL Syrup (diethylcarbamazine citrate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 100–690	DIFIL Tablets (diethylcarbamazine citrate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 107–957	TYLAN 20 Sulfa-G (tylosin phosphate and sulfamethazine).	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 111–069	TYLAN 40 Sulfa-G (tylosin phosphate and sulfamethazine).	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 131–956	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 131–957	TYLAN 40 (tylosin phosphate)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 133–490	Ban-D-Wormer II BANMINTH (pyrantel tartrate)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 140–842	HYGROMIX 2.4 Premix (hygromycin B)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 140–958	EQUIPHEN Paste (phenylbutazone) 520.1720c	Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967.

In a notice published elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 014–485, 032–322, 044–655, 045–288, 049–890, 055–034, 055–052, 065–158, 065–259, 065–488, 095–953, 100–689, 100–690, 107–957, 111–069, 131–956, 131–957, 133–490, 140–842, and 140–958, and all supplements and amendments thereto, is withdrawn, effective February 13, 2012. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these withdrawals of approval and a current format.

Following these withdrawals of approval, Evsco Pharmaceuticals, an Affiliate of IGI, Inc.; Medical Developments International, Ltd.; and Norco Mills of Norfolk, Inc., are no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for these firms.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520, 522, 524, and 529

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 522, 524, 529, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entries for ''Evsco Pharmaceuticals, An Affiliate of IGI, Inc.'', ''Medical Developments International, Ltd.'', and ''Norco Mills of Norfolk, Inc.''; and in the table in paragraph (c)(2), remove the entries for ''017030'', ''025245'', and ''027190''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 4. Revise § 520.390a to read as follows:

§ 520.390a Chloramphenicol tablets.

(a) *Specifications.* Each tablet contains 50, 100, 250, or 500 milligrams (mg); 1 or 2.5 grams (g) of chloramphenicol.

(b) *Sponsors.* See § 510.600(c) of this chapter:

(1) For use as in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section:

(i) No. 000010 for 100-, 250-, and 500-mg; and 1- and 2.5-g tablets;

(ii) No. 000856 for 100-, 250-, and 500-mg tablets;

(iii) No. 000069 for 250-mg tablets.

(2) For use as in paragraphs (c)(1), (c)(2)(ii), and (c)(3) of this section:

(i) No. 061623 for 50-, 100-, 250-, and 500-mg; and 1-g tablets;

(ii) [Reserved]

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 25 mg per pound of body weight by mouth every 6 hours.

(2) *Indications for use*—(i) For the treatment of bacterial pulmonary infections, bacterial infections of the urinary tract, bacterial enteritis, and bacterial infections associated with canine distemper caused by susceptible organisms.

(ii) For the treatment of bacterial gastroenteritis associated with bacterial diarrhea, bacterial pulmonary infections, and bacterial infections of the urinary tract caused by susceptible organisms.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

§ 520.622a [Amended]

■ 5. In § 520.622a, remove and reserve paragraph (a)(4).

§ 520.622b [Amended]

■ 6. In § 520.622b, remove and reserve paragraph (b).

§ 520.1720c [Amended]

■ 7. In § 520.1720c, in paragraph (b)(1), remove ''Nos. 000061 and 010797'' and in its place add ''No. 000061''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 8. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 9. In § 522.1696a, revise paragraphs (b)(1), (b)(3), (d)(1)(iii), and (d)(2)(iii) to read as follows:

§ 522.1696a Penicillin G benzathine and penicillin G procaine suspension.

* * * * *

(b) * * *

(1) Nos. 000856, 055529, and 061623 for use as in paragraph (d)(1) of this section.

* * * * *

(3) No. 000856 for use as in paragraphs (d)(2)(i), (d)(2)(ii)(B), and (d)(2)(iii) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Not for use in beef cattle within 30 days of slaughter. Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Not for use within 30 days of slaughter. For Nos. 055529, 059130, and 061623: A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 10. The authority citation for 21 CFR part 524 continues to read as follows:

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

■ 11. Revise § 524.390 to read as follows:

§ 524.390 Chloramphenicol ophthalmic ointment.

(a) *Specifications.* Each gram contains 10 milligrams chloramphenicol.

(b) *Sponsors.* See Nos. 000856 and 025463 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Apply every 3 hours around the clock for 48 hours, after which night instillations may be omitted.

(2) *Indications for use.* For treatment of bacterial conjunctivitis caused by pathogens susceptible to chloramphenicol.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§§ 524.390a, 524.390b, and 524.390d [Removed]

■ 12. Remove §§ 524.390a, 524.390b, and 524.390d.

§§ 524.1484a, 524.1484j, and 524.1484k [Removed]

■ 13. Remove 524.1484a, 524.1484j, and 524.1484k.

§§ 524.1880 [Removed]

■ 14. Remove 524.1880.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 15. The authority citation for 21 CFR part 529 continues to read as follows:

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

§ 529.1455 [Removed]

■ 16. Remove 529.1455.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.274 [Amended]

■ 18. In § 558.274, remove and reserve paragraph (a)(7); and in the table in paragraphs (c)(1)(i) and (c)(1)(ii), in the ''Sponsor'' column, remove ''012286''.

§ 558.485 [Amended]

■ 19. In paragraph (b)(3) of § 558.485, remove ''012286''.

§ 558.625 [Amended]

■ 20. In § 558.625, remove and reserve paragraphs (b)(10), (b)(12), and (b)(67).

§ 558.630 [Amended]

■ 21. In § 558.630, remove and reserve paragraph (b)(2) and in paragraph (b)(5), remove ''012286''.

Dated: January 26, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–2103 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0010]

RIN 1625–AA00

Safety Zone; M/V Del Monte Live-Fire Gun Exercise, James River, Isle of Wight, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the James River in Isle of Wight, VA. This action is necessary to provide for the safety of life on navigable waters during the live-fire gun exercises on the M/V Del Monte. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the live-fire gun exercise.

DATES: This rule is effective in the CFR on February 1, 2012 through February 3, 2012. This rule is effective with actual notice for purposes of enforcement at 11 a.m. on January 30, 2012. This rule will remain in effect through 9 a.m. on February 3, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0010 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0010 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Christopher A. O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because this exercise is necessary to train and qualify Navy personnel in the use of weapons. This training is necessary to ensure that Navy personnel located within the Fifth Coast Guard District are properly trained and qualified before conducting military and national security operations for use in securing ports and waterways. Navy policy requires that Navy personnel meet and maintain certain qualification standards before being allowed to carry weapons on board vessels. Failure to conduct this required training at this time will result in a lapse in personnel qualification standards and, consequently, the inability of Navy personnel to carry out important national security functions at any time. It is impracticable, unnecessary, and contrary to public interest to delay the issuance of this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of vessels transiting the area.

Background and Purpose

Coast Guard Sector Hampton Roads was notified that the U.S. Navy will conduct a live fire and explosive training event onboard the M/V Del Monte in the vicinity of the James River Reserve Fleet. The event is scheduled to take place from January 30, 2012 until February 3, 2012. Due to the need to protect mariners transiting on the James River in the vicinity of the exercise from the hazards associated with live fire and explosive events, the Coast Guard is establishing a safety zone bound by a 1500-foot radius around approximate position 37°06′11″ N/076°38′40″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Rule

The Coast Guard is establishing a 1500-foot radius safety zone on specified waters of James River around approximate position 37°06′11″ N/076°38′40″ W (NAD 1983) in the vicinity of the James River Reserve Fleet. This safety zone is being established in the interest of public safety during the live fire and explosive training exercise and will be enforced from 11 a.m. on January 30, 2012 until 9 a.m. on February 3, 2012. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the safety zone is of limited size; (iii) mariners may transit the waters in and around this safety zone at the discretion of the Captain of the Port or designated representative; and (iv), the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the James River from 11 a.m. January 30, 2012 until 9 a.m. on February 3, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in place for a limited duration and is of a limited size; and (ii) Before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, Under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves a temporary safety zone that will be in effect for only five days and is intended to keep mariners safe from the hazards associated with live fire and explosive exercises. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0427 to read as follows:

§ 165.T05–0427 Safety Zone; M/V Del Monte Live-Fire Gun Exercise, James River, Isle of Wight, Virginia.

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of the James River Reserve Fleet on the James River within a 1500-foot radius of position 37°06′11″ N/ 076°38′40″ W (NAD 1983).

(b) Definition: For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) Regulations:

(1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This rule will be enforced from 11 a.m. January 30, 2012 until 9 a.m. on February 3, 2012.

Dated: January 17, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–2221 Filed 1–31–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0318]

RIN 1625–AA87

Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on a notice of proposed rulemaking entitled ''Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone'' that was published in the **Federal Register** on July 27, 2011. As stated in that document, the Coast Guard proposes to implement fixed and moving security zones around High Capacity Passenger Vessels (HCPVs) and vessels carrying Certain Dangerous Cargo (CDC) while they are being escorted in the navigable waters of the Captain of the Port (COTP), Sector Ohio Valley Zone. The proposed security zones would control the movement of vessels within 50-yards of a HCPV or vessel carrying a CDC. These security zones would mitigate potential terrorist acts and would enhance public and maritime safety and security.

DATES: A public meeting will be held on Wednesday, February 29, 2012 from 1 p.m. to 4 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the proposed rule closed on August 26, 2011. A second comment period will be open for 15 days following the public meeting. All comments and related material submitted after the meeting must be received by the Coast Guard on or before Thursday, March 15, 2012.

ADDRESSES: The public meeting will be held at The Brown Hotel, 335 West Broadway, Louisville, KY 40202, telephone 502–583–1234.

You may submit written comments at the public meeting or during the comment period following the public meeting. Written comments submitted after the public meeting must be identified by docket number USCG–2011–0318 and may be submitted using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at *http://www.regulations.gov* under docket number USCG–2011–0318.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the proposed rule, please call or email LCDR Derek Schade, Sector Ohio Valley Response Department, Coast Guard; telephone 502–779–5413, email *derek.t.schade@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 27, 2011, (76 FR 44880), entitled ''Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone''. In it we stated that we did not plan to hold a public meeting, but that we welcomed requests explaining why one would be beneficial. 76 FR 44881. We received several requests from vessel owners and operators to have a more ''substantive discussion'' in order to address some of their specific concerns and have concluded that a public meeting would aid this rulemaking. Therefore, we are publishing this notice.

In the NPRM, we propose to establish a 50-yard security zone around High Capacity Passenger Vessels (HCPVs) and vessels carrying Certain Dangerous Cargo (CDC) while they are being escorted in the Captain of the Port Ohio Valley zone, as defined in 33 CFR 3.40–65. In the proposed rule, *HCPVs* are defined as any commercial vessel carrying 500 or more passengers and CDC means the same as its definition in 33 CFR part 160. This rule would establish security zones that control the movement of persons and other vessels from the surface to the bottom of the water in a 50-yard radius around escorted vessels. Vessels traveling within 50 yards of these escorted vessels would be required to slow to the minimum speed necessary to navigate safely. All vessels or persons would be prohibited from entering within a 25-yard radius around these escorted vessels without the permission from the COTP Sector Ohio Valley or his or her designated representative.

For the purposes of this rule, a *designated representative of the COTP Ohio Valley* includes commissioned, warrant, or petty officers of the U.S. Coast Guard; or Federal, State, and local law enforcement officers designated by or assisting the COTP Ohio Valley. In the proposed rule, an *escorted vessel* is defined as a HCPV or vessel carrying CDC that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement assets clearly identified by lights, vessel markings, or with agency insignia. In all cases, the COTP would notify the maritime and general public by marine information broadcast of the periods during which individual security zones will be enforced.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard, including a preliminary environmental checklist and Categorical Exclusion Determination (CED), and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert ''USCG–2011–0318'' in the ''Keyword'' box and click ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing following the meeting. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before Thursday, March 15, 2012. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by

the Coast Guard when it is received at the Docket Management Facility.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LCDR Derek Schade, Sector Ohio Valley Response Department, Coast Guard at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone proposed rule on Wednesday, February 29, 2012 from 1 p.m. to 4 p.m., at The Brown Hotel, 335 West Broadway, Louisville, KY 40202, telephone (502) 583–1234. Government-issued, photo ID or other item will not be required to attend the meeting. Street parking is limited during business hours. Parking garages and surface lots are available near the meeting location but charge hourly rates. Public transportation to the building is available. For additional information regarding public transportation, contact the Transit Authority of River City at *http://www.ridetarc.org/.*

We plan to record this meeting using an audio-digital recorder and then make that audio recording available through a link in our online docket. We will also provide a written summary of the meeting and comments and will place that summary in the docket.

Dated: January 9, 2012.

L.W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2012–2122 Filed 1–31–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R03–OAR–2011–0681; FRL–9625–3]

Designation of Areas for Air Quality Planning Purposes; Maryland; Determination of Nonattainment and Reclassification of the Baltimore 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a determination that the Baltimore moderate 8-hour ozone nonattainment area (the Baltimore Area) did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2011 attainment date. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date and EPA extended the area's attainment date to June 15, 2011. This determination is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in the EPA Air Quality System (AQS) database. As a result of this determination, the Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Consequently, the State of Maryland must submit State Implementation Plan (SIP) revisions for the Baltimore Area to meet the Clean Air Act (CAA) requirements for serious ozone nonattainment areas. In this action, EPA is setting the due date for the State of Maryland to submit the necessary SIP revisions to EPA as no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013. This action is being taken under the CAA.

DATES: *Effective Date:* This final rule is effective on March 2, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2011–0681. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 1, 2011 (76 FR 54412), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed to determine that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. The Baltimore Area encompasses Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date. Therefore, EPA extended the area's attainment date to June 15, 2011. This proposal was based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in the EPA AQS database.

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. At that time, EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma. On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. This rulemaking relates only to the 1997 8-hour ozone NAAQS, and does not address the 2008 NAAQS.

II. Summary of Action

EPA is determining that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. As a result of this

determination, the Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Consequently, the State of Maryland must submit SIP revisions for the Baltimore Area to meet the CAA requirements for serious ozone nonattainment areas. The State of Maryland must submit the necessary SIP revisions to EPA by no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013.

Other specific information regarding this determination and reclassification and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

III. Summary of Public Comment and EPA Response

On October 3, 2011, EPA received comments on the NPR from Emery Hines, Empowered Representative Chair of the Baltimore Regional Transportation Board (BRTB). A summary of the comments submitted and EPA's response is provided below.

Comment: The commenter wrote in support of the Maryland Department of the Environment (MDE) being allowed the option to use a ''hybrid'' modeling approach to complete the SIPs required once the Baltimore Area is reclassified to serious. The approach would use EPA's Motor Vehicle Emission Simulator (MOVES) model to establish attainment year mobile source emissions budgets, but would use existing air quality modeling that used MOBILE6.2-based mobile emissions for the serious area attainment demonstration modeling.

Response: Starting March 2, 2010, EPA's MOVES model must be used to establish motor vehicle emissions budgets in all new SIPs. (*See* 75 FR 9411.) Therefore, MOVES must be used to develop the emission inventories for the serious area reasonable further progress (RFP) requirements resulting from this reclassification. Furthermore, MOVES must be used to establish motor vehicle emissions budgets associated with RFP and the attainment year.

Comment: The commenter stated that given the short timeframe to submit the revised SIP and resource limitations in providing a new air quality modeling demonstration using MOVES, the BRTB supports the option of a hybrid approach that provides for the best use of available resource while protecting air quality.

Responses: EPA will work closely with MDE to develop its serious area attainment demonstration for the Baltimore Area, while being mindful of time and resource constraints. Therefore, EPA intends to allow MDE to use its existing attainment demonstration modeling, which used MOBILE6.2, for the serious area SIP. However, the attainment demonstration modeling should be supplemented with more recently available modeling from EPA and/or the Ozone Transport Commission, which uses MOVES, as part of a weight of evidence analysis.

IV. Final Action

EPA is making a determination that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. The Baltimore Area is reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. Consequently, the State of Maryland must submit SIP revisions for the Baltimore Area to meet the CAA requirements for serious ozone nonattainment areas by no later than September 30, 2012. The serious area attainment date for the Baltimore Area is as expeditiously as practicable, but not later than June 15, 2013.

V. Statutory and Executive Order Reviews

Under the CAA, within six months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator is required to determine whether the area attained the standard by that date, and if attainment has not been achieved, the area ''shall be reclassified by operation of law.'' 42 U.S.C. 7511(b)(2). Thus, in actions addressing failure to attain a NAAQS by an applicable attainment date, EPA's role is to simply review the relevant air quality information provided by the state, and if the area did not meet the NAAQS by the applicable attainment date, EPA must reclassify the area as required under the Act. Accordingly, this action does not impose additional requirements beyond those mandated by the CAA itself. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the specific nonattainment finding and reclassification do not trigger Clean Air Act requirements for tribal governments pursuant to the Tribal Authority Rule (40 CFR 49.1 *et seq*), and thus will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 2012. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, determining that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date and reclassifying the Baltimore Area by operation of law to be a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 24, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.321 the table entitled ''Maryland—Ozone (8-Hour Standard)'' is amended by revising the entries for Baltimore, MD, revising footnote 4, and adding a new footnote 5 at the end of the table to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baltimore, MD:				
Anne Arundel County		Nonattainment	(5)	Subpart 2/Serious.[4]
City of Baltimore		Nonattainment	(5)	Subpart 2/Serious.[4]
Baltimore County		Nonattainment	(5)	Subpart 2/Serious.[4]
Carroll County		Nonattainment	(5)	Subpart 2/Serious.[4]
Harford County		Nonattainment	(5)	Subpart 2/Serious.[4]
Howard County		Nonattainment	(5)	Subpart 2/Serious.[4]
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
* * * * * * *
[4] Attainment date is June 15, 2013.
[5] Effective March 2, 2012.

* * * * *

[FR Doc. 2012–2218 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0053; FRL–9333–5]

Trichoderma virens strain G–41; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Trichoderma virens* strain G–41 in or on all food commodities when applied as a fungicide and used in accordance with good agricultural practices. BioWorks, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Trichoderma virens* strain G–41 under the FFDCA.

DATES: This regulation is effective February 1, 2012. Objections and requests for hearings must be received on or before April 2, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0053. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8920; email address: *kausch.jeannine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0053 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 2, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0053, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Mail: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- Delivery: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of March 10, 2010 (75 FR 11171) (FRL–8810–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7618) by Technology Sciences Group, Inc., on behalf of BioWorks, Inc., 100 Rawson Rd., Suite 205, Victor, NY 14564. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Trichoderma virens* strain G–41. This notice referenced a summary of the petition prepared by the petitioner, BioWorks, Inc., which is available in the docket via *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *'' Additionally, section 408(b)(2)(D) of FFDCA requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview of Trichoderma virens strain G–41

Trichoderma species are common soil hyphomycetes found in all climate zones ranging from Antarctica to the tropics (Ref. 1). Since 1989, several *Trichoderma* species (*e.g., Trichoderma polysporum, Trichoderma viride,* and *Trichoderma harzianum*) have been used in pesticide products—notably without reported incidents—to control various fungal plant pathogens such as *Pythium* species, *Phytophthora* species, *Heterobasidion annosum,* and *Chondrostereum purpureum*. In conjunction with the registration of some of these pesticide products, EPA established the following exemptions from the requirement of a tolerance:

1. *Gliocladium virens* strain GL–21 (now recognized as *Trichoderma virens* strain GL–21) (40 CFR 180.1100)—see the **Federal Register** of September 20, 1995 (60 FR 48657) (FRL–4974–1) and October 5, 1995 (60 FR 52248) (FRL–4974–1).

2. *Trichoderma harzianum* Rifai strain T–22 (40 CFR 180.1102)—see the **Federal Register** of April 7, 1999 (64 FR 16856) (FRL–6070–3).

3. *Trichoderma harzianum* strain T–39 (40 CFR 180.1201)—see the **Federal Register** of June 22, 2000 (65 FR 38753) (FRL–6383–7).

4. *Trichoderma gamsii* strain ICC 080 (40 CFR 180.1293)—see the **Federal Register** of February 25, 2010 (75 FR 8504) (FRL–8799–4).

5. *Trichoderma asperellum* strain ICC 012 (40 CFR 180.1294)—see the **Federal Register** of March 3, 2010 (75 FR 9527) (FRL–8800–9).

6. *Trichoderma hamatum* isolate 382 (40 CFR 180.1298)—see the **Federal Register** of July 23, 2010 (75 FR 43072) (FRL–8835–6).

Specifically, *Trichoderma virens,* including strain G–41, is a naturally occurring fungus that is native to the United States and is widely distributed throughout the world, inhabiting forest, agricultural, and orchard soils, as well as plant litter (Ref. 2). *Trichoderma virens* strain G–41 was isolated from soil samples taken from *Aphanomyces*-suppressive fields in Livingston County, New York. Much like other *Trichoderma* species, *Trichoderma virens* strain G–41 inhibits or kills certain plant-pathogenic fungi (*e.g., Rhizoctonia* species and *Fusarium* species) through competition for food and space, mycoparasitism, antibiosis, and induction of plant defense responses (Refs. 1, 2, 3, and 4).

B. Microbial Pesticide Toxicology Data Requirements

All applicable mammalian toxicology data requirements supporting the request for an exemption from the requirement of a tolerance for residues of *Trichoderma virens* strain G–41 in or on all food commodities have been fulfilled with data submitted or cited by the petitioner.

The petitioner conducted several acute toxicological tests with *Trichoderma virens* strain G–41 or a substance containing *Trichoderma virens* strain G–41. The acute oral toxicity/pathogenicity test evaluated the potential toxicity and pathogenicity of the active ingredient should dietary exposure occur. The acute dermal toxicity and primary dermal irritation tests evaluated the potential for a substance containing the active ingredient to cause toxicity or irritation should skin exposure occur. The acute inhalation toxicity test evaluated the potential for a substance containing the active ingredient to cause toxicity should inhalation exposure occur. The results of these studies revealed little to no toxicity or irritation attributed to *Trichoderma virens* strain G–41, and all these studies received a Toxicity Category IV classification (see 40 CFR 156.62). Moreover, when the skin was bypassed as a protective barrier during an acute injection toxicity/pathogenicity test, *Trichoderma virens* strain G–41 was not found to be toxic, infective, and/or pathogenic via the intraperitoneal route of exposure. Finally, the petitioner has reported that no hypersensitivity incidents occurred during development and testing of this fungus.

With its petition, BioWorks, Inc., also cited to toxicological data done with a similar, previously registered strain of *Trichoderma virens,* GL–21 (Refs. 1, 3, 4, and 5). Although GL–21 and G–41 are not identical, the two strains share many characteristics typical of *Trichoderma virens* (*e.g.,* particular morphological features, production of certain enzymes involved in mycoparasitism, and weak growth at the temperature of the human body (37°C)), and thus are considered to be functionally similar (Ref. 4). Based on these similarities, EPA concluded that data on *Trichoderma virens* strain GL–21 would be representative of the toxicological nature of *Trichoderma virens* strain G–41 (Ref. 6). These additional data on *Trichoderma virens* strain GL–21 confirmed (*i.e.,* no toxicity observed) and contributed (*i.e.,* no pathogenicity anticipated) to the findings of the acute oral toxicity/pathogenicity study mentioned above and fulfilled the acute pulmonary toxicity/pathogenicity data requirement for *Trichoderma virens* strain G–41.

The overall conclusions from all toxicological information submitted and cited by the petitioner are briefly described below, while more in-depth synopses of some study results can be found in the associated Biopesticides Registration Action Document provided as a reference in Unit IX. (Ref. 5).

1. *Acute oral toxicity/pathogenicity—rat (Harmonized Guideline 885.3050; Master Record Identification Numbers (MRID Nos.) 483438–01 and 407198–04).* The petitioner submitted or cited to data resulting from two separate acute oral toxicity/pathogenicity tests, one conducted with *Trichoderma virens* strain G–41 and the other conducted with *Trichoderma virens* strain GL–21. The results of the first study demonstrated that *Trichoderma virens* strain G–41 was not toxic to rats when administered by oral gavage in a single dose of 1.5×10^8 colony-forming units (cfu)/animal. Although a pattern of clearance was established, the sensitivity of detection indicated low recovery of *Trichoderma virens* strain G–41 from tissues and fluids (*i.e.,* 0.5–9%). Thus, pathogenicity was not unequivocally assessed. The second study demonstrated that *Trichoderma virens* strain GL–21, a strain that is functionally similar to *Trichoderma virens* strain G–41, was not toxic to, infective in, or pathogenic for rats when given a single oral dose of 10^8 cfu/animal and adequately addressed the pathogenicity endpoint that could not be fully assessed in the first study. The weight-of-evidence from the results of these two studies indicates that *Trichoderma virens* strain G–41 is not acutely toxic and/or pathogenic through the oral route of exposure.

2. *Acute pulmonary toxicity/pathogenicity—rat (Harmonized Guideline 885.3150; MRID Nos. 407198–05 and 408640–02).* An acute pulmonary toxicity/pathogenicity study demonstrated that *Trichoderma virens* strain GL–21, a functionally similar strain to *Trichoderma virens* strain G–41, was not toxic to, infective in, or pathogenic for rats when given a single intratracheal dose of 10^8 cfu/animal. Given the functional similarity of these two strains, EPA concludes that *Trichoderma virens* strain G–41 is also not likely to be toxic, infective, and/or pathogenic through the inhalation route. To further support this conclusion, an acceptable acute inhalation toxicity study (MRID No. 478650–04) resulted in no mortalities and only minor signs of toxicity (activity decrease; piloerection) that resolved by day 2 after rats were exposed to a test substance containing *Trichoderma virens* strain G–41 at 5.14 milligrams per liter for 4 hours.

3. *Acute injection toxicity/pathogenicity (intraperitoneal)—rat (Harmonized Guideline 885.3200; MRID Nos. 478651–02 and 482368–01).* An acceptable acute injection toxicity/pathogenicity study demonstrated that *Trichoderma virens* strain G–41 was not toxic to rats when administered intraperitoneally in a single dose of 10^7 cfu/animal. While clearance was not directly assessed in this study, the lack of clinical findings upon necropsy, in combination with the lack of signs of toxicity and mortality in the animals during the observation period, strongly suggests that *Trichoderma virens* strain G–41 is also not pathogenic by intraperitoneal injection.

4. *Hypersensitivity incidents (Harmonized Guideline 885.3400; MRID No. 482526–01).* The petitioner reported that no hypersensitivity incidents, including immediate-type or delayed-type reactions of humans and domestic animals, occurred during research, development, or testing of *Trichoderma virens* strain G–41.

5. *Acute dermal toxicity—rat (Harmonized Guideline 870.1200; MRID No. 478650–03).* An acceptable acute dermal toxicity study demonstrated that a test substance containing *Trichoderma virens* strain G–41 was not toxic to rats when dosed at 5,050 milligrams per kilogram (mg/kg) for 24 hours. The dermal median lethal dose (LD_{50}), which is a statistically derived single dose that can be expected to cause death in 50% of test animals, was greater than 5,050 mg/kg for male and female rats combined (Toxicity Category IV).

6. *Primary dermal irritation—rabbit (Harmonized Guideline 870.2500; MRID No. 478650–06).* An acceptable primary dermal irritation study demonstrated that a test substance containing *Trichoderma virens* strain G–41 was non-irritating to the skin of rabbits (Toxicity Category IV).

IV. Aggregate Exposure

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food exposure.* All proposed *Trichoderma virens* strain G–41 applications are soil directed or soil incorporated because of the targeted soilborne pests (*e.g., Rhizoctonia* species and *Fusarium* species). Based on calculations made in EPA's environmental risk assessment for *Trichoderma virens* strain G–41 (Ref. 7), these applications are not expected to significantly increase the populations of this fungus above natural levels in the soil. No reports were available in the literature describing natural concentrations of *Trichoderma virens;* however, *Trichoderma* species have been reported in various types of soils at concentrations of 10^4 to 10^6 colony-forming units per gram (cfu/g) (Refs. 8 and 9). Based on the maximum application rate of the proposed end-use pesticide products containing *Trichoderma virens* strain G–41, the estimated amount of *Trichoderma virens* applied to the soil surface is approximately 6.7×10^3 colony-forming units per square centimeter (cfu/cm^2). Assuming a bulk density of 1 to 2 grams per cubic centimeter (g/cm^3), the maximum application rate will not result in soil concentrations that are substantially greater than concentrations of *Trichoderma virens* naturally found in the soil, and overall increased exposure to *Trichoderma virens* in the terrestrial environment, including on above-ground plant parts such as food commodities, is not expected. Work by Jackson *et al.* (1991) supports this conclusion given that, after *Trichoderma virens* and three other *Trichoderma* isolates were incorporated into soil, fungal numbers either transiently increased, remained stable, or declined (Ref. 10). Should this microbial pesticide be present on food, the acute oral toxicity and pathogenicity data available for *Trichoderma virens* strain G–41 and functionally similar *Trichoderma virens* strain GL–21 demonstrated that no toxicity, infectivity, and/or pathogenicity is likely to occur with any exposure level of *Trichoderma virens* strain G–41 resulting from application in accordance with good agricultural practices (see additional discussion in Unit III.B.).

2. *Drinking water exposure.* Exposure to residues of *Trichoderma virens* strain G–41 in consumed drinking water is unlikely. The proposed use patterns for *Trichoderma virens* strain G–41 are soil directed and soil incorporated, thereby limiting contact with surface water by drift and runoff. Furthermore, ground water is not expected to have significant exposure to *Trichoderma virens* strain G–41 since, like other *Trichoderma* species, this fungus would likely be filtered out by the particulate nature of many soil types, and be concentrated in upper soil horizons (Refs. 11 and 12) near plant roots (Ref. 13). If *Trichoderma virens* strain G–41 were to be transferred to surface or ground waters (*e.g.,* through spray drift or runoff) that are intended for eventual human consumption and directed to wastewater treatment systems or drinking water facilities, it likely would not survive the conditions water is subjected to in such systems or facilities, including chlorination, pH adjustments, filtration, and occasionally high temperatures (Refs. 14 and 15). For instance, *Trichoderma virens* strain G–41 does not grow well at 37 °C (Refs. 3 and 16), and test data has shown it to be unstable at elevated temperatures; therefore, any heat treatment applied to water containing *Trichoderma virens* strain G–41 would probably render the fungus non-viable. In the remote likelihood that this microbial pesticide is present in drinking water (*e.g.,* water not subject to treatment systems or facilities), the acute oral toxicity and pathogenicity data available for *Trichoderma virens* strain G–41 and functionally similar *Trichoderma virens* strain GL–21 demonstrated no toxicity, infectivity, and/or pathogenicity is likely to occur with any exposure level of *Trichoderma virens* strain G–41 resulting from application in accordance with good agricultural practices (see additional discussion in Unit III.B.).

B. Other Non-Occupational Exposure

Given *Trichoderma virens'* natural occurrence in soil (Ref. 2), non-occupational exposure to the fungus is likely already occurring. Even with the proposed pesticide applications of *Trichoderma virens* strain G–41, it is not likely that there will be a significant increase in these exposures due to the relative stability of typical background levels in the soil (see calculations and information presented in the food exposure section above). If significant non-occupational exposures were to occur, such exposures would not exceed EPA's level of concern in light of test results that indicated *Trichoderma virens* strain G–41 is not toxic (acute pulmonary toxicity/pathogenicity, acute dermal toxicity, and acute inhalation toxicity), is non-irritating (primary dermal irritation), and is not pathogenic or infective (acute pulmonary toxicity/pathogenicity) (see additional discussion in Unit III.B.).

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance exemption, EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] * * * residues and other substances that have a common mechanism of toxicity.''

There are several *Trichoderma* species used as active ingredients in registered pesticide products. While these different microbial pest control agents may produce similar metabolites, the likelihood of adverse cumulative effects via a common mechanism of toxicity is not anticipated, based on the lack of toxicity/pathogenicity potential of the active ingredients used on food and/or labeled for residential uses (see Unit III.B., as well as Refs. 17, 18, 19, and 20). For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

VI. Determination of Safety for United States Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal

and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on the acute toxicity and pathogenicity data/information discussed in Unit III.B., as well as use of *Trichoderma* pesticide products since 1989 without reported adverse effects to humans, EPA concludes that there are no threshold effects of concern to infants, children, or adults when *Trichoderma virens* strain G–41 is used as labeled in accordance with good agricultural practices. As a result, EPA concludes that no additional margin of exposure (safety) is necessary to protect infants and children and that not adding any additional margin of exposure (safety) will be safe for infants and children.

Moreover, based on the same data and EPA analysis as presented directly above, the Agency is able to conclude that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to the residues of *Trichoderma virens* strain G–41 when it is used as labeled and in accordance with good agricultural practices as a fungicide. Such exposure includes all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has arrived at this conclusion because, considered collectively, the data and information available on *Trichoderma virens* strain G–41, as well as data available on functionally similar *Trichoderma virens* strain GL–21, do not demonstrate toxic, pathogenic, and/or infective potential to mammals, including infants and children.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes for the reasons stated above and because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for *Trichoderma virens* strain G–41.

VIII. Conclusions

EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Trichoderma virens* strain G–41. Therefore, an exemption from the requirement of a tolerance is established for residues of *Trichoderma virens* strain G–41 in or on all food commodities when applied as a fungicide and used in accordance with good agricultural practices.

IX. References

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X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, EPA has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, EPA has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 20, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1310 is added to subpart D to read as follows:

§ 180.1310 Trichoderma virens strain G–41; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Trichoderma virens* strain G–41, in or on all food commodities, when applied as a fungicide and used in accordance with good agricultural practices.

[FR Doc. 2012–2216 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1518–CN4]

RIN 0938–AQ24

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that occurred in the Addendum of the final rule entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates'' which appeared in the August 18, 2011 **Federal Register**.

DATES: *Effective Date:* This document is effective January 31, 2012.

Applicability Date: The corrections noted in this document and posted on the CMS Web site are applicable to hospital payments and discharges on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Slater, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–19719 of August 18, 2011 (76 FR 51476), the final rule entitled ''Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2012 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2012 Rates'' (hereinafter referred to as the FY 2012 IPPS/FY 2012 LTCH PPS final rule) there were a number of technical errors in the tables included in the Addendum of the final rule which are, posted on the CMS Web site. In section II. of this correcting document, we describe these errors and note the tables that will include the corrections. We have already made changes to our rates, updated PRICER

and sent a Technical Director's Letter on December 20, 2011 informing fiscal intermediaries of these changes. Accordingly, the corrections are applicable to hospital discharges and payments on or after October 1, 2011.

II. Summary of Errors and Corrections Posted on the CMS Web site

On pages 51812 and 51813, we list the tables that are tables available only through the Internet. We are making corrections to Tables 2, 4C, and 9A in this notice. Therefore, we have corrected these errors and will post corrections to Tables 2, 4C, and 9A on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp*).

In Table 2.—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2010; Hospital Wage Indexes for Federal Fiscal Year 2012; Hospital Average Hourly Wages for Federal Fiscal Years 2010 (2006 Wage Data), 2011 (2007 Wage Data), and 2012 (2008 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, we are correcting the wage index value for providers 010022, 010164, and 360096, which were inadvertently omitted from Table 9A as receiving a geographic reclassification for FY 2012.

In Table 4C.—Wage Index and Capital Geographic Adjustment Factor (GAF) for Acute Care Hospitals that are Reclassified, we are adding a wage index value for CBSA 11500 Anniston-Oxford, AL. Provider 010164 was omitted from Table 9A as being reclassified to CBSA 11500. As there was not a published value for CBSA 11500, due to no hospitals previously reclassified to that CBSA, we are adding a reclassified wage index in Table 4C.

In Table 9A.—Hospital Reclassifications and Redesignations—FY 2012, we are correcting the inadvertent omission of providers 010022, 010164, and 360096 from Table 9A by adding these 3 providers to the table.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(b) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

In our view, this correcting document does not constitute a rulemaking that would be subject to the APA notice and comment or delayed effective date requirements. This correcting document corrects technical errors in the tables included in the Addendum of the FY 2012 IPPS/LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the tables included in the Addendum of the FY 2012 IPPS/LTCH PPS final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in our final rule. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 23, 2012.

Jennifer M. Cannistra,

Executive Secretary to the Department.

[FR Doc. 2012–2220 Filed 1–31–12; 8:45 am]

BILLING CODE 4120–01–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective Date:* This rule is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295–1624; *mcohan@lsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The figures for 2012 set out below are equivalent to 125% of the current Federal Poverty Guidelines as published on January 26, 2012 (77 FR 4034).

In addition, LSC is publishing a chart listing income levels that are 200% of the Federal Poverty Guidelines. This chart is for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 125% of the applicable Federal Poverty Guidelines amount, but less than 200% of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant programs—Law, Legal services.

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Appendix A to part 1611 is revised to read as follows:

Appendix A to Part 1611—Legal Services Corporation 2012 Income Guidelines

LEGAL SERVICES CORPORATION 2012 INCOME GUIDELINES *

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$13,963	$17,463	$16,075
2	18,913	23,650	21,763
3	23,863	29,838	27,450
4	28,813	36,025	33,138
5	33,763	42,213	38,825
6	38,713	48,400	44,513
7	43,663	54,588	50,200
8	48,613	60,775	55,888
For each additional member of the household in excess of 8, add	4,950	6,188	5,688

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$22,340	$27,940	$25,720
2	30,260	37,840	34,820
3	38,180	47,740	43,920
4	46,100	57,640	53,020
5	54,020	67,540	62,120
6	61,940	77,440	71,220
7	69,860	87,340	80,320
8	77,780	97,240	89,420
For each additional member of the household in excess of 8, add	7,920	9,900	9,100

Mattie Cohan,

Senior Assistant General Counsel.

[FR Doc. 2012–2098 Filed 1–31–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15 and 18

[DA 11–2011]

Editorial Revisions to the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document makes a number of non-substantive, editorial revisions to the Commission's rules. These revisions are made to delete certain rule provisions that are without current legal effect and therefore are obsolete. These non-substantive revisions are part of the Commission's ongoing examination and improvement of FCC processes and procedures. The revisions clarify, simplify, and harmonize the rules, making them more readily accessible to the public and minimizing potential confusion for interested parties and Commission staff.

DATES: Effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, email: *hugh.vantuyl@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* DA 11–2011, adopted December 12, 2011 and released December 14, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also 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: *www.fcc.gov.*

Summary of the Order

1. In this Order, the Commission makes a number of non-substantive, editorial revisions to parts 2, 15 and 18 of the Commission's rules. These revisions are made to delete certain rule provisions that are without current legal effect and therefore are obsolete. These non-substantive revisions are part of the Commission's ongoing examination and improvement of FCC processes and procedures. The revisions clarify, simplify, and harmonize the rules, making them more readily accessible to the public and minimizing potential confusion for interested parties and Commission staff alike. The revisions and the specific reasons for adopting each change are set forth below.

2. *Part 2, Subpart N, FCC Procedure for Testing Class A, B and S Emergency Position Indicating Radiobeacons* (EPIRBs). This Order deletes in its entirety part 2, Subpart N, FCC Procedure for Testing Class A, B and S Emergency Position Indicating Radiobeacons (EPIRBs), § 2.1501 through 2.1517 and Figures 1 through 4. All of the rules and figures in this subpart pertain to a measurement procedure that was developed for determining the compliance of certain types of maritime distress beacons with

technical requirements formerly contained in part 80 of the Commission's rules. The Commission deleted the part 80 technical requirements for Class A, B and S EPIRBs in 2002. The Commission also prohibited the manufacture, importation and sale of this equipment effective February 1, 2003 and its operation effective December 31, 2006. Thus, all of the rules in this subpart are without current legal effect and are obsolete.

3. *Part 15, Radio Frequency Devices, transition provisions.* This Order modifies § 15.37 of the rules to expired transition provisions. This section lists the dates by which certain types of equipment must comply with revised part 15 technical requirements. The Commission established § 15.37 when it substantially revised part 15 of the rules in 1989. The changes it adopted in that revision tightened the emission limits for certain types of equipment such as radio receivers and required some devices to comply with emission limits at higher frequencies than the previous rules. The Commission therefore decided to provide manufacturers with a transition period to bring equipment into compliance with the revised part 15 requirements.

4. Subsequent to the 1989 part 15 revision, the Commission added a number of additional transition provisions to § 15.37. These additional provisions are unrelated to the 1989 part 15 revisions and instead specify the dates by which equipment had to comply with later revisions to part 15 of the rules. The types of additional devices covered by § 15.37 include cordless telephones, scanning receivers, computer boards and power supplies, medical telemetry equipment, radar detectors and TV bands devices.

5. All of the transition dates listed in § 15.37 have passed, so the Commission analyzed each paragraph in this section to determine whether they contain any regulatory requirements that would necessitate their retention. The Commission determined that many but not all of these provisions can be as obsolete. This Order revises § 15.37 as described.

• Sections 15.37(a), 15.37(b) 15.37(c) and 15.37(d) are deleted. These sections list the dates by which intentional radiators, unintentional radiators, radio receivers and equipment operating in the 902–905 MHz band had to comply with the rules adopted in the 1989 part 15 revision. All of the transition dates listed in these sections has passed, and these sections contain no regulatory requirements that would necessitate their retention. Thus, they are without legal effect and are obsolete. The Commission also deleted two provisions in part 15 that reference these obsolete sections: the note in § 15.31(l) which references the receiver transition rule in § 15.37(b); and § 15.249(f) which references the transition provision in § 15.37(d).

• The introductory text to § 15.37 is deleted. This text was intended as a preface to the transition provisions in paragraphs (a) and (b) because it relates to the authorization, manufacture and importation of equipment that complies with the part 15 rules in effect prior to June 23, 1989. It is not applicable as an introduction to any of the other transition provisions that were added subsequent to the 1989 part 15 revision. Because paragraphs (a) and (b) are deleted, the introductory text for them is also without legal effect and is obsolete.

• Section 15.37(e) is deleted. This section specifies the dates by which cordless telephones must comply with the requirements of § 15.214(d) to incorporate digital security codes to prevent unintentional access to the public switched telephone network by base units, and unintentional ringing of handsets. Applications for certification of cordless telephones that do not comply with these requirements were no longer accepted after May 10, 1991, and the manufacture of cordless telephones that do not comply with these requirements had to cease on or before September 11, 1991. These transition dates have passed, and this section contains no other regulatory requirements that would necessitate its retention. Thus, this section is without legal effect and is obsolete.

• Section 15.37(f) is deleted. This section requires scanning receivers manufactured or imported after April 26, 1994 to comply with the provisions of § 15.121(a)(1) that require blocking of reception on frequencies allocated to the Cellular Radiotelephone Service in part 22 of the rules. Section 15.37(f) was effectively superseded by § 15.37(h), which requires scanning receivers manufactured or imported after October 25, 1999 to comply with a subsequently revised § 15.121 that tightened the rules to ensure that scanning receivers do not receive Cellular Radiotelephone Service frequencies. Thus, § 15.37(f) is without legal effect and is obsolete. § 15.37(h) is retained because it contains relevant regulatory information, *i.e.,* that scanning receivers manufactured or imported prior to October 25, 1999 may continue to be marketed and operated.

• Section 15.37(g) is deleted. This section states that certain CPU computer boards and power supplies must be authorized under either the Commission's certification procedure or its Declaration of Conformity (DoC) procedure, as set forth in § 15.101, effective June 19, 1997. Prior to the adoption of § 15.37(g), manufacturers and importers of such computer equipment were not required to have their equipment authorized. Thus, § 15.37(g) simply announces the date that authorization under either the DoC or certification procedure became mandatory for CPU computer boards and related equipment, and cross-references another rule section for informational purposes. As a result, § 15.37(g) is without legal effect and is obsolete.

• Section 15.37(n) is deleted. This section prohibited the marketing of TV bands devices before the planned February 18, 2009 digital television transition date. No TV bands devices were approved for marketing before that date and the date has passed. Thus, § 15.37(n) is without legal effect and is obsolete.

• In addition to the changes listed, the remaining paragraphs in § 15.37 are sequentially renumbered. This is merely an editorial change.

6. *Part 15, Radio Frequency Devices, other provisions.* This Order modifies or deletes a number of other part 15 rules containing provisions that have become obsolete because they now only function as unnecessary informational statements (*e.g.,* due to the expiration of a transition deadline), without any legal effect. Specifically, this order makes the following changes.

• Section 15.115 is revised by removing the last sentence from each of paragraphs (c)(1)(i), (h) and (i). These paragraphs contain technical requirements for transfer switches used to select between a cable TV input and an over-the-air antenna input to a TV receiver. Each of these three paragraphs ends with a statement designed to inform the public that the requirements in that paragraph would become effective June 30, 1997. Because that date has passed, the sentence at the end of each of these paragraphs provides unnecessary information that does not affect the substance of the rules or otherwise have any legal effect.

• Section 15.117 is revised by removing expired transition provisions from paragraphs (i) and (j) and making editorial revisions to the text of paragraph (i) that were necessitated by the removal of the transition provisions. Paragraph (i) contains a requirement that all TV receivers must be equipped with a digital TV tuner no later than March 1, 2007. This requirement was phased in over several years, with larger screen TVs having to meet it first,

followed later by smaller screen TVs and other devices such as VCRs and digital video recorders that contain TV tuners. Paragraph (j) of this section contains technical requirements for transfer switches within a TV receiver that are used to select between a cable TV input and an over-the-air antenna input. This paragraph ends with a sentence stating that the requirements in that paragraph are effective June 30, 1997. The transition dates in paragraphs (i) and (j) have passed, and the statute of limitations in the Communications Act prohibits any new enforcement actions for violations of these provisions. Accordingly, the transition provisions in these paragraphs provide unnecessary information that does not affect the substance of the rules or otherwise have any legal effect.

• Section 15.118 is revised by removing the note at the end of the section. This section specifies the technical requirements that a TV receiver must meet to be marketed as cable ready or cable compatible. This section contains a note at the end informing the public that the provisions of the section would apply as of June 30, 1997. Because that date has passed, and because the statute of limitations in the Communications Act precludes any enforcement action for activities taking place before that date, that note provides unnecessary information that does not affect the substance of the rules or otherwise have any legal effect.

• Section 15.120 is revised by removing the transition dates from paragraphs (b) and (d)(2). This section requires that TV receivers incorporate the capability for users to block programming based on rating information transmitted with the program. Paragraph (b) states that TV receivers must meet the program blocking requirements in paragraphs (c), (d) and (e) of this section effective January 1, 2000. Paragraph (d)(2) states that, effective March 15, 2006, digital TV receivers must be capable of receiving program rating information in accordance with a specific industry standard. Thus, these provisions merely state the effective dates of other requirements in § 15.120. These dates have passed, and the statute of limitations for violations of these requirements has also passed. Therefore, the transition provisions provide unnecessary information that does not affect the substance of the rules or otherwise have any legal effect.

• Section 15.123 is revised by removing expired transition provisions from paragraph (b)(6) and making editorial revisions to the text that are necessitated by their removal. This paragraph states that a unidirectional digital cable television may not be labeled or marketed as digital cable ready unless it includes a digital TV tuner and contains at least one of two specific interfaces. This requirement was phased in, with some larger screen TV sets having to meet it by July 1, 2004, followed by smaller TV sets, with all sets having to meet it by July 1, 2007. Because all of the transition dates and the statute of limitations for enforcement actions have passed, the transition provisions of this section provide unnecessary information that does not affect the substance of the rules or otherwise have any legal effect.

• Section 15.124 is deleted. This section requires television receivers and related devices (e.g., video recorders and set-top boxes) manufactured between April 1, 2009 and June 30, 2009 to include consumer information about the DTV transition. The time period during which this requirement applied ended over two years ago, and the statute of limitations for violations of this requirement ended on June 30, 2010. As a result, this section is without current legal effect and is obsolete.

7. *Part 18, Industrial, Scientific and Medical Equipment.* This Order amends part 18 of the rules to delete § 18.123. This section lists the dates by which specific types of Industrial, Scientific and Medical (ISM) equipment must comply with the present limits on radio frequency emissions conducted from a device onto the AC power lines. The Commission modified these emission limits in 2002 and established dates by which equipment had to comply with the modified limits. All transition dates listed within this section have passed and this section contains no other regulatory requirements. Thus, it is without current legal effect and is obsolete.

8. The rule amendments adopted in this Order and set forth in the attached Appendix are non-substantive, editorial revisions of the rules pursuant to 47 CFR § 0.231(b). These revisions delete rule provisions that are without current legal effect and therefore are obsolete, delete references to obsolete rules and make minor editorial changes that are necessary due to the deletion of obsolete rule provisions. Accordingly, the Commission finds good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose. For the same reason, the Commission also finds good cause to make these non-substantive, editorial revisions of the rules effective upon publication in the **Federal Register**.

9. Because this Order is being adopted without notice and comment, the Regulatory Flexibility Act does not apply.

10. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. In addition, therefore, this Order does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002. The Commission will not send a copy of the Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

11. Accordingly, effective upon publication in the **Federal Register**, parts 2, 15 and 18 of the Commission's rules *Are Amended,* as set forth in the attached Appendix, pursuant to the authority contained in sections 4(i), 5(c), and 303(r) of the Communications Act, 47 U.S.C. 154(i), 155(c), and 303(r), and sections 0.231(b) and 0.241(h) of the Commission's regulations, 47 CFR 0.231(b), 0.241(h).

List of Subjects in 47 CFR Parts 2, 15 and 18

Communications equipment, Reporting and recordkeeping.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 15 and 18 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

Subpart N [Removed and Reserved]

■ 2. Remove and reserve subpart N, consisting of §§ 1.1801 through 1.1870, and Figures 1 through 4.

PART 15—RADIO FREQUENCY DEVICES

■ 3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 4. Section § 15.31 is amended by removing the note following paragraph (l).

■ 5. Section § 15.37 is revised to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

(a) The manufacture or importation of scanning receivers, and frequency converters designed or marketed for use with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before October 25, 1999. Effective July 26, 1999, the Commission will not grant equipment authorization for receivers that do not comply with the provisions of § 15.121. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to October 25, 1999.

(b) Effective October 16, 2002, an equipment approval may no longer be obtained for medical telemetry equipment operating under the provisions of § 15.241 or § 15.242. The requirements for obtaining an approval for medical telemetry equipment after this date are found in subpart H of part 95 of this chapter.

(c) All radio frequency devices that are authorized under the certification, verification or declaration of conformity procedures on or after July 12, 2004 shall comply with the conducted limits specified in § 15.107 or § 15.207 as appropriate. All radio frequency devices that are manufactured or imported on or after July 11, 2005 shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate. Equipment authorized, imported or manufactured prior to these dates shall comply with the conducted limits specified in § 15.107 or § 15.207, as appropriate, or with the conducted limits that were in effect immediately prior to September 9, 2002.

(d) Radar detectors manufactured or imported after August 28, 2002 and marketed after September 27, 2002 shall comply with the regulations specified in this part. Radar detectors manufactured or imported prior to January 27, 2003 may be labeled with the information required by § 2.925 of this chapter and § 15.19(a) on the individual equipment carton rather than on the device, and are exempt from complying with the requirements of § 15.21.

(e) U–NII equipment operating in the 5.25–5.35 GHz band for which applications for certification are filed on or after July 20, 2006 shall comply with the DFS and TPC requirements specified in § 15.407. U–NII equipment operating in the 5.25–5.35 GHz band that are imported or marketed on or after July 20, 2007 shall comply with the DFS and TPC requirements in § 15.407.

(f) All Access BPL devices that are manufactured, imported, marketed or installed on or after July 7, 2006, shall comply with the requirements specified in subpart G of this part, including certification of the equipment.

■ 6. Section § 15.115 is amended by revising paragraphs (c)(1)(i), (h) and (i) to read as follows:

§ 15.115 TV interface devices, including cable system terminal devices.

* * * * *

(c) * * *

(1) * * *

(i) For a cable system terminal device or a TV interface device equipped for use with a cable system or a master antenna, as defined in paragraph (b)(3) of this section, the isolation between the antenna and cable input terminals shall be at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a transfer switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted.

* * * * *

(h) Stand-alone switches used to alternate between cable service and an antenna shall provide isolation between the antenna and cable input terminals that is at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of stand-alone switches requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted.

(i) Switches and other devices intended to be used to by-pass the processing circuitry of a cable system terminal device, whether internal to such a terminal device or a stand-alone unit, shall not attenuate the input signal more than 6 dB from 54 MHz to 550 MHz, or more than 8 dB from 550 MHz to 804 MHz. The 6 dB standard applies at 550 MHz.

■ 7. Section § 15.117 is amended by revising paragraph (i) and revising paragraph (j) to read as follows:

§ 15.117 TV broadcast receivers.

* * * * *

(i) *Digital television reception requirement.*

(1) Responsible parties, as defined in § 2.909 of this chapter, are required to equip with DTV tuners new TV broadcast receivers that are shipped in interstate commerce or imported from any foreign country into the United States and for which they are responsible to comply with the provisions of this section. For purposes of this section, the term ''TV broadcast receivers'' includes other video devices (videocassette recorders (VCRs), digital video recorders such as hard drive and DVD recorders, etc.) that receive television signals.

(2) The requirement to include digital television reception capability in new TV broadcast receivers does not apply to devices such as mobile telephones and personal digital assistants where such devices do not include the capability to receive TV service on the frequencies allocated for broadcast television service.

(j) For a TV broadcast receiver equipped with a cable input selector switch, the selector switch shall provide, in any of its set positions, isolation between the antenna and cable input terminals of at least 80 dB from 54 MHz to 216 MHz, at least 60 dB from 216 MHz to 550 MHz and at least 55 dB from 550 MHz to 806 MHz. The 80 dB standard applies at 216 MHz and the 60 dB standard applies at 550 MHz. In the case of a selector switch requiring a power source, the required isolation shall be maintained in the event the device is not connected to a power source or power is interrupted. An actual switch that can alternate between reception of cable television service and an antenna is not required for a TV broadcast receiver, provided compliance with the isolation requirement specified in this paragraph can be demonstrated and the circuitry following the antenna input terminal(s) has sufficient band-width to allow the reception of all TV broadcast channels authorized under this chapter.

* * * * *

■ 8. Section § 15.118 is amended by removing the note following paragraph (d).

■ 9. Section § 15.120 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 15.120 Program blocking technology requirements for television receivers.

* * * * *

(b) All TV broadcast receivers as defined in § 15.3(w), including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger, measured diagonally, or with displays in the 16:9 aspect ratio that are 19.8 cm (7.8 in) or greater in height and digital television receivers without an associated display device shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

* * * * *

(d) * * *

(2) Digital television receivers shall react in a similar manner as analog televisions when programmed to block specific rating categories. Digital television receivers will receive program rating descriptors transmitted pursuant to industry standard EIA/CEA–766–A ''U.S. and Canadian Region Rating Tables (RRT) and Content Advisory Descriptors for Transport of Content Advisory Information using ATSC A/65–A Program and System Information Protocol (PSIP),'' 2001 (incorporated by reference, *see* § 15.38). Blocking of programs shall occur when a program rating is received that meets the pre-determined user requirements. Digital television receivers shall be able to respond to changes in the content advisory rating system.

* * * * *

■ 10. Section 15.123 is amended by revising paragraph (b)(6) to read as follows:

§ 15.123 Labeling of digital cable ready products.

* * * * *

(b) * * *

(6) In addition to the requirements of paragraphs (b)(1) through (5) of this section, a unidirectional digital cable television may not be labeled or marketed as digital cable ready or with other terminology as described in paragraph (b) of this section, unless it includes a DTV broadcast tuner as set forth in § 15.117(i) and employs at least one interface specified in paragraphs (b)(6)(i) and (ii) of this section:

(i) For 480p grade unidirectional digital cable televisions, either a DVI/HDCP, HDMI/HDCP, or 480p Y,Pb,Pr interface.

(ii) For 720p/1080i grade unidirectional digital cable televisions, either a DVI/HDCP or HDMI/HDCP interface.

* * * * *

§ 15.124 [Removed]

■ 11. Remove § 15.124.

§ 15.249 [Amended]

■ 12. Section 15.249 is amended by removing paragraph (f).

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

■ 13. The authority citation for part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

§ 18.123 [Removed]

■ 14. Remove § 18.123.

[FR Doc. 2012–2061 Filed 1–31–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA 2011–0005]

RIN 2127–AK06

Consumer Information Regulations; Fees for Use of Traction Skid Pads

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends NHTSA's consumer information regulations on uniform tire quality grading standards by updating the fees currently charged for use of the traction skid pads at NHTSA's San Angelo Test Facility, formerly called the Uniform Tire Quality Grading Test Facility, in San Angelo, Texas, and by eliminating fees for course monitoring tires, which are no longer supplied by NHTSA. This rule updates the fees in accordance with Office of Management and Budget Circular A–25, which governs fees assessed for Government services and use of Government goods or resources.

DATES: Today's final rule is effective April 2, 2012.

Petitions for reconsideration must be received by March 19, 2012.

FOR FURTHER INFORMATION CONTACT:

For program issues: Mr. George Gillespie, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5299.

For legal issues: Ms. Carrie Gage, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–6051.

SUPPLEMENTARY INFORMATION:

I. Background

Section 203 of the National Traffic and Motor Vehicle Safety Act of 1966 directs the Secretary of Transportation to prescribe standards establishing ''a uniform quality grading system for motor vehicle tires.'' 49 U.S.C. 30123. Those standards are found at 49 CFR 575.104. To aid consumers in making an informed choice in the purchase of passenger car tires, the standards require motor vehicle and tire manufacturers and tire brand owners to label such tires with information indicating their relative performance in the areas of treadwear, traction and temperature resistance. *See* 49 CFR 575.104(a).

The Uniform Tire Quality Grading Standards (UTQGS), 49 CFR 575.104, state that tire traction is ''evaluated on skid pads that are established, and whose severity is monitored, by the NHTSA both for its compliance testing and for that of regulated persons.'' 49 CFR 575.104(f)(1). As further described in the standards, the test pads are paved with asphalt and concrete surfaces that have specified locked wheel traction coefficients when evaluated in a manner prescribed in the standards. The traction skid pads are located at NHTSA's San Angelo Test Facility. 49 CFR 575.104, App. B. Several commercial facilities also have traction skid pads.

The current fees charged for use of the traction skid pads at the San Angelo Test Facility, as well as fees charged for course monitoring tires, were established by final rule published in the **Federal Register** on August 2, 1995. *See* 60 FR 39269 (Aug. 2, 1995).[1] Pursuant to Appendix D to 49 CFR 575.104, the fees charged to manufacturers for use of the Government traction skid pads continue in effect until adjusted by the Administrator of NHTSA.

II. Notice of Proposed Rulemaking (NPRM)

The NPRM proposed to update, in accordance with Office of Management and Budget (OMB) Circular A–25, the

[1] The August 2, 1995 final rule responded to a Department of Transportation Office of Inspector General (OIG) audit of NHTSA's facility in San Angelo in which the OIG concluded that NHTSA was not charging a user fee for the use of the traction skid pads at the facility and was not recovering the full cost of the course monitoring tires that it sold at San Angelo, contrary to OMB Circular A–25. *See* 60 FR 39269.

fee charged to manufacturers for use of the agency's traction skid pads at the San Angelo Test Facility.[2] It also proposed to remove provisions concerning the fees charged for course monitoring tires, as NHTSA no longer supplies these tires for purchase by manufacturers. Based on NHTSA's assessment using a ''market price'' analysis, the agency proposed to update the fees for use of the facility from $34.00 an hour, established in 1995, to $125.00 an hour, which reflected the agency's assessment of the current market price for use of traction skid pads. NHTSA received no public comments on the proposal.

As NHTSA noted in the NPRM, OMB Circular A–25 establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. The Circular expresses the general policy that ''[a] user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.'' According to the Circular, a ''special benefit'' accrues and a user charge is assessed when a Government service ''is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public.'' Manufacturer use of NHTSA's testing facility is a special benefit because use of the facility is beyond the services regularly received by the industry or the general public.[3] Accordingly, NHTSA assesses a user charge for the use of the traction skid pads.

For the purposes of assessing user charges, the Circular requires that, when the Government is acting in its capacity as sovereign, user charges be sufficient to recover the full cost to the Government of providing the good or service. When the Government is not acting as sovereign, however, user charges are to be based on market prices. The Government acts in its capacity as sovereign when it uses powers over which it has a monopoly. *See e.g., U.S.* v. *Reyes,* 87 F.3d 676, 681 (5th Cir. 1996). The Government may act in a sovereign capacity, for example, when it is the only source of a good or service, such as where the Government issues a license. *See National Park Service—Special Park Use Fees,* B–307319, *6 (Aug. 23, 2007).

The agency is not acting in its capacity as sovereign in making the San Angelo Test Facility available for traction testing by manufacturers. That facility serves primarily for NHTSA's own verification testing of manufacturers' tires. As NHTSA recently stated with regard to the UTQGS regulations, manufacturers are not restricted to the use of the traction skid pads at the government facility in San Angelo. Rather, manufacturers may test their tires wherever they choose. *See* 75 FR 15894, 15913 (March 30, 2010). Because NHTSA's own verification tests are conducted at the San Angelo Test Facility, tire manufacturers often choose to do so as well.

Pursuant to Circular A–25, '''Market price' means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.'' Where there is substantial competitive demand for a good, resource, or service, the market price is determined by commercial practice, for example, by competitive bidding, or by reference to the prevailing price of the same or similar good, resources, or services, adjusted to reflect demand, level of service and quality of the good or service.

As NHTSA explained in the NPRM, to determine the appropriate market price for use of the San Angelo Test Facility, the agency surveyed several commercial facilities with traction skid pads available for public use. Prices for the hourly use of traction skid pads ranged from approximately $115 per hour to approximately $200 per hour. From its own experience, NHTSA believes that discounted rates may be available based on volume use or advance planning. As described in the NPRM, NHTSA believes it is appropriate to take the availability of discounts into account in arriving at a determination of market rate. In the NPRM, NHTSA took a conservative approach, proposing to set the rate for use of the traction skid pads at the lower end of this range—$125 per hour. NHTSA specifically sought comments regarding whether our proposed rate for hourly use of the traction skid pads at the San Angelo Test Facility accurately reflects the market price for such services. As noted above, NHTSA received no comments on the proposal.

III. Final Rule

NHTSA continues to believe that a fee of $125.00 per hour for use of the traction skid pads at the San Angelo Test Facility accurately reflects the current market price of such services. Accordingly, in the absence of comments, this document adopts the agency's proposal by updating the fees to $125.00 an hour. As proposed in the NPRM, this document also removes provisions concerning fees charged for course monitoring tires.

V. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this regulatory action under E.O. 12866 and E.O. 13563 and the Department of Transportation's (DOT) regulatory policies and procedures. This rulemaking action was not reviewed by the Office of Management and Budget under E.O. 12866. The rulemaking has also been determined not to be significant under DOT's regulatory policies and procedures (44 FR 11034, February 26, 1979).

Based on the type of fees and the anticipated use of the test track, NHTSA believes that the costs of the final rule will be minimal and do not warrant preparation of a regulatory evaluation. The rule will increase fees charged to private manufacturers for use of a government facility to prevailing market rates. Manufacturers have a choice as to whether to use this government facility or a private commercial facility. As a result, this action does not involve any substantial public interest or controversy. Furthermore, NHTSA anticipates that any impact on the sale price of tires would be minimal, because an increase in testing fees would likely be distributed across a manufacturer's sales volume. NHTSA does not anticipate any substantial effect on State and local governments or on a major transportation safety program.

B. National Environmental Policy Act

NHTSA has evaluated this final rule for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the quality of the human environment.

C. Regulatory Flexibility Act

NHTSA has considered the impact of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996). NHTSA believes

[2] 76 FR 2309 (Jan. 13, 2011).

[3] While there is a public benefit in making available a standardized tire grading facility for manufacturer use, the public benefits are incidental to the special benefits derived by the manufacturers. According to Circular A–25, when the public obtains a benefit as a necessary consequence of an agency's provision of special benefits to an identifiable recipient, an agency should seek to recover the applicable fee from the identifiable recipient.

that this action would not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). Tire manufacturers are not small entities. The amendments will affect businesses that conduct contract traction testing at NHTSA's test facility, some of which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency does not believe that this rulemaking will result in a significant economic impact on these entities. Under the final rule, the fees paid for use of the government facility will be essentially equivalent to those paid to a commercial testing facility—the market rate. The agency believes that small governmental jurisdictions will be only minimally affected by this rulemaking since they are generally not large scale purchasers of vehicles tires. Furthermore, even in the case of substantial purchases, as noted above, costs passed on to consumers are expected to be minimal since testing fees will likely be distributed across a manufacturer's sales volume.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the final rule does not have federalism implications because the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the preemptive effect of today's final rule. NHTSA's safety standards can have preemptive effect in two ways. [4] This final rule amends 49 CFR Part 575 and is not a safety standard. This rulemaking only updates the fees currently charged for use of the traction skid pads at NHTSA's San Angelo Test Facility and does not require anyone to use the facility.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this final rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 2005). Adjusting this amount by the implicit gross domestic product price deflator for 2009 results in $135 million (109.770/81.536 = 1.35).

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $135 million annually, and will not result in an expenditure of that magnitude by private entities. Because this final rule will not require expenditures exceeding $135 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule will not have any requirements that are considered to be information collection requirements as defined by the OMB in 5 CFR Part 1320. Accordingly, the PRA is not applicable to this action.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please write to us with your suggestions.

J. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

[4] With respect to the safety standards, the National Traffic and Motor Vehicle Safety Act contains an express preemptive provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). Second, the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

List of Subjects in 49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, 49 CFR part 575 is amended as follows:

PART 575—CONSUMER INFORMATION

■ 1. The authority citation for part 575 continues to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

■ 2. Revise Appendix D to § 575.104 to read as follows:

§ 575.104 Uniform tire quality grading standards.

Appendix D—User Fees

1. *Use of Government Traction Skid Pads:* A fee of $125 will be assessed for each hour, or fraction thereof, that the traction skid pads at Goodfellow Air Force Base, San Angelo, Texas are used. This fee is based upon the market price of the use of the traction skid pads.

2. Fee payments shall be by check, draft, money order, or Electronic Funds Transfer System made payable to the Treasurer of the United States.

3. The fee set forth in this Appendix continues in effect until adjusted by the Administrator of NHTSA. The Administrator reviews the fee set forth in this Appendix and, if appropriate, adjusts it by rule at least every 2 years.

Issued on: January 25, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–2141 Filed 1–31–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 216 and 218

[Docket No. 111019636–2033–02]

RIN 0648–BB53

Taking and Importing Marine Mammals: U.S. Navy Training in 12 Range Complexes and U.S. Air Force Space Vehicle and Test Flight Activities in California

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

ACTION: Final rule.

SUMMARY: Between January 2009 and May 2011, pursuant to the Marine Mammal Protection Act (MMPA), NMFS issued twelve 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities. Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-year regulations to govern the unintentional taking of marine mammals incidental to U.S. Air Force (USAF) space vehicle and test flight activities from Vandenberg Air Force Base (VAFB). These regulations require the issuance of annual ''Letters of Authorization'' (LOAs).

Since the issuance of the rules, the Navy realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. NMFS now amends the regulations for the affected Navy training ranges to provide for additional flexibility and allow for LOAs with longer periods of validity. Similarly, NMFS now amends the regulations issued to VAFB in February 2009, to allow for greater flexibility regarding the types and amounts of missile and rocket launches that the USAF conducts.

DATES: Effective on February 1, 2012.

ADDRESSES: Regarding the Navy action, electronic copies of the Navy's LOA applications, NMFS' Records of Decision (RODs), and NMFS' proposed and final rules and subsequent LOAs; and regarding the USAF action, electronic copies of the USAF's LOA application, NMFS' Environmental Assessment and Finding of No Significant Impact, and NMFS' proposed and final rules and subsequent LOAs, and other documents cited herein may be obtained by writing to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

FOR FURTHER INFORMATION CONTACT: Jolie Harrison or Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, a notice of proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103.

The National Defense Authorization Act (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations, and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (section 3(18)(B) of the MMPA):

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Between January 2009 and May 2011, pursuant to the MMPA, NMFS issued 5-year final regulations to govern the unintentional taking of marine mammals incidental to Navy training and associated activities conducted in the Hawaii Range Complex (HRC), the Southern California (SOCAL) Range Complex, the Atlantic Fleet Active Sonar Training (AFAST) Study Area, the Jacksonville (JAX) Range Complex, the Virginia Capes (VACAPES) Range Complex, the Cherry Point (CHPT) Range Complex, the Naval Surface Warfare Center Panama City Division (NSWC PCD), the Mariana Islands Range Complex (MIRC), the Northwest Training Range Complex (NWTRC), the Naval Under Sea Warfare Center (NUWC) Keyport, the Gulf of Mexico (GOMEX) Range Complex, and the Gulf of Alaska Temporary Maritime Activities Area (GOA TMAA). Additionally, in February 2009, pursuant to the MMPA, NMFS issued 5-

year regulations to govern the unintentional taking of marine mammals incidental to USAF space vehicle and test flight activities from VAFB in California. These regulations, which allow for the issuance of annual LOAs for the incidental take of marine mammals during the specified activities and described timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

Currently, with the exception of the GOA TMAA regulations (which allow for biennial LOAs), these rules state that LOAs must be renewed annually. To date, the Navy has complied with this requirement, and NMFS has issued annual LOAs to the Navy for activities on its ranges; however, in order to alleviate some of the administrative burden associated with processing annual LOAs, the Navy has requested that NMFS revise the current regulations to allow for LOAs with longer periods of validity. NMFS' regulations implementing section 101(a)(5)(A) through (D) of the MMPA do not limit the period of validity for LOAs to one year, and NMFS relied on this authority when regulations were promulgated for the GOA TMAA that allow for LOAs to be issued on an annual or biennial basis (76 FR 25480, May 4, 2011). The specific language found in the general regulations governing small takes of marine mammals incidental to specified activities states that, ''Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request'' (50 CFR 216.106(c)). With respect to revising the timing of LOA renewals, the period of validity for the LOAs can be extended past one year, but will not exceed the time remaining on the 5-year rule. For example, under the revised regulations, if the Navy requested a multi-year LOA for AFAST in 2012, the LOA could only be valid for a maximum of two years because the 5-year rule expires in 2014. Other factors may be taken into consideration when determining the period of validity for a multi-year LOA, such as the degree of advanced planning regarding future training or exercise schedules and the details concerning the amount of activity and marine mammal occurrence documented in the previous year's monitoring and exercise reports. The regulations still: (1) Require the Navy to submit annual monitoring and exercise reports; (2) require that NMFS and the Navy hold annual monitoring and adaptive management meetings; and (3) allow for LOAs to be changed at any time, as appropriate, based on the availability of new information regarding military readiness activities or the marine mammals affected.

In addition, these rules as first issued (a subset have been modified) quantified the specific amounts of individual sound source use that would occur over the course of the 5-year rules, and indicated that marine mammal take could only be authorized in an LOA incidental to the source types and amounts described. No language was initially included expressly allowing for deviation from those precise levels of source use, even if the total number of takes remained within the analyzed and authorized limits. Since the issuance of the rules, the Navy realized that their evolving activities, which are linked to real world events, necessitate greater flexibility in the types and amounts of sound sources that they use. In response to this need, when the Navy requested incidental take authorization for the most recent area (GOA TMAA), NMFS included language explicitly allowing for greater flexibility in both source amount and type. Recently, NMFS amended the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations to explicitly allow for greater flexibility in the types and amount of sound sources that they use (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). The language contained in the regulatory text for the interim final rules issued on February 8, 2011, and May 26, 2011 (76 FR 6699 and 76 FR 30552) remains unchanged from what was initially published. Through this final rule, NMFS now finalizes the aforementioned interim final rules without changes and amends the regulations for the remaining Navy training and RDT&E ranges to allow this same flexibility and ensure consistency.

The USAF regulations for activities at VAFB initially quantified the specific amounts of missiles and rockets that could be launched over the course of the 5-year rule and indicated that marine mammal take could only be authorized in an LOA incidental to the amounts described. No language was initially included expressly allowing for deviation from those precise launch levels, even if the total number of takes remained within the analyzed and authorized limits. Since the issuance of the rule, the USAF realized that their evolving training programs, which are linked to real world events, necessitate greater flexibility in the types and amounts of missile and rocket launches that they conduct. NMFS now amends the regulations issued to VAFB in February 2009, to allow for such flexibility.

Summary of the Navy Modifications

Multi-Year LOAs

On May 4, 2011, NMFS issued 5-year regulations governing the taking of marine mammals incidental to training activities conducted in the GOA TMAA (76 FR 25480). These regulations allow for the issuance of annual or biennial LOAs (only annual LOAs had been allowed for in the previous Navy rules issued), but retain the annual reporting and meeting requirements.

After the issuance of the 2011 GOA TMAA rule, the Navy inquired about proposing amendments to the previously implemented Navy rules that would enable NMFS to renew LOAs for other training and RDT&E ranges on a multi-year basis. The ability to issue multi-year LOAs reduces administrative burdens on both NMFS and the Navy. In addition, multi-year LOAs would avoid situations where the last minute issuance of LOAs necessitated the commitment of extensive resources by the Navy for contingency planning.

This modification amends the regulations to allow the issuance of multi-year LOAs for all 12 Navy range complexes: HRC, SOCAL, AFAST, JAX, VACAPES, CHPT, NSWC PCD, MIRC, NWTRC, NUWC Keyport, GOA TMAA and GOMEX. The regulations for these range complexes currently limit the period of validity for LOAs to 1 year (2 for GOA TMAA) and the Navy must request renewal of LOAs annually (biennially for GOA TMAA). Although the amendments can increase the period of validity for LOAs, the regulations retain the annual reporting and adaptive management meeting requirements that ensure NMFS is able to evaluate the Navy's compliance and marine mammal impacts with the same attention and frequency. In addition, a new LOA can be issued to incorporate any needed mitigation or monitoring measures developed through adaptive management, or if the Navy proposes changes to their activity within a given annual reporting period.

Interannual Flexibility (Source Type and Amount of Use)

With respect to the second modification regarding the types of sources for which incidental take is authorized, in some cases the Navy's rules only identified the most representative or highest power source to represent a group of known similar sources. The Navy regularly modifies or develops new technologies, which often

results in sound sources that are similar to, but not exactly the same as, existing sources. In order to address these source modifications and the development of new technologies, NMFS includes new regulatory language designed to allow for more flexibility by authorizing take incidental to the previously identified specific sound source or ''similar sources'' (i.e., those that have similar characteristics to the specific sources and do not change any of the underlying analysis, which NMFS would evaluate and verify upon receipt of an LOA application containing a description of the new similar sound source). In the February 8, 2011, modification to the HRC, SOCAL, and AFAST rules and the May 26, 2011, modification to the VACAPES and JAX rules, NMFS increased the flexibility of the regulations by inserting language that explicitly allows for authorization of take incidental to the previously identified specified sound sources or ''similar sources'' (with similar characteristics that do not change any of the underlying analyses). The language contained in the regulatory text for the interim final rules issued on February 8, 2011, and May 26, 2011 (76 FR 6699 and 76 FR 30552) remains unchanged from what was initially published. NMFS now finalizes these two interim final rules without changes and inserts similar language in the following Navy rules: CHPT; NSWC PCD; MIRC; NUWC Keyport; GOMEX; and NWTRC.

Finally, regarding amounts of sound source use, the regulations only allow for the authorization of take incidental to a 5-yr maximum amount of use for each specific sound source, even though in most cases our effects analyses do not differentiate the impacts from the majority of the different types of sources. Specifically, although some sonar sources are louder or generate more acoustic energy in a given amount of time, which results in more marine mammal takes, we authorize total takes but do not differentiate between the individual takes that result from one source versus another. This final rule amends the Navy rules to allow for inter-annual variability in the amount of source use identified in each LOA. For example, in one year, the Navy could use a lot of one source and a little of another, and the next year those amounts could be reversed; however, the amount of inter-annual variability cannot result in exceeding the total level of incidental take analyzed and identified in the final rules, and the taking cannot result in more than a negligible impact on affected species or stocks. Language of this nature was included in final regulations governing the authorization of take incidental to the Navy's training activities in the Mariana Islands and Northwest Training Range Complexes, which were issued in 2010. NMFS issued interim final rules amending the HRC, SOCAL Range Complex, AFAST, VACAPES, and JAX regulations by adding language of this nature to increase operational flexibility in those range complexes (76 FR 6699, February 8, 2011, and 76 FR 30552, May 26, 2011). However, this language has not been adopted in the remaining Navy rules and NMFS now finalizes the aforementioned interim final rules and includes language of this nature in the regulations governing the authorization of take incidental to the additional Navy range complexes not previously addressed by either the final rules or interim final rules mentioned above.

These regulatory amendments do not change the analyses of marine mammal impacts conducted in the original final rules. This is assured and illustrated through: (1) The Navy's submission of LOA applications for each area, which include take estimates specific to the upcoming period's activities (*i.e.,* sound source use); (2) their subsequent annual submission of classified exercise reports, which accurately report the specific amount of use for each sound source over the course of the previous year; and (3) their annual submission of monitoring reports, which describe observed responses of marine mammals to Navy sound sources collected via visual, passive acoustic, or tagging methods. Together, these submissions allow NMFS to accurately predict and track the Navy's activities to ensure that both NMFS' LOAs, and the impacts of the Navy's activities on marine mammals, remain within what is analyzed and allowed under the 5-year regulations.

Summary of the USAF Modification

In the 5-year regulations issued to the USAF in February 2009, NMFS authorized up to 30 missile launches and up to 20 rocket launches annually from VAFB (74 FR 6236, February 6, 2009). Those regulations analyzed potential impacts from many different types of missiles and rockets, such as the Atlas, Delta, Falcon, and intercontinental ballistic missiles. At the time of issuance of the regulations to the USAF, the Falcon was not yet ready for launch, but it was anticipated that the first launch of such a rocket would occur around August 2009. Information related to this rocket type was analyzed in both the proposed and final rulemaking documents. The Falcon has not yet been launched from VAFB, and it is anticipated that the first launch will occur in late 2012 or early 2013.

In order to accommodate the necessary launches of the Falcon rocket, the USAF has indicated that it needs to reassign the amount of the 50 total launches allowed annually. Instead of the 30 missile and 20 rocket launches currently authorized per year, the USAF has requested that they be permitted to conduct 15 missile launches and 35 rocket launches per year. The total number of annual launches would remain at 50.

As indicated above, this regulatory amendment does not change the analyses of marine mammal impacts conducted in the original final rule. This fact is assured and illustrated through: (1) The USAF's submission of annual LOA requests for the activities at VAFB related to space vehicle and test flight activities; and (2) their annual submission of monitoring reports, which describe observed responses of marine mammals to USAF missile and rocket launches and aircraft activity collected via visual monitoring and acoustic recording methods. These submissions allow NMFS to accurately predict and track the USAF's activities to ensure that both NMFS' LOAs and the impacts of the USAF's activities on marine mammals remain within what is analyzed and authorized under the 5-year regulations.

Comments and Responses

On November 15, 2011 (76 FR 70695), NMFS published a proposed rule in response to requests by the Navy and USAF to allow for greater flexibility with respect to the regulations and LOAs permitting the types and amounts of sound sources that they use. In addition, the proposed rule responded to the Navy's request for LOAs with longer periods of validity (i.e., greater than one year). NMFS received comment letters from the Marine Mammal Commission, Department of the Interior, the U.S. Air Force, environmental non-governmental organizations, an interested member of the public, and one member of Congress. The comments are summarized and addressed below. Full copies of the comment letters may be accessed at *http://www.regulations.gov*. The letter from the Marine Mammal Commission can be accessed at *http://mmc.gov/letters/letters_11.shtml*, and recommended that NMFS amend the regulations as proposed.

Comment 1: NMFS should delay publishing the final rule until after NOAA's working group on marine mammal hotspots has completed its work.

Response: NMFS does not agree that delaying the publication of the final rule until after the working groups have completed their work is warranted. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the Navy final rules and LOAs, and mitigation or monitoring measures may be modified, as appropriate. The timing of potential adaptive management actions identified above would not be changed by delaying the publication of this final rule because LOAs can be modified at any time to include new mitigation or monitoring measures if new information suggests such a change is warranted.

Comment 2: NMFS has not properly assessed the impacts to marine mammals that could result from variability in the amount of source use within a five year period.

Response: As we stated in the preamble to the proposed rule (76 FR 70695, November 15, 2011), these regulatory amendments do not change the analyses of marine mammal impacts conducted in the original final rules. Under the revisions, any variations in sound types or use could not exceed the level of take authorized by the original rules, and individual LOA renewal applications will provide new take estimates for NMFS to review. New information, including results and recommendations from the working groups, would also be taken into consideration. In addition, the submission of annual monitoring and exercise reports by the Navy and USAF allow NMFS to accurately track the military readiness activities and ensure that LOAs issued by NMFS and the impacts of the military readiness activities on marine mammals remain within what is analyzed and authorized under the 5-year regulations.

Comment 3: NMFS must ensure that ''similar sources'' are truly similar and that the takings of marine mammals resulting from the use of ''similar sources'' do not exceed the takings that are authorized in the final rules.

Response: NMFS agrees and will evaluate the ''similar sources'' and their likely impacts on marine mammals when the Navy submits their LOA applications, which include a detailed description of any new sources and a take estimate. NMFS will also review annual monitoring and exercise reports to ensure that takings from similar sources do not exceed those authorized in the final rules.

Comment 4: To maintain a commitment to oversight and adaptive management, NMFS must limit the taking of marine mammals to the annual take amount analyzed in the applicable EISs and final rules.

Response: NMFS' commitment to oversight and adaptive management is assured and illustrated through the review of annually submitted exercise and monitoring reports, which describe military readiness activities conducted during the reporting periods and observed responses of marine mammals to Navy training exercises and USAF missile and rocket launches and aircraft activity collected via visual monitoring and acoustic recording methods. Together, these submissions allow NMFS to accurately predict and track military readiness activities conducted by the Navy and USAF to ensure that incidental takings remain within what is analyzed and allowed under the 5-year regulations. In addition, NMFS continues to require annual adaptive management meetings with the Navy, which ensures that NMFS is able to evaluate the Navy's compliance and marine mammal impacts as carefully and as often as NMFS would in the absence of the modification. Finally, under the modified regulations, NMFS still has the ability to issue a new LOA at any time, pursuant to the adaptive management mechanism, if mitigation or monitoring modifications are needed.

Comment 5: The USAF requested that NMFS include language in the final rule that allows for the issuance of multi-year LOAs to the USAF for space vehicle and test flight activities from VAFB.

Response: The USAF did not make this request to NMFS prior to release of the proposed rule for public comment. The current 5-year rule governing authorizations for take of marine mammals at VAFB expires on February 6, 2014. Therefore, if NMFS were to make this change now, it would make it unnecessary to issue only one remaining LOA, as three LOAs have already been issued to the USAF under the current regulations. NMFS did not include language authorizing LOAs that would cover multiple years for activities at VAFB, and including such language in the final rule would not result in significant time savings or administrative streamlining at this stage in implementation of the current 5-year regulations. Therefore, NMFS has not included language in the final rule for the USAF activities that would allow for the issuance of multi-year LOAs. However, if and when the USAF applies for new 5-year regulations, NMFS will consider issuance of multi-year LOAs in the proposed rule that is released for public comment at that time.

Comment 6: With respect to the interim final rule that amended the regulations governing take authorizations for JAX, VACAPES, and CHPT, the Marine Mammal Commission questioned whether it was necessary to waive the opportunity for public notice and comment, and recommended that NMFS take all steps possible to avoid invoking the good cause exception under similar circumstances.

Response: NMFS agrees with the Commission that a waiver of the opportunity for public notice and comment is only permissible in limited circumstances; that is, when the agency finds that notice and comment are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). In this case, NMFS determined that providing for notice and comment and delaying the effective date of the interim final rule were both impracticable and contrary to the public interest, because the Navy had ''a compelling need to continue its currently on-going military readiness and testing activities with the specific sound sources at issue without interruption.'' Specifically, the Navy urgently needed to make multiple adjustments to the amount and type of explosives being used, and had an immediate need for more flexibility regarding the areas in which certain exercises could take place. As noted by the Commission, the Navy requested the amendment to the regulation several months before the interim final rule was issued. Given limited agency resources, the interim final rule was issued as soon as NMFS was able to perform the required analyses, and the Navy was simply unable to accommodate any further delay in issuance of the interim final rule in order to allow for notice and comment. As recommended by the Commission, NMFS provided an opportunity for public review and comment on all of the modifications that were subsequently proposed by NMFS for other Navy rules that did not require immediate implementation, and that are also codified in this final rule.

Classification

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

Pursuant to the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities. The RFA requires Federal agencies to prepare an analysis of a rule's impact on small

entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. Neither the Navy nor the USAF are small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. Any requirements imposed by an LOA issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy and USAF. NMFS does not expect the amendments of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action would directly affect the Navy and USAF and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effectiveness of the measures contained in the final rule. The Navy and USAF, as the authorized entities, have informed NMFS that any delay of enacting the final rule would result in: (1) A suspension of ongoing or planned military readiness activities, which would disrupt vital training essential to national security; or (2) the Navy and USAF's procedural non-compliance with the MMPA (should the Navy and USAF conduct activities without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the Navy and USAF, the only parties directly affected by this rule, are ready to implement the rule immediately; therefore, these measures will become effective upon publication.

List of Subjects in 50 CFR Parts 216 and 218

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: January 20, 2012.

Alan D. Risenhoover,

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

For reasons set forth in the preamble, 50 CFR parts 216 and 218 are amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 216.120, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 216.120 Specified activity and specified geographical region.

(a) * * *

(1) Launching up to 15 missiles each year from Vandenberg Air Force Base, for a total of up to 75 missiles over the 5-year period of the regulations in this subpart,

(2) Launching up to 35 rockets each year from Vandenberg Air Force Base, for a total of up to 175 rocket launches over the 5-year period of the regulations in this subpart,

* * * * *

■ 3. Section 216.121 is revised to read as follows:

§ 216.121 Effective dates.

Amended regulations are effective from February 1, 2012, through February 6, 2014.

■ 4. In § 216.170, revise paragraphs (c) introductory text, (c)(1) introductory text, (c)(1)(vii), (c)(2) introductory text, (c)(2)(ii)(H), and (d) are as follows:

§ 216.170 Specified activity and specified geographical region.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training activities (estimated amounts below):

* * * * *

(vii) AN/SSQ–125 (AEER sonar sonobuoy)—4800 sonobuoys (total, of IEER/EER and AEER combined) over the course of 5 years (an average of 960 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(ii) * * *

(H) EER/IEER—4800 sonobuoys (total, of EER/IEER and AEER combined) over the course of 5 years (an average of 960 sonobuoy deployments per year)

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.170(c) should the amounts (*e.g.,* hours, dips, or number of exercises) vary from those estimated in § 216.170(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.172(c).

■ 5. In § 216.171, paragraph (a) is revised to read as follows:

§ 216.171 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 5, 2014.

* * * * *

■ 6. In § 216.177, paragraph (a) is revised to read as follows:

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.178 and the modification conditions in § 216.179.

* * * * *

■ 7. In § 216.178, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.177 for the activity identified in § 216.170(c) may be renewed for an amount of time not to exceed the periods of validity of this subpart upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.176 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.174 and the Letter of Authorization issued under §§ 216.106 and 216.177, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 8. In § 216.240, revise paragraphs (c) introductory text and paragraph (d) to read as follows:

§ 216.240 Specified activity and specified geographical region.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the use of the following mid-frequency active sonar (MFAS) sources, high frequency active sonar (HFAS) sources, explosive sonobuoys, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.240(c) should the amounts (*e.g.,* hours, dips, or number of exercises) vary from those estimated in § 216.240(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.242(c).

■ 9. In § 216.241, paragraph (a) is revised to read as follows:

§ 216.241 Effective dates and definitions.

(a) Amended regulations are effective from February 1, 2012, through January 22, 2014.

* * * * *

■ 10. In § 216.247 paragraph (a) is revised to read as follows:

§ 216.247 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.248 and the modification conditions in § 216.249.

* * * * *

■ 11. In § 216.248, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.248 Renewal of Letters of Authorization and Adaptive Management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.247 for the activity identified in § 216.240(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.246 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.244 and the Letter of Authorization issued under §§ 216.106 and 216.247, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 12. In § 216.270, revise paragraphs (c) introductory text, (c)(1), (c)(2) and (d) to read as follows:

§ 216.270 Specified activity and specified geographical region.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

* * * * *

(d) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 216.270(c) should the amounts (e.g., hours, dips, or number of exercises) vary from those estimated in § 216.270(c), provided that the variation does not result in exceeding the amount of take indicated in § 216.272(c).

■ 13. In § 216.271, paragraph (a) is revised to read as follows:

§ 216.271 Effective dates and definitions.

(a) Amended regulations are effective from the date of publication of the final rule, through January 14, 2014.

* * * * *

■ 14. In § 216.277, paragraph (a) is revised to read as follows:

§ 216.277 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 216.278 and the modification conditions in § 216.279.

* * * * *

■ 15. In § 216.278, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 216.278 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under §§ 216.106 and 216.277 for the activity identified in § 216.270(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.276 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 216.274 and the Letter of Authorization issued under §§ 216.106 and 216.277, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 16. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 17. In § 218.1, revise paragraphs (c) introductory text, (c)(1), (c)(1)(i)(D), (c)(1)(ii) introductory text, (d) and (e) to read as follows:

§ 218.1 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

(i) * * *

(D) Airborne Mine Neutralization system (AMNS)

* * * * *

(ii) Training events (with approximated number of events)

* * * * *

(d) Amended regulations are effective from February 1, 2012, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives or activities, listed in § 218.1(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.1(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.2(c).

■ 18. In § 218.7, paragraph (a) is revised to read as follows:

§ 218.7 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.8 and the modification conditions in § 218.9.

* * * * *

■ 19. In § 218.8, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.8 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.7 for the activity identified in § 218.1(c) may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.6 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.4 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.7, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 20. In § 218.10, revise paragraphs (c) introductory text, (c)(1), (d) and (e) to read as follows:

§ 218.10 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Amended regulations are effective February 1, 2012, through June 4, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.10(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.10(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.11(c).

■ 21. In § 218.13, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.13 Mitigation.

* * * * *

(A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 216.11(c).

* * * * *

■ 22. In § 218.16, paragraph (a) is revised to read as follows:

§ 218.16 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.17 and modification conditions in § 218.18.

* * * * *

■ 23. In § 218.17, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.17 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.16 for the activity identified in § 218.10(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.15 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.13 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.16, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 24. In § 218.20, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.20 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Regulations are effective February 1, 2012, through June 4, 2014.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.20(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.20(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.21(c).

■ 25. In § 218.23, paragraph (a)(4)(i)(A) is revised to read as follows:

§ 218.23 Mitigation.

(a) * * *

(4) * * *

(i) * * *

(A) This activity shall only occur in Areas 4/5 and 13/14, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.21(c).

* * * * *

■ 26. In § 218.26, paragraph (a) is revised to read as follows:

§ 218.26 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.27 and the modification conditions in § 218.28.

* * * * *

■ 27. In § 218.27, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.27 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.26 for the activity identified in § 218.20(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.25 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.23 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.26, were undertaken and will be undertaken

during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 28. In § 218.30, paragraphs (c) introductory text, (c)(1) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.30 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the explosive munitions, or similar explosive types, indicated in paragraph (c)(1)(i) of this section conducted as part of the Navy training events, or similar training events, indicated in paragraph (c)(1)(ii) of this section:

* * * * *

(d) Regulations are effective February 1, 2012, through February 17, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the explosive types and activities, or similar explosives and activities, listed in § 218.30(c) should the amounts (e.g., number of exercises) vary from those estimated in § 218.30(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.31(c).

■ 29. In § 218.33, paragraph (a)(3)(i)(A) is revised to read as follows:

§ 218.33 Mitigation.

(a) * * *

(3) * * *

(i) * * *

(A) This activity shall only occur in the W–155A/B (hot box) area, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in § 218.31(c).

* * * * *

■ 30. In § 218.36, paragraph (a) is revised to read as follows:

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.37 and the modification conditions in § 218.38.

* * * * *

■ 31. In § 218.37, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.33 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.36, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 32. In § 218.100, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.100 Specified activity and specified geographical area.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

* * * * *

■ 33. Section 218.101 is revised to read as follows:

§ 218.101 Effective dates.

Amended regulations are effective February 1, 2012, through August 3, 2015.

■ 34. In § 218.107, paragraph (a) is revised to read as follows:

§ 218.107 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.108 and the modification conditions in § 218.109.

* * * * *

■ 35. In § 218.108, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.108 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.107 for the activity identified in § 218.100(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.106 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.104 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.107, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 36. In § 218.110, paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2) introductory text are revised to read as follows:

§ 218.110 Specified activity and specified geographical area.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

* * * * *

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section, or similar explosives, conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

* * * * *

■ 37. Section 218.111 is revised to read as follows:

§ 218.111 Effective dates.

Amended regulations are effective February 1, 2012, through November 9, 2015.

■ 38. In § 218.117, paragraph (a) is revised to read as follows:

§ 218.117 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the

periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.118 and the modification conditions in § 218.119.

* * * * *

■ 39. In § 218.118 paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.118 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.117 for the activity identified in § 218.110(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.116 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.114 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.117, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 40. Section 218.121 is revised to read as follows:

§ 218.121 Effective dates.

Amended regulations in this subpart are effective February 1, 2012, through May 4, 2016.

■ 41. In § 218.127, paragraph (a) is revised to read as follows:

§ 218.127 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.128 and the modification conditions in § 218.129.

* * * * *

■ 42. In § 218.128, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.128 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.127 for the activity identified in § 218.120(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.126 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.124 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.127, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 43. In § 218.170, paragraphs (c) introductory text and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.170 Specified activity and specified geographical area and effective dates.

* * * * *

(c) These regulations apply only to the taking of marine mammals by the Navy if it occurs incidental to the following activities, or similar activities, and sources, or similar sources (estimate amounts of use below):

* * * * *

(d) Amended regulations are effective February 1, 2012, through April 11, 2016.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.170(c) should the amounts (*e.g.,* hours, number of exercises) vary from those estimated in § 218.170(c), provided that the variation does not result in exceeding the amount of take indicated in § 218.171(c).

■ 44. In § 218.176, paragraph (a) is revised to read as follows:

§ 218.176 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.177 and the modification conditions in § 218.178.

* * * * *

■ 45. In § 218.177, paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.177 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.176 for the activity identified in § 218.170(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.175 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.173 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.176, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

■ 46. In § 218.180, paragraphs (c) introductory text, (c)(1) introductory text, (c)(2) introductory text, (c)(3) introductory text, (c)(4) introductory text, (c)(5) introductory text, and (d) are revised, and paragraph (e) is added to read as follows:

§ 218.180 Specified activity and specified geographical area and effective dates.

* * * * *

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in territorial waters (estimated amounts below):

* * * * *

(2) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(3) Ordnance operations, or similar operations, for Navy mission activities in territorial waters (estimated amounts below):

* * * * *

(4) Ordnance operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(5) Projectile firing operations, or similar operations, for Navy mission activities in non-territorial waters (estimated amounts below):

* * * * *

(d) Amended regulations are effective February 1, 2012, through January 21, 2015.

(e) The taking of marine mammals may be authorized in an LOA for the activities and sources listed in § 218.180(c) should the amounts (*e.g.,* hours, number of exercises) vary from those estimated in § 218.180(c), provided that the variation does not

result in exceeding the amount of take indicated in § 218.181(b).

■ 47. In § 218.186, paragraph (a) is revised to read as follows:

§ 218.186 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.187 and the modification conditions in § 218.188.

* * * * *

■ 48. In § 218.187 paragraphs (a) introductory text, (a)(1), and (a)(3) are revised to read as follows:

§ 218.187 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.186 for the activity identified in § 218.180(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.185 will be undertaken and that there will not be a substantial modification to the desired work, mitigation, or monitoring undertaken during the upcoming period of validity;

* * * * *

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.183 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.186, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

* * * * *

[FR Doc. 2012–1621 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 21
Wednesday, February 1, 2012

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AE01

Loan Workouts and Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its regulations to require federally insured credit unions (FICUs) to maintain written policies that address the management of loan workout arrangements and nonaccrual policies for loans, consistent with industry practice or Financial Institutions Examination Council (FFIEC) requirements. The proposed rulemaking includes guidelines set forth as an interpretive ruling and policy statement (IRPS) and incorporated as an appendix to the rule that will assist FICUs in complying with the rule, including the regulatory reporting of troubled debt restructured loans (TDR loans or TDRs) in FICU Call Reports. The NCUA Board (Board) believes this proposed rulemaking and IRPS is timely considering the growth of these types of loans during the recent economic stresses experienced in the financial industry.

DATES: Send your comments to reach us on or before March 2, 2012. We may not consider comments received after the above date in making our decision on the proposed rule.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Proposed Rule 741/IRPS 12–1, ''Loan Workouts'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCmail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Director of Supervision Matthew J. Biliouris and Chief Accountant Karen Kelbly, Office of Examination and Insurance; at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background
II. The Rule and IRPS as Proposed
III. Analysis of Rule Amendment and IRPS
IV. Regulatory Procedures

I. Background

Why is NCUA proposing this rule and IRPS?

The economic challenges of the last several years have resulted in an increasing number of distressed borrowers. In order to better serve members experiencing financial difficulties and improve collectability, FICUs have worked with members and offered sensible workout loans, including programs offered through the Obama Administration's ''Making Home Affordable Program'' (MHA). MHA is an important part of the Obama Administration's comprehensive plan to stabilize the U.S. housing market by helping homeowners get mortgage relief and avoid foreclosure.[1]

NCUA Call Report data illustrates FICU loan modifications have increased 60 percent, or $5 billion, from March 2010 to September 2011, proving FICUs are working with their members during this stressful economic downturn.[2] FICUs reported $13.5 billion in outstanding balances of loans that have been modified on the September 2011 Call Report, of which 62.6 percent, or $8.5 billion, are TDR loans—see Figure 1 below.[3] FICUs reported modifying $4 billion in loans, with $2.4 billion reported as TDR loans, for the first nine months of 2011. September 2011 data also reported approximately 42,000 delinquent modified loans totaling $2.2 billion, which equates to a 16.42 percent delinquency rate for these loans.

[1] MHA was developed to help homeowners avoid foreclosure, stabilize the country's housing market, and improve the nation's economy. MHA includes such programs as the ''Home Affordable Refinance Program'' (HARP) and ''Home Affordable Modification Program'' (HAMP). Programs such as these further enable FICUs to provide workout loans to their members. For additional information regarding programs available through MHA see *http://www.makinghomeaffordable.gov/pages/default.aspx.*

[2] NCUA began collecting data on modified real estate loans with the September 30, 2008 Call Report. Data regarding other types of modified loans was added with the March 31, 2010 Call Report.

[3] ''Troubled Debt Restructuring'' is as defined in generally accepted accounting principles (GAAP) and means a restructuring in which a credit union, for economic or legal reasons related to a member borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. The restructuring of a loan may include, but is not necessarily limited to: (1) the transfer from the borrower to the credit union of real estate, receivables from third parties, other assets, or an equity interest in the borrower in full or partial satisfaction of the loan, (2) a modification of the loan terms, such as a reduction of the stated interest rate, principal, or accrued interest or an extension of the maturity date at a stated interest rate lower than the current market rate for new debt with similar risk, or (3) a combination of the above. A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not to be reported as a restructured troubled loan. FASB ASC 310–40, ''Receivables, Troubled Debt Restructurings by Creditors.''

[4] NCUA began collecting the number of delinquent modified loans with the September 30, 2009 Call Report.

[5] Federal Credit Union (FCU) and Federally-Insured State Credit Union (FISCU).

FIGURE 1—SUMMARY OF LOAN MODIFICATION DATA

	Reported modified loan count	Reported modified loan balance	Percent of total loans outstanding	Reported delinquent modified loan count [4]	Reported delinquent modified loan balance	Delinquent modified percentage
2008:						
FCU [5]	4,855	$702,903,362	0.23	N/A	$156,418,754	22.25
FISCU	5,400	782,308,903	0.30	N/A	164,981,230	21.09
Totals	10,255	1,485,212,265	0.26	N/A	321,399,984	21.64
2009:						
FCU	15,562	2,779,601,418	0.89	3,259	619,178,160	22.28
FISCU	19,485	3,247,090,975	1.24	3,590	679,078,846	20.91
Totals	36,047	6,026,692,393	1.05	6,849	1,298,257,006	21.54
2010:						
FCU	189,809	6,161,299,433	2.01	23,390	1,024,208,423	16.62
FISCU	116,259	5,561,026,453	2.15	16,330	1,084,561,131	19.50
Totals	306,068	11,722,325,886	2.08	39,720	2,108,769,554	17.99
Sept 2011:						
FCU	207,067	6,789,980,370	2.20	21,274	929,089,211	13.68
FISCU	141,235	6,705,125,149	2.59	20,662	1,287,161,821	19.20
Totals	348,302	13,495,105,519	2.38	41,936	2,216,251,032	16.42

As specified in the ''Interagency Question and Answers for Accounting for Loan and Leases Losses'' and distributed through NCUA Accounting Bulletin 06–01 (December 2006), NCUA's current regulatory reporting policy for TDR loans is: [6]

For regulatory reporting purposes on the Call Report, credit unions should report TDR loans (as defined in GAAP) as delinquent consistent with the original loan contract terms until the borrower/member has demonstrated an ability to make timely and consecutive monthly payments over a six month period consistent with the restructured terms. Likewise, such loans may not be returned to full accrual status until the six month consecutive payment requirement is met.

As previously discussed, data supports FICUs are modifying loans to assist their members, the majority of which are considered TDRs. The increased volume of this activity coupled with the existing reporting requirements has underscored the practical challenges for the industry. The Board is aware that in order to follow the agency's Call Report instructions for TDRs, most FICUs must maintain separate, manual delinquency computations and nonaccrual schedules. In response to feedback from the industry and in the spirit of reduced regulatory burden, the Board proposes to revise this reporting requirement and allow delinquency on TDR loans to be calculated consistent with loan contract terms, including amendments made to loan terms by a formal restructure.

The Board also believes there is confusion regarding what NCUA has defined on the Call Report as a ''Modified Loan'' for purposes of data collection, workout loans as defined in various interagency guidance, and TDRs as defined by GAAP. To address this confusion, the Board proposes to further revise the regulatory reporting requirements by eliminating data collection on ''Modified Loans'' and targeting data collection efforts to loans meeting the definition of a TDR under GAAP. In addition, it is important to recognize the Financial Accounting Standards Board (FASB) issued on April 5, 2011, Accounting Standards Update No. 20–11—Receivables (Topic 310) ''A Creditor's Determination of Whether a Restructuring is a Troubled Debt Restructuring.'' [7] This Standards Update clarified the definition of a TDR, which has the practical effect in the current economic environment to broaden loan workouts that constitute a TDR. Therefore, the Board concludes that focusing regulatory reporting requirements on TDRs will satisfy NCUA's data collection and offsite supervision needs.

Over the last several years, the Board has reconfirmed its view that prudent and sound loan workouts can be an effective tool to assist financially distressed members. Similarly, the Board understands and recognizes the need to effectively balance appropriate loan workout programs with potential safety and soundness considerations. Safety and soundness concerns related to such programs include the potential to mask deterioration in the quality of the loan portfolio, especially given the tendency for a high degree of relapse into past due status; delay loss recognition; and to ensure appropriate income recognition.[8] The Board's current policy of requiring delinquency be calculated on the original contract terms for six consecutive payments under the restructured terms was intended to provide the regulatory controls necessary to address the issues described above. With the proposal to modify this regulatory reporting requirement, the Board is clarifying regulatory expectations for the proper control of these lending activities.[9] These include requiring each

[6] Current Call Report instructions reflect this requirement. See *http://www.ncua.gov* for additional information.

[7] This standard is effective for annual periods ending on or after December 15, 2012, including interim periods within those annual periods.

[8] See NCUA Letter to Credit Unions (LCU) 07–CU–06 ''Working with Residential Mortgage Borrowers'' at *http://www.ncua.gov;* FFIEC Press Release dated March 4, 2009, ''Making Home Affordable'' at *http://www.ncua.gov;* LCU 09–CU–04, ''Making Homes Affordable—A Program for Mortgage'' at *http://www.ncua.gov;* FFIEC Press Release August 6, 2009 at *http://www.ffiec.gov;* LCU 10–CU–07, ''Commercial Real Estate Loan Workouts'' at *http://www.ncua.gov.*

[9] At the time of publishing the Interagency ALLL Policy Statement (July 2001), the banking

FICU to have a written loan workout policy and associated monitoring and controls, and formalizing the existing practice of nonaccrual standards for past due loans.

Call Report data further indicates FISCUs engage in comparable volume of this type of activity and experience similar performance trends as FCUs (see Table 1 above). As both FCUs and FISCUs actively engage in loan workout programs it is important for managing risk to the National Credit Union Share Insurance Fund (NCUSIF) that all FICUs adhere to the same minimum standards for such programs. The Board, therefore, proposes to amend Section 741.3 relating to required FICU lending policies in order to specifically address the management of loan workouts and nonaccrual practices.

II. The Rule and IRPS as Proposed

A. How would the proposal change current practice?

This proposal establishes standards for the management of loan workout arrangements that assist borrowers; revises regulatory reporting requirements related to TDR loans; and reaffirms the existing policy and practice within the credit union industry of placing loans on nonaccrual status when they reach 90 days past due. The following table summarizes these specific changes:

Topic	Current requirement	Proposed requirement	Current requirement reference
Loan workout policy	No formal requirement ..... **NOTE**—NCUA has provided specific guidance on loan modification policies for real estate loans and commercial loan workouts.	All federally insured credit unions must have a written loan workout policy.	NCUA Letter to Credit Unions (LCU) 09–CU–19, ''Evaluating Residential Real Estate Mortgage Loan Modification Program,'' (September 2009), *http://www.ncua.gov* FFIEC ''Uniform Retail Credit Classification and Account Management Policy'' 65 FR 36903 (June 12, 2000) LCU 10–CU–07, ''Commercial Real Estate Loan Workouts, transmitting Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' (June 2010), and Enclosure *http://www.ncua.gov.*
TDR Delinquency Reporting	Calculate and report TDR loan delinquency based on original contract terms until the member has made six consecutive payments under modified terms.	Calculate and report TDR loan delinquency based on restructured contract terms.	2006 Interagency Allowance for Loan and Lease Losses (ALLL) Policy Statement and Interagency FAQ on ALLL transmitted by NCUA Accounting Bulletin 06–1 (December 2006), *http://www.ncua.gov.*
Data Collection of Loan Modification and TDRs.	Data collection involves both modified loans as defined by NCUA and TDRs as defined by GAAP.	Data collection reduced to TDRs as defined by GAAP.	NCUA 5300 Call Report.
Loan Nonaccrual Policy	No formal requirements except for TDRs. For TDRs, maintain in nonaccrual until receive 6 consecutive payments.	All federally insured credit unions must cease accruing interest on loans at 90 days or more past due (with some exceptions).	Nonaccrual policy not currently memorialized in a current policy document but has been consistent credit union practice, and is supported by their existing tracking systems.
Member Business Loan (MBL) Workout Nonaccrual Policy.	No formal requirements except for TDRs. For TDRs, maintain in nonaccrual until receive 6 consecutive payments.	All federally insured credit unions must maintain member business workout loans in a nonaccrual status until the credit union receives 6 consecutive payments under the modified terms.	LCU 10–CU–07, ''Commercial Real Estate Loan Workouts, transmitting Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' (June 2010) and Enclosure *http://www.ncua.gov.*

The proposed rule requires policies governing loan workout practices and loan nonaccruals. The proposed rule also includes an IRPS as an appendix to establish NCUA's expectations and requirements regarding compliance. The Board seeks to ensure loan workout management is subject to written credit union policies and monitoring strategies, thereby limiting inherently ineffective workout strategies that do not improve loan collectability but delay loss recognition and potentially lead to further deterioration in the loan portfolio. The Board invites the public's comment on all aspects of the proposed rule and IRPS (Appendix).

B. Does the proposed rule and IRPS create greater restrictions than the current guidance?

The proposed rule and associated IRPS reduce regulatory burden by eliminating the requirement to maintain a separate, mostly manual process for tracking TDR loans. The proposed rule does, however, introduce compensating controls by requiring FICUs to establish a written loan workout policy and formulate measuring and monitoring controls. It also memorializes a longstanding nonaccrual practice for past due loans.

regulators, through the FFIEC, had in place policy requirements related to the loan account management matters, in guidance entitled ''Uniform Retail Credit Classification and Account Management Policy.'' 65 FR 36903 (June 12, 2000). When the Board implemented IRPS 02–3 conforming the ALLL to GAAP and banking regulators' like policies, it did not adopt parallel loan account management guidance for FICUs.

C. Why is the period for public comment thirty days?

As a matter of policy, NCUA believes that the public should be given at least sixty days to comment on a proposed regulation. *See* NCUA IRPS 87–2 (as amended by IRPS 03–2). In this case, however, the Board is issuing the proposed rule and IRPS with a thirty-day comment period to address the industry's request that NCUA clarify its expectations and reduce confusion and burden, particularly with regard to the classification and regulatory reporting for TDRs.

D. When will FICUs have to comply with the proposed rule?

With a shortened comment period, the Board will issue a final rule as soon as practicable, but recognizes that FICUs will need time to revise existing lending policies. Furthermore, to implement these new requirements, certain system changes will be required for reporting purposes. As such, the Board intends on issuing the final rule with an effective date of 120 days after it is published in the **Federal Register** to require the implementation of the written lending policies by such date. As further discussed in the preamble, the Board plans to closely time its adjustments to the Call Report requirements for reporting TDRs, consistent with this rulemaking. The Board anticipates that the Call Report requirements will go into effect no later than the quarter ending December 31, 2012.

The Board requests comment on the proposed effective dates for the policy requirements and the Call Report changes as well as any suggestions to lessen burden or otherwise reduce the necessary implementation time period.

III. Analysis of Rule Amendment and IRPS

Section 741.3, Lending Policies

The Board proposes to amend § 741.3(b)(2) to require FICUs to adopt policies that govern loan workout and nonaccrual practices. Section 741.3(b)(2) currently requires all FICUs to maintain written lending policies that address, at a minimum, adequate loan documentation, protection of security interests, determinations of collateral value, and evaluations of a borrower's ability to repay in the event of default. The existence and adequacy of written lending policies are critical factors in evaluating whether a FICU is operating in a safe and sound manner. In light of the increased demand for loan workouts and to ensure appropriate income recognition for loans that are past due by 90 days or more, the Board believes it prudent to require loan account management policies in the rule. The proposed rule establishes minimum standards to be applied consistently throughout the industry and serves as a tool for managing risk to NCUSIF.

To set NCUA's supervisory expectations and assist FICUs in compliance with the proposed change to § 741.3, the Board proposes to include an appendix to Part 741. The proposed appendix thoroughly addresses the loan workout account management and reporting standards FICUs must implement in order to comply with the rule. It also explains how FICUs are to report their data collections related to TDRs on Call Reports. The contents of the appendix are described in detail below.

B. Proposed Appendix C to Part 741, Interpretive Ruling and Policy Statement on Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

1. Written Loan Workout Policy and Monitoring Requirements

The Board recognizes loan workouts can be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. The Board further acknowledges that the lack of a sound workout policy can mask the true performance and past due status of the loan portfolio. Accordingly, the proposal requires the FICU board and management to adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. The loan workout policy and practices should be commensurate with each credit union's size and complexity, and must be in line with the credit union's broader risk mitigation strategies. The policy should also include aggregate program limits (for total workout portfolio and each type of workout) as a percentage of net worth. The Board proposes to use net worth, rather than unimpaired capital and surplus, as the means for striking this balance. Net worth cushions fluctuations in earnings, supports growth, and provides protection against insolvency. As such, the Board believes establishing limits tied to this measure is appropriate. The Board understands that not all FICUs are alike and this policy will enable FICUs to tailor their written policies to their own unique circumstances.

Furthermore, the Board believes loan workouts should be adequately controlled and monitored by the board of directors and management, and therefore proposes the decision to re-age, extend, defer, renew, or rewrite a loan, like any other revision to contractual terms, be supported by the FICU's management information systems. Sound management information systems are able to identify and document any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent such action has been taken. Appropriate documentation typically shows that the FICU's personnel communicated with the borrower, the borrower agreed to pay the loan in full, and the borrower has the ability to repay the loan under the new terms.

The policy must also define eligibility requirements (*i.e.* under what conditions the FICU will consider a loan workout), including establishing limits on the number of times an individual loan may be modified.[10] The policy must ensure the FICU makes loan workout decisions based on the borrower's renewed willingness and ability to repay the loan. In addition, the policy must establish sound controls to ensure loan workout actions are appropriately structured.

In developing a written policy, the FICU board and management may wish to consider similar parameters as those established in the FFIEC's ''Uniform Retail Credit Classification and Account Management Policy'' (FFIEC Policy).[11] 65 FR 36903 (June 12, 2000). The FFIEC Policy sets forth specific limitations on the number of times a loan can be re-aged (for open-end accounts) or extended, deferred, renewed or rewritten (for closed-end accounts).[12] Additionally, LCU 09–CU–19, ''Evaluating Residential Real Estate Mortgage Loan Modification Programs,'' outlines policy requirements for real

[10] Broad based credit union programs commonly used as a member benefit and implemented in a safe and sound manner limited to only accounts in good standing, such as Skip-a-Pay programs, are not intended to count toward these limits.

[11] The FFIEC was established in March 1979 to prescribe uniform principles, standards, and report forms and to promote uniformity in the supervision of financial institutions. The Council has six voting members: a Governor of the Board of Governors of the Federal Reserve System designated by the Chairman of the Board, the Chairman of the Federal Deposit Insurance Corporation, the Chairman of the Board of the National Credit Union Administration, the Comptroller of the Currency, the Director of the Consumer Financial Protection Bureau, and the Chairman of the State Liaison Committee. The Council's activities are supported by interagency task forces and by an advisory State Liaison Committee, comprised of five representatives of state agencies that supervise financial institutions.

[12] See *http://www.fdic.gov* for additional information.

estate modifications.[13] Those requirements remain applicable to real estate loan modifications but could be adapted in part by the FICU in its written loan workout policy for other loans.

The Board does not intend for these minimum requirements to be an all inclusive list, rather they provide a basic framework within which to establish a sound loan workout program.

The Board seeks comment on the proposed policies including any additional elements that should be added.

2. Regulatory Reporting of Workout Loans Including TDR Past Due Status

The Board recognizes that loan workouts that qualify under GAAP as TDRs require special financial reporting considerations. Confusion has been evident throughout the credit union industry about what constitutes a TDR and how to report the TDR identified.

The proposed policy mandates that the past due status of all loans should be calculated consistent with loan contract terms, including amendments made to loan terms through a formal restructure. This proposed revision eliminates the dual, often manual delinquency tracking burden on FICUs managing and reporting TDR loans, while instituting a nonaccrual policy on TDR loans apart from past due status. If the proposal is finalized, the Board intends to modify the Call Report instructions accordingly. As previously indicated for purposes of Call Report data, in determining if a loan is a TDR, it is the Board's view that in an economic downturn absent contrary supportable information workout loans are TDRs.

Additionally, the proposed IRPS will institute revised Call Report data collections related to loan workouts eliminating much of the current data collections on the broad category ''loan modifications,'' focusing data collection on TDR loans. The Board will add additional data elements as necessary to effectively monitor and measure TDR activity and corresponding risk to the NCUSIF. This will assist national and field examination and supervision staff both to detect the level of activity and possible overuse of reworking a nonperforming loan multiple times without improving overall collectability, and will ensure income recognition is appropriate.

Accordingly the Board invites public comment on its proposal to modify Call Report instructions to change the ''past due'' definition, and to revise loan modification data collections to target TDR data elements, as discussed.

3. Loan Nonaccrual Policy

Generally, the NCUA has required, and it has become accepted credit union practice, to cease accruing interest on a loan when it becomes 90 days or more past due. The existing approach is referenced in various letters and publications but currently is not memorialized or enforceable through any statute or regulation.[14] The Board reaffirms this longstanding credit union practice by proposing that the rule and appended IRPS require a FICU to adopt written nonaccrual policies that specifically address the discontinuance of interest accrual on loans that are past due by 90 days or more, as well as the requirements for returning such loans (including member business loan workouts) to accrual status.

Nonaccrual Status

As proposed, the IRPS specifies when FICUs must place loans in nonaccrual status, including the reversal of previously accrued but uncollected interest, set the conditions for restoration of a nonaccrual loan to accrual status, and discuss the criteria under GAAP for Cash or Cost Recovery basis of income recognition. The Board is proposing that FICUs may not accrue interest on any loan upon which principal or interest has been in default for a period of 90 days or more, unless the loan is both well secured and in the process of collection. Additionally, FICUs must place loans in nonaccrual status if maintained on a Cash (or Cost Recovery) basis because of deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected. The policy also addresses the treatment of cash interest payments received and prohibits the reversal of previously accrued, but uncollected, interest applicable to any loan placed in nonaccrual status. The Board believes this uniform policy will promote consistency and appropriate income recognition practices across FICUs of all sizes. The Board further believes this is a longstanding practice and data processing systems already support this nonaccrual policy. Therefore, the Board anticipates no more than minimal, if any, changes to credit union processes would be required.

Restoration to Accrual Status (Not Including Member Business Loan Workouts)

The proposed IRPS sets forth specific parameters for returning a nonaccrual loan to accrual. A nonaccrual loan may be returned to accrual status when:

- Its past due status is less than 90 days, GAAP does not require it to be maintained on the Cash or Cost Recovery basis, and the credit union is plausibly assured of repayment of the remaining contractual principal and interest within a reasonable period;
- When it otherwise becomes well secured and in the process of collection; or
- The asset is a purchased impaired loan and it meets the criteria under GAAP for accrual of income under the interest method specified therein.

In restoring loans to accrual status, if any interest payments received while the loan was in nonaccrual status were applied to reduce the recorded investment in the loan the application of these payments to the loan's recorded investment must not be reversed (and interest income must not be credited). Likewise, accrued but uncollected interest reversed or charged off at the point the loan was placed on nonaccrual status cannot be restored to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

The Board believes these policies surrounding restoration of loans to accrual status are a necessary supplement to the nonaccrual requirements previously discussed and will ensure appropriate and consistent income recognition in credit unions.

Restoration to Accrual Status on Member Business Loan Workouts

The Board recognizes there are unique circumstances governing the restoration of accrual for member business loan workouts and has set forth a separate policy in the proposal. This policy is largely derived from the ''Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' that NCUA and the other financial regulators issued on October 30, 2009.[15] The proposed IRPS requires a formally restructured member business loan workout to remain in nonaccrual status until the FICU can document a current credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms. The evaluation must include consideration

[13] See *http://www.ncua.gov* for additional information.

[14] The policy was discussed in an obsolete version of the NCUA Accounting Manual for FCUs, last published in June 1995.

[15] See *Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts* (October 30, 2009) transmitted by Letter to Credit Unions No. 10–CU–07, and available at *http://www.ncua.gov*.

of the borrower's sustained historical repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status.

A sustained period of repayment performance would be a minimum of six consecutive payments and would involve payments of cash or cash equivalents. In returning the member business workout loan to accrual status, sustained historical repayment performance for a reasonable time prior to the restructuring may be taken into account. Such a restructuring must improve the collectability of the loan in accordance with a reasonable repayment schedule and does not relieve the FICU from the responsibility to promptly charge off all identified losses. An example is included in the IRPS to illustrate the application of the six consecutive month sustained repayment history. The Board has included tables setting forth nonaccrual criteria and restoration to accrual in the IRPS.

4. Glossary

The final section of the IRPS is a glossary of terms used throughout.

Accordingly, the Board invites public comment on its proposal to require FICUs to adopt loan nonaccrual policies incorporating more specifically the GAAP elements of the Cash and Cost Recovery bases of income recognition in relation to nonperforming loan workouts. Additionally, the Board invites comment on its proposed policy on the restoration of nonaccrual loans to accrual under certain conditions. The Board also seeks comment on its additional parameters for restoring member business loan workouts to accrual status.

To assist commenters in understanding existing agency guidance, the following illustration is provided:

SUMMARY OF SOURCE GUIDANCE RELATED TO LENDING AND LOAN MODIFICATIONS

Source of supervisory guidance	Consumer lending	Member business lending
Existing Recent Supervisory Guidance on Lending and/or Loan Modifications.	Letter to Credit Union 11–CU–01, *Residential Mortgage Foreclosure Concerns,* (January 2011) *http://www.ncua.gov*. Letter to Credit Unions 09–CU–19, *Evaluating Residential Real Estate Mortgage Loan Modification Programs,* (September 2009) *http://www.ncua.gov* Federal Financial Regulatory Agencies Issue Statement In Support of the "*Making Home Affordable" Loan Modification Program,"* (March 2009) *http://www.ncua.gov* *Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages,* (September 2007) *http://www.ncua.gov*	Letter to Credit Unions 10–CU–07, *Commercial Real Estate Loan Workouts,* transmitting *Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts,* (June 2010), and Enclosure *http://www.ncua.gov*. Letter to Credit Unions 10–CU–02, *Current Risks in Business Lending and Sound Risk Management Practices,* (February 2010) *http://www.ncua.gov*.
Written Policy Requirement on Frequency of Modifications.	Proposed policy is in this Proposed IRPS 12–1	Proposed policy is in this Proposed IRPS 12–1, and Letter to Credit Unions 10–CU–07, *Commercial Real Estate Loan Workouts,* transmitting *Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts,* (June 2010) and Enclosure *http://www.ncua.gov.*
Nonaccrual	Proposed policy is in this Proposed IRPS 12–1.	
Delinquency	Change to existing policy in this Proposed IRPS 12–1. For all loans including workout loans, past due status is based on loan contract terms.	
Allowance for Loan and Lease Losses.	IRPS 02–3, *Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions (May 2002), http://www.ncua.gov*. *2006 Interagency ALLL Policy Statement transmitted by Accounting Bulletin 06–1 (December 2006), http://www.ncua.gov*.	
Charge-offs	Letter to Credit Unions No. 03–CU–01, *Loan Charge-off Guidance* (January 2003), and its Enclosure, *http://www.ncua.gov*.	

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This proposed rule tightens loan account management processes that should already be in place in FICUs. While FICUs are required to have policies that address loan management protocols, the proposed rule and IRPS set additional parameters that are consistent with existing best practices and federal banking regulators' policies. NCUA has determined this proposed rule will not have a significant impact on a substantial number of small credit unions so NCUA is not required to conduct a Regulatory Flexibility Analysis.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections.

The proposed rule contains an information collection in the form of a written policy requirement. Any FICU making loan workout arrangements that assist borrowers must have a written policy to govern this activity. As required by the PRA, NCUA is submitting a copy of this proposed IRPS to the Office of Management and Budget (OMB) for its review and approval. Persons interested in submitting comments with respect to the information collection aspects of the proposed rule should submit them to OMB at the address noted below.

Based on NCUA's experience, FICUs already maintain written loan policies, which often include minimum workout loan requirements. As such, they will

only need to modify current policies to include any additional parameters established in the proposed rule. It is therefore NCUA's view that implementing this type of policy will create minimum burden to credit unions. The parameters established within the proposed rule and IRPS are usual and customary operating practices of a prudent financial institution. NCUA estimates it should take a FICU an average of 8 hours to modify current policies to comply with the parameters set forth in the proposed IRPS. Therefore, the total initial burden imposed to 7,250 FICUs for modifying the policies is approximately 58,000 hours. NCUA further estimates a FICU spends on average 15 minutes per month manually calculating and reporting past due status on each TDR loan. This policy eliminates this requirement. Per the September 30, 2011, Call Report, FICUs have 150,453 TDR loans outstanding. Eliminating this reporting requirement therefore results in an annual savings of 451,359 hours. Thus, on net, this policy results in a substantial hours (393,359 annually) reduction of regulatory burden. NCUA is specifically interested in receiving comments regarding estimates of reduced burden relating to the proposed changes on regulatory reporting of TDR loans.

NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are required 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.

The PRA requires OMB to make a decision concerning the collection of information contained in the proposed rule and IRPS between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This coincides with the 30-day public comment period on the proposed regulation.

Comments on the proposed information collection requirements should be sent to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: NCUA Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule applies to all FICUs but does not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 26, 2012.

Mary F. Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790 and 1790d; 31 U.S.C. 3717.

2. In § 741.3, revise paragraph (b)(2) to read as follows:

§ 741.3 Criteria

(b) Financial condition and policies. * * *

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance or other adequate means, adequate determination of the financial capacity of borrowers and co-makers for repayment of the loan, adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default, loan workout arrangements, and nonaccrual standards that include the discontinuance of interest accrual on loans past due by 90 days or more and requirements for returning such loans, including member business loans, to accrual status.

3. Amend Part 741 by adding Appendix C to read as follows:

Appendix C to Part 741—Interpretive Ruling and Policy Statement on Loan Workouts, Nonaccrual Policy, and Regulatory Reporting of Troubled Debt Restructured Loans

This Interpretive Ruling and Policy Statement (IRPS) establishes requirements for the management of loan *workout* [1] arrangements, loan *nonaccruals,* and regulatory reporting of *troubled debt restructured loans* (herein after referred to as TDR or TDRs).

This IRPS applies to all federally insured credit unions.

Under this IRPS, TDR loans are as defined in *generally accepted accounting principles* (GAAP) and the Board does not intend through this policy to change the Financial Accounting Standards Board's (FASB) definition of TDR in any way. In addition to existing agency policy, this IRPS sets NCUA's supervisory expectations governing loan workout policies and practices and loan accruals.

Written Loan Workout Policy and Monitoring Requirements [2]

For purposes of this policy statement, types of workout loans to borrowers in

[1] Terms defined in the Glossary will be *italicized* on their first use in the body of this guidance.

[2] For additional guidance on member business lending extension, deferral, renewal, and rewrite policies, see *Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts*

Continued

financial difficulties include re-agings, extensions, deferrals, renewals, or rewrites. See the Glossary entry on ''workouts'' for further descriptions of each term. Borrower retention programs or *new loans* are not encompassed within this policy nor considered by the Board to be workout loans.

Loan workouts can be used to help borrowers overcome temporary financial difficulties, such as loss of job, medical emergency, or change in family circumstances like loss of a family member. Loan workout arrangements should consider and balance the best interests of both the borrower and the credit union.

The lack of a sound written policy on workouts can mask the true performance and *past due* status of the loan portfolio. Accordingly, the credit union board and management must adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. The loan workout policy and practices should be commensurate with each credit union's size and complexity, must be in line with the credit union's broader risk mitigation strategies, and must include aggregate program limits (for total workout portfolio and each type of workout) as a percentage of net worth. The policy must define eligibility requirements (*i.e.* under what conditions the credit union will consider a loan workout), including establishing limits on the number of times an individual loan may be modified.[3] The policy must also ensure credit unions make loan workout decisions based on the borrower's renewed willingness and ability to repay the loan. In addition, the policy must establish sound controls to ensure loan workout actions are appropriately structured.[4] In no event should the credit union authorize additional advances to finance unpaid interest and fees. For loan workouts granted, the credit union must document the determination that the borrower is willing and able to repay the loan.

Management must ensure that comprehensive and effective risk management and internal controls are established and maintained so that loan workouts can be adequately controlled and monitored by the credit union's board of directors and management, to provide for timely recognition of losses,[5] and to permit review by examiners. To be effective, management information systems need to track the principal reductions and *charge-off* history of loans in workout programs by type of program. Any decision to re-age, extend, defer, renew, or rewrite a loan, like any other revision to contractual terms, needs to be supported by the credit union's management information systems. Sound management information systems are able to identify and document any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent such action has been taken. Documentation normally shows that the credit union's personnel communicated with the borrower, the borrower agreed to pay the loan in full under any new terms, and the borrower has the ability to repay the loan under any new terms.

Regulatory Reporting of Workout Loans Including TDR Past Due Status

The *past due* status of all loans will be calculated consistent with loan contract terms, including amendments made to loan terms through a formal restructure. Credit unions will report delinquency on the Call Report consistent with this policy.[6]

Loan Nonaccrual Policy

Credit unions must ensure appropriate income recognition by placing loans in nonaccrual when conditions as specified below exist, reversing previously accrued but uncollected interest, complying with the criteria under GAAP for Cash or Cost Recovery basis of income recognition, and following the specifications below regarding restoration of a nonaccrual loan to accrual status. This policy on loan accrual is consistent with longstanding credit union industry practice as implemented by the NCUA over the last several decades. The balance of the policy relates to member business loan workouts and is similar to the FFIEC policies adopted by the federal banking agencies[7] as set forth in the FFIEC Call Report for banking institutions and its instructions.[8]

Nonaccrual Status

Credit unions may not accrue interest[9] on any loan upon which principal or interest has been in default for a period of 90 days or more, unless the loan is both *well secured* and in the *process of collection.*[10] Additionally, loans will be placed in nonaccrual status if maintained on a *Cash basis* (or Cost Recovery basis) because of deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected. For purposes of applying the ''well secured'' and ''in process of collection'' test for nonaccrual status listed above, the date on which a loan reaches nonaccrual status is determined by its contractual terms.

While a loan is in nonaccrual status, some or all of the cash interest payments received may be treated as interest income on a cash basis as long as the remaining recorded investment in the loan (*i.e.,* after charge-off of identified losses, if any) is deemed to be fully collectable. The reversal of previously accrued, but uncollected, interest applicable to any loan placed in nonaccrual status must be handled in accordance with GAAP.[11] Where assets are collectable over an extended period of time and, because of the terms of the transactions or other conditions, there is no reasonable basis for estimating the degree of collectability—when such circumstances exist, and as long as they exist—consistent with GAAP the *Cost Recovery Method* of accounting must be used.[12] Use of the Cash

(October 30, 2009) transmitted by Letter to Credit Unions No. 10–CU–07, and available at *http://www.ncua.gov.*

[3] Broad based credit union programs commonly used as a member benefit and implemented in a safe and sound manner limited to only accounts in good standing, such as Skip-a-Pay programs, are not intended to count toward these limits.

[4] In developing a written policy, the credit union board and management may wish to consider similar parameters as those established in the FFIEC's ''Uniform Retail Credit Classification and Account Management Policy'' (FFIEC Policy). 65 FR 36903 (June 12, 2000). The FFIEC Policy sets forth specific limitations on the number of times a loan can be re-aged (for open-end accounts) or extended, deferred, renewed or rewritten (for closed-end accounts). Additionally, NCUA Letter to Credit Unions (LCU) 09–CU–19, ''Evaluating Residential Real Estate Mortgage Loan Modification Programs,'' outlines policy requirements for real estate modifications. Those requirements remain applicable to real estate loan modifications but could be adapted in part by the credit union in their written loan workout policy for other loans.

[5] Refer to NCUA guidance on charge-offs set forth in LCU 03–CU–01, ''Loan Charge-off Guidance,'' dated January 2003. Examiners will require that a reasonable written charge-off policy is in place and that it is consistently applied. Additionally, credit unions need to adjust historical loss factors when calculating ALLL needs for pooled loans to account for any loans with protracted charge-off timeframes (*e.g.,* 12 months or greater).

[6] Subsequent Call Reports and accompanying instructions will reflect this policy, including focusing data collection on loans meeting the definition of TDR under GAAP. Credit unions should also refer to the recently revised standard from the FASB, Accounting Standards Update No. 2011–02 (April 2011) to the FASB Accounting Standards Codification entitled, Receivables (Topic 310), ''A Creditor's Determination of Whether a Restructuring is a Troubled Debt Restructuring.'' This clarified the definition of a TDR, which has the practical effect in the current economic environment to broaden loan workouts that constitute a TDR. This standard is effective for annual periods ending on or after December 15, 2012.

[7] The federal banking agencies are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

[8] FFIEC Report of Condition and Income Forms and User Guides, Updated September 2011, *http://www.fdic.gov.*

[9] Nonaccrual of interest also includes the amortization of deferred net loan fees or costs, or the accretion of discount. Nonaccrual of interest on loans past due 90 days or more is a longstanding agency policy and credit union practice.

[10] A purchased credit impaired loan asset need not be placed in nonaccrual status as long as the criteria for accrual of income under the interest method in GAAP is met. Also, the accrual of interest on workout loans is covered in a separate section of this IRPS later in the policy statement.

[11] Acceptable accounting treatment includes a reversal of all previously accrued, but uncollected, interest applicable to loans placed in a nonaccrual status against appropriate income and balance sheet accounts. For example, one acceptable method of accounting for such uncollected interest on a loan placed in nonaccrual status is: (1) To reverse all of the unpaid interest by crediting the ''accrued interest receivable'' account on the balance sheet, (2) to reverse the uncollected interest that has been accrued during the calendar year-to-date by debiting the appropriate ''interest and fee income on loans'' account on the income statement, and (3) to reverse any uncollected interest that had been accrued during previous calendar years by debiting the ''allowance for loan and lease losses'' account on the balance sheet. The use of this method presumes that credit union management's additions to the allowance through charges to the ''provision for loan and lease losses'' on the income statement have been based on an evaluation of the collectability of the loan and lease portfolios and the ''accrued interest receivable'' account.

[12] When a purchased impaired loan or debt security that is accounted for in accordance with

or Cost Recovery basis for these loans and the statement on reversing previous accrued interest is the practical implementation of relevant accounting principles.

Restoration to Accrual Status (Not Including Member Business Loan Workouts)

A nonaccrual loan may be restored to accrual status when:

- Its past due status is less than 90 days, GAAP does not require it to be maintained on the Cash or Cost Recovery bases, and the credit union is plausibly assured of repayment of the remaining contractual principal and interest within a reasonable period;
- When it otherwise becomes both *well secured* and *in the process of collection;* or
- The asset is a purchased impaired loan and it meets the criteria under GAAP for accrual of income under the interest method specified therein.

In restoring loans to accrual status, if any interest payments received while the loan was in nonaccrual status were applied to reduce the recorded investment in the loan the application of these payments to the loan's recorded investment must not be reversed (and interest income must not be credited). Likewise, accrued but uncollected interest reversed or charged-off at the point the loan was placed on nonaccrual status cannot be restored to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

Restoration to Accrual Status on Member Business Loan Workouts [13]

A formally restructured member business loan workout need not be maintained in nonaccrual status, provided the restructuring and any charge-off taken on the loan are supported by a current, well documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms. Otherwise, the restructured loan must remain in nonaccrual status. The evaluation must include consideration of the borrower's sustained historical repayment performance for a reasonable period prior to the date on which the loan is returned to accrual status. A sustained period of repayment performance would be a minimum of six consecutive payments and would involve payments of cash or cash equivalents. In returning the member business workout loan to accrual status, sustained historical repayment performance for a reasonable time prior to the restructuring may be taken into account. Such a restructuring must improve the collectability of the loan in accordance with a reasonable repayment schedule and does not relieve the credit union from the responsibility to promptly charge off all identified losses.

For example, if the original contractually due monthly payment was $1,500, and the borrower's payment was lowered to $1,000 through formal member business loan restructure, then based on the following schedule of repayment performance (in the first row) the ''*sustained historical repayment performance for a reasonable time prior to the restructuring''* would encompass five of the pre-workout consecutive payments that were at least $1,000; so, in total, the six consecutive repayment burden would be met by the first month post workout. In the second row, only one of the pre-workout payments would count toward the six consecutive repayment requirement, so the loan would remain on nonaccrual for at least five post-workout consecutive payments consistent with restructured terms.

TABLE 1—SIX CONSECUTIVE PERIODS SUSTAINED REPAYMENT PERFORMANCE [14]

Pre-workout					Post workout		
					Month 1	Month 2	Month 3
[1] $1,500	[2] $1,200	[3] $1,200	[4] $1,000	[5] $1,000	[6] $1,000	$1,000	$1,000
1,500	1,200	900	875	[1] 1,000	[2] 1,000	[3] 1,000	[4] 1,000

After a formal restructure of a member business loan, if the restructured loan has been returned to accrual status, the loan otherwise remains subject to the nonaccrual standards of this policy.

The following tables summarize nonaccrual and restoration to accrual requirements previously discussed:

TABLE 2—NONACCRUAL CRITERIA

Action	Condition identified	Additional consideration
Nonaccrual on All Loans	90 days or more past due unless loan is both well secured and in the process of collection; or.	See Glossary descriptors for ''well secured'' and ''in the process of collection.''
	If the loan must be maintained on the Cash or Cost Recovery basis because there is a deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected.	Consult GAAP for Cash Basis and Cost Recovery income recognition guidance. See also Glossary Descriptors.
Nonaccrual on Member Business Loan Workouts.	Continue on nonaccrual at workout point and until restore to accrual criteria are met.	See Table 3—Restore to Accrual.

ASC Subtopic 310–30, ''Receivables-Loans and Debt Securities Acquired with Deteriorated Credit Quality,'' has been placed on nonaccrual status, the cost recovery method should be used, when appropriate.

[13] This policy is derived from the ''Interagency Policy Statement on Prudent Commercial Real Estate Loan Workouts'' NCUA and the other financial regulators issued on October 30, 2009.

[14] Number prior to monthly payment amounts indicate payments received towards the six consecutive payment requirement as explained in the example above.

TABLE 3—RESTORE TO ACCRUAL

Action	Condition identified	Additional consideration
Restore to Accrual on Loans (not including Member Business Loan Workouts).	When the loan is past due less than 90 days, GAAP does not require it to be maintained on the Cash or Cost Recovery basis, and the credit union is plausibly assured of repayment of the remaining contractual principal and interest within a reasonable period. When it otherwise becomes both "well secured" and "in the process of collection"; or. The asset is a purchased impaired loan and it meets the criteria under GAAP for accrual of income under the interest method.	See Glossary descriptors for "well secured" and "in the process of collection." Interest payments received while the loan was in nonaccrual status and applied to reduce the recorded investment in the loan must not be reversed and income credited. Likewise, accrued but uncollected interest reversed or charged-off at the point the loan was placed on nonaccrual status cannot be restored to accrual.
Restore Accrual on Member Business Loan Workouts.	Formal restructure with a current, well documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms.	The evaluation must include consideration of the borrower's sustained historical repayment performance for a minimum of six consecutive payments. In returning the loan to accrual status, sustained historical repayment performance for a reasonable time prior to the restructuring may be taken into account.

Glossary[15]

''Cash Basis'' method of income recognition is set forth in GAAP and means while a loan is in nonaccrual status, some or all of the cash interest payments received may be treated as interest income on a cash basis as long as the remaining recorded investment in the loan (*i.e.,* after charge-off of identified losses, if any) is deemed to be fully collectible.[16]

''Charge-off'' means a direct reduction (credit) to the carrying amount of a loan carried at amortized cost resulting from uncollectability with a corresponding reduction (debit) of the ALLL. Recoveries of loans previously charged off should be recorded when received.

''Cost Recovery'' method of income recognition means equal amounts of revenue and expense are recognized as collections are made until all costs have been recovered, postponing any recognition of profit until that time.[17]

''Generally accepted accounting principles (GAAP)'' means official pronouncements of the FASB as memorialized in the FASB Accounting Standards Codification® as the source of authoritative principles and standards recognized to be applied in the preparation of financial statements by federally-insured credit unions in the United States with assets of $10 million or more.

''In the process of collection'' means collection of the loan is proceeding in due course either: (1) Through legal action, including judgment enforcement procedures, or (2) in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future, *i.e.,* generally within the next 90 days.

''Member Business Loan'' is defined consistent with Section 723.1 of NCUA's Member Business Loan Rule, 12 CFR 723.1.

''New Loan'' means the terms of the revised loan are at least as favorable to the credit union (*i.e.,* terms are market-based, and profit driven) as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the credit union, and the revisions to the original debt are more than minor.

''Past Due'' means a loan is determined to be delinquent in relation to its contractual repayment terms including formal restructures, and must consider the time value of money. Credit unions may use the following method to recognize partial payments on ''consumer credit,''''' *i.e.,* credit extended to individuals for household, family, and other personal expenditures, including credit cards, and loans to individuals secured by their personal residence, including home equity and home improvement loans. A payment equivalent to 90 percent or more of the contractual payment may be considered a full payment in computing past due status.

''Recorded Investment in a Loan'' means the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

''Troubled Debt Restructuring'' is as defined in GAAP and means a restructuring in which a credit union, for economic or legal reasons related to a member borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider.[18] The restructuring of a loan may include, but is not necessarily limited to: (1) the transfer from the borrower to the credit union of real estate, receivables from third parties, other assets, or an equity interest in the borrower in full or partial satisfaction of the loan, (2) a modification of the loan terms, such as a reduction of the stated interest rate, principal, or accrued interest or an extension of the maturity date at a stated interest rate lower than the current market rate for new debt with similar risk, or (3) a combination of the above. A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not to be reported as a restructured troubled loan.

''Well secured'' means the loan is collateralized by: (1) A perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount, or (2) by the guarantee of a financially responsible party.

''Workout Loan'' means a loan to a borrower in financial difficulty that has been formally restructured so as to be reasonably assured of repayment (of principal and interest) and of performance according to its restructured terms. A workout loan typically involves a *re-aging, extension, deferral, renewal, or rewrite* of a loan.[19] For purposes of this policy statement, workouts do not

[15] Terms defined in the Glossary will be *italicized* on their first use in the body of this guidance.

[16] Acceptable accounting practices include: (1) allocating contractual interest payments among interest income, reduction of the recorded investment in the asset, and recovery of prior charge-offs. If this method is used, the amount of income that is recognized would be equal to that which would have been accrued on the loan's remaining recorded investment at the contractual rate; and, (2) accounting for the contractual interest in its entirety either as income, reduction of the recorded investment in the asset, or recovery of prior charge-offs, depending on the condition of the asset, consistent with its accounting policies for other financial reporting purposes.

[17] FASB Accounting Standards Codification (ASC) 605–10–25–4, ''Revenue Recognition, Cost Recovery.''

[18] FASB ASC 310–40, ''Troubled Debt Restructuring by Creditors.''

[19] ''*Re-Age''* means returning a past due account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

''*Extension''* means extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they should be collected at the time of the extension and not added to the balance of the loan.

''*Deferral''* means deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral.

''*Renewal''* means underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms.

''*Rewrite''* means significantly changing the terms of an existing loan, including payment amounts, interest rates, amortization schedules, or its final maturity.

include loans made to market rates and terms such as refinances, borrower retention actions, or new loans.[20]

[FR Doc. 2012–2206 Filed 1–31–12; 8:45 am]

BILLING CODE 7535–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0775; FRL–9625–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Determination of Failure to Attain the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Houston/Galveston/Brazoria (HGB) area did not attain the one-hour ozone national ambient air quality standard (NAAQS) by its applicable attainment date, November 15, 2007. This determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data for the period preceding the applicable attainment deadline.

DATES: Written comments must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2011–0775, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *EPA Region 6 Contact Us Web site: http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- *Email:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2011–0775. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7259; fax number 214–665–7263; email address *boyce.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'' ''us'' or ''our'' is used, we mean the EPA

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I. What actions is EPA taking?

The EPA is proposing to determine that, under the Clean Air Act (CAA or ''Act''), the HGB area failed to attain the NAAQS for one-hour ozone by its applicable one-hour NAAQS attainment date of November 15, 2007.

II. Background

Regulatory Context

The Act requires us to establish NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the Act). In 1979, we promulgated the revised one-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979).[1]

An area is considered to have attained the one-hour ozone standard if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR section 50.9, based on three consecutive calendar years of complete, quality-assured and certified monitoring data. A

[20] There may be instances where a workout loan is not a TDR even though the borrower is experiencing financial hardship. For example, a workout loan would not be a TDR if the fair value of cash or other assets accepted by a credit union from a borrower in full satisfaction of its receivable is at least equal to the credit union's recorded investment in the loan, *e.g.,* due to charge-offs.

[1] For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm × 1000. Thus, 0.12 ppm becomes 120 ppb (or between 120 to 124 ppb, when rounding is considered).

violation occurs when the ambient ozone air quality monitoring data show greater than one (1.0) ''expected number'' of exceedances per year at any site in the area, when averaged over three consecutive calendar years.[2] An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. For more information, please see ''National 1-hour primary and secondary ambient air quality standards for ozone'' (40 CFR 50.9) and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the one-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991). The Act further classified these areas, based on the severity of their nonattainment problem, as Marginal, Moderate, Serious, Severe, or Extreme.

The control requirements and date by which attainment of the one-hour ozone standard was to be achieved varied with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while Severe and Extreme areas were subject to more stringent planning requirements and were provided more time to attain the standard. Two measures that are triggered if a Severe or Extreme area fails to attain the standard by the applicable attainment date are contingency measures [section 172(c)(9)] and a major stationary source fee provision [sections 182(d)(3) and 185)] (''major source fee program'' or ''section 185 fee program'').

Designations and Classifications

The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties in Texas. Upon the date of enactment of the 1990 CAA Amendments, the HGB area was classified as a severe ozone nonattainment area for the one-hour ozone NAAQS. As noted above, severe and extreme areas are subject to more stringent planning requirements but were provided more time to attain the ozone standard. HGB one-hour ozone nonattainment area was classified as severe 17. As a result the attainment date for the HGB area was November 15, 2007. [3]

On January 13, 2011, the Sierra Club filed a complaint in the U.S. District Court for the District of Columbia alleging EPA failed in its mandatory duties to make a determination of attainment by the applicable attainment date for certain one hour ozone nonattainment areas. The Houston/Galveston/Brazoria was one of the nonattainment areas listed in Sierra Club's complaint. On September 12, 2011, EPA signed a Settlement Agreement with the Sierra Club which, in relevant part to this rulemaking, committed EPA by January 31, 2012 to sign a proposed notice to be published in the **Federal Register** as to whether Houston/Galveston/Brazoria has attained the 1 hour ozone standard by its attainment date and by May 31, 2012, to sign a final notice to be published in the **Federal Register** determining whether Houston/Galveston/Brazoria has attained the 1 hour ozone standard by its attainment date.

Transition From One-Hour Ozone Standard to Eight-Hour Ozone Standard

In 1997, EPA promulgated a new, more protective standard for ozone based on an eight-hour average concentration (the 1997 eight-hour ozone standard). In 2004, EPA published the 1997 eight-hour ozone designations and classifications and a rule governing certain facets of implementation of the eight-hour ozone standard (Phase 1 Rule) (69 FR 23858 and 69 FR 23951, respectively, April 30, 2004).

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), to comply with anti-backsliding requirements of the Act, eight-hour ozone nonattainment areas remain subject to certain requirements based on their one-hour ozone classification. Initially, in our rules to address the transition from the one-hour to the eight-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as one-hour ozone anti-backsliding requirements.[4] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements from its anti-backsliding requirements. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (DC Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

Thus, the Court vacated the provisions that excluded these requirements. As a result, States must continue to meet the obligations for one-hour ozone NAAQS contingency measures and, for Severe and Extreme areas, major source fee programs. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

Rationale for Today's Proposed Action

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for the HGB area, EPA proposes to determine that the area failed to attain the one-hour ozone standard by its applicable attainment date. See CAA section 301(a) and the relevant portion of section 181(b)(2).

III. What is EPA's analysis?

A determination of whether an area's air quality meets the one-hour ozone standard is generally based upon three years of complete [5], quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (''SLAMS'') in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are

[2] An ''expected number'' of exceedances is a statistical term that refers to an arithmetic average. An ''expected number'' of exceedances may be equivalent to the number of observed exceedances plus an increment that accounts for incomplete sampling. See 40 CFR part 50, appendix H. Because, in this context, the term ''exceedances'' refers to days (during which the daily maximum hourly ozone concentration exceeded 0.124 ppm), the maximum possible number of exceedances in a given year is 365 (or 366 in a leap year).

[3] 56 FR 56694, November 6, 1991 and CAA section 181(a)(1).

[4] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[5] Generally, a ''complete'' data set for determining attainment of the ozone is one that includes three years of data with an average percent of days with valid monitoring data greater than 90% with no single year less than 75%. See 40 CFR part 50, appendix I. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See 40 CFR section 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

Under EPA regulations at 40 CFR section 50.9, the one-hour ozone standard is attained at a monitoring site when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million (235 micrograms per cubic meter) is equal to or less than 1, as determined by 40 CFR part 50, appendix H.[6] EPA proposes to determine that the HGB area failed to attain the one-hour ozone standard by its applicable attainment date; that is, the number of expected exceedances at sites in the nonattainment area was greater than one per year in the period prior to the applicable attainment date. This proposed determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data in AQS for the 2005–2007 monitoring period for the HGB area.

Table 1 summarizes the ozone monitoring data from the various monitoring sites in the HGB area by showing the expected exceedances per year and 3-year expected exceedances averages over the 2005–2007 period. The data summarized in Table 1 below are considered complete for the purpose of determining if the standard is met. Review of the data in Table 1 shows that the average number of expected exceedances for the 2005–2007 period is greater than one for 12 of the ozone monitoring sites in the HGB area. Furthermore, the NW Harris County site had more than one expected exceedance in the attainment year, 2007, so the area could not qualify for a 1 year extension to the attainment date.

TABLE 1—ONE-HOUR OZONE DATA FOR THE HGB ONE-HOUR OZONE NONATTAINMENT AREA

Site name	AQS ID	Expected exceedances by year			Expected exceedances 3-yr average
		2005	2006	2007	
Brazoria County	.....	.....	.....	.....	.....
Manvel	480391004	2.1	3	1.1	2.1
Lake Jackson	480391016	0	0	0	0.0
Galveston County	.....	.....	.....	.....	.....
Galveston County Airport	481670014/1034	0	0	0	0.0
Harris County	.....	.....	.....	.....	.....
Aldine	482010024	2.1	0	0	0.7
Channelview	482010026	2	2	1	1.7
NW Harris County	482010029	2.1	2	2	2.0
Wayside	482010046	0	0	0	0.0
Lang	482010047	0	0	0	0.0
Croquet	482010051	4.1	1	0	1.7
Bayland Park	482010055	6.1	5.1	0	3.7
Monroe	482010062	5.1	3	0	2.7
Westhollow	482010066	1	4	1	2.0
Regional Office	482010070	3	2	0	1.7
Texas Avenue	482010075	0	1.1	1	0.7
Park Place	482010416	NA	8.2	0	*4.1
Lynchburg	482011015	6.2	1	0	2.4
Mae Drive	482011034	0	2.1	0	0.7
Clinton Drive	482011035	1	0	0	0.3
Deer Park	482011039	3.1	4.1	0	2.4
Seabrook	482011050	3.1	2	1	2.0
Montgomery County	.....	.....	.....	.....	.....
Conroe	483390078	1	2	0	1.0

Source: AQS Quicklook Report, September 26, 2011.
*Two-year average 2006–2007.

IV. What is the effect of the proposed determination?

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backlsiding contingency measures and section 185 fee programs for the HGB one hour ozone area, EPA proposes to determine that the HGB area failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the South Coast court decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here—that the area did not attain the one-hour ozone standard by the November 15, 2007 deadline (based on data for 2005–2007) is made pursuant to section (301)(a) and the relevant portion of section 181(b)(2), and is linked solely to two required one-hour anti-backsliding measures: i.e., one-hour contingency measures for failure to attain under section 172(c)(9), and fee programs under sections 182(d)(3) and 185. A final determination of failure to attain by the area's 2007 attainment date will not result in reclassification of the area under the revoked one-hour standard. As a severe one-hour nonattainment area, the HGB area is not subject to reclassification for the one-hour standard, and in any event

[6] The average number of expected exceedances is determined by averaging the expected exceedances of the one-hour ozone standard over a consecutive three calendar year period. See 40 CFR part 50 appendix H.

EPA is no longer required to reclassify any area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. 40 CFR 51.905(e)(2)(i)(B).

The EPA's proposed determination that the area failed to attain the one-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two one-hour ozone anti-backsliding requirements whose implementation is triggered by a finding of failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain, and sections 182(d)(3) and 185 major stationary source fee programs.

With respect to the one-hour ozone anti-backsliding requirement for contingency measures, the Texas SIP included contingency measures to achieve an additional 3 percent reduction in NO_X and VOC emissions in 2008. The contingency measure reductions for 2008 were to be obtained from on-road and off-road mobile control measures already being implemented. EPA has previously approved the State's one-hour ozone attainment demonstration and Rate of Progress plans for the HGB area which included contingency measures. See: 71 FR 52670, 70 FR 7407, 66 FR 57195, and 66 FR 20750. Thus, the reductions from contingency measures have already been achieved and therefore a final determination of failure to attain by the area's one-hour ozone attainment date would not trigger additional emissions reductions.

With respect to the one-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section 185. Section 185 requires one-hour ozone SIPs for severe areas to provide a program requiring each major stationary source of ozone precursors located in the area to pay fees to the State if the area has failed to attain by the attainment date. A final determination of failure to attain by the area's one-hour attainment date would trigger the one-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3) and 185, unless that obligation is terminated.

V. Statutory and Executive Order Reviews

This action proposes to make a determination that this area did not attain the one-hour ozone standard based on air quality, and does not impose any requirements beyond those required by statute or regulation. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not a economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to the 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 it would not 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, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 24, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–2199 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2011–0680; FRL–9625–4]

Determination of Failure To Attain by 2005 and Determination of Current Attainment of the 1-Hour Ozone National Ambient Air Quality Standards in the Baltimore Nonattainment Area in Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Baltimore severe 1-hour ozone nonattainment area failed to attain the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 15, 2005, based on three years of complete, quality-assured and certified ambient air quality monitoring data for 2003 through 2005. In addition, EPA is proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS. This proposed determination is based upon the most recent three years, 2008–2010, of complete, quality-assured and certified ambient air monitoring data showing the area has monitored attainment of the 1-hour ozone NAAQS. EPA's review shows that the area has attained the 1-hour ozone NAAQS since the 2006–2008 monitoring period and that it continues to attain the 1-hour ozone NAAQS. If this latter proposed determination is made final, the requirement for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore severe 1-hour ozone nonattainment area shall be suspended.

DATES: Written comments must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0680 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0680, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0680. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *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 *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

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

The information presented in this notice is organized as follows:

I. What action is EPA proposing?
A. Proposed Determination of Failure To Attain by Applicable Attainment Date
B. Proposed Determination of Current Attainment
II. What is the background for these proposed actions?
A. What are the geographical boundaries of the Baltimore area?
B. What is the history of the ozone designations and classifications and the 1-hour ozone requirements for the Baltimore area?
C. What is the background of 1-hour ozone anti-backsliding requirements in the transition to the 1997 8-hour ozone rule?
III. What is the rationale for and effect of these proposed determinations for the Baltimore area?
A. What is the rationale for the proposed determination of failure to attain by applicable attainment date?
B. What is the status of the Maryland State Implementation Plan (SIP) regarding the 1-hour ozone anti-backsliding requirement for contingency measures?
C. What would be the effects of these proposed determinations for the Baltimore area?
IV. How does EPA compute whether an area complies with the 1-hour ozone NAAQS?
A. What is the level and form of the 1-hour ozone NAAQS?
B. What are the relevant data handling and rounding conventions for the 1-hour ozone NAAQS?
C. How is the number of expected exceedance days determined and how is attainment determined under the form of the 1-hour ozone NAAQS?
V. What is EPA's analysis of the data regarding Baltimore's attainment of the 1-hour ozone standard?
A. What is EPA's analysis of whether the Baltimore area attained the 1-hour ozone standard by its 2005 attainment deadline?
B. What is EPA's proposed determination of whether the Baltimore area is currently attaining the 1-hour ozone standard?
VI. Proposed Actions
A. Proposed Determination of 1-Hour Ozone Attainment by the Attainment Deadline of November 15, 2005
B. Proposed Determination That the Baltimore Area Is Currently Attaining the 1-Hour Ozone Attainment
VII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing two separate and independent determinations for the Baltimore 1-hour severe ozone nonattainment area (hereafter ''the Baltimore area'').

A. Proposed Determination of Failure To Attain by Applicable Attainment Date

For the Baltimore area, EPA is proposing to determine that the area did not attain the 1-hour ozone NAAQS by the applicable attainment date, November 15, 2005. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2003 through 2005 ozone seasons.

B. Proposed Determination of Current Attainment

EPA is also proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS, based upon complete, quality-assured and certified ambient air monitoring data showing the area has monitored attainment of the 1-hour ozone NAAQS for the most recent 3-year period 2008–2010. Preliminary data available for 2011 indicate that the Baltimore area continues to attain the standard. EPA's review shows that the area has monitored attainment continuously since the 2006–2008 monitoring period. If this proposed determination is made final, the requirement for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore area shall be suspended.

II. What is the background for these proposed actions?

A. What are the geographical boundaries of the Baltimore area?

The Baltimore area consists of Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties and the City of Baltimore in Maryland.

B. What is the history of the ozone designations and classifications and the 1-hour ozone requirements for the Baltimore area?

Pursuant to provisions of the Clean Air Act (CAA), EPA establishes NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the CAA). In 1979, we promulgated the 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, we may informally report ozone concentrations in parts per billion (ppb) where one-thousand ppb equals one ppm. Thus, 0.12 ppm becomes 120 ppb or up to 124 ppb when rounding is considered. (Rounding is further discussed in section IV. B. of this document.)

EPA first designated the Baltimore area as an ozone nonattainment area in 1978. *See,* 43 FR 8962 at 9001, March

3, 1978.[1] Under the 1990 Amendments to the CAA, the CAA designated ''by operation of law'' as nonattainment each area of the country that was already designated nonattainment for the 1-hour ozone NAAQS. The Baltimore area was one such pre-amendment ozone nonattainment area so designated nonattainment for ozone. The CAA as amended in 1990 further classified ''by operation of law'' each ozone nonattainment area as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. *See,* CAA sections 107(d)(1)(C) and 181(a).

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while severe and extreme areas are subject to more stringent planning requirements and are provided more time to attain the standard. Based upon air quality monitoring data, the Baltimore area was classified as ''severe-15'' with a statutory attainment date of November 15, 2005. *See,* 56 FR 56694, November 6, 1991.

C. What is the background of 1-hour ozone anti-backsliding requirements in the transition to the 1997 8-hour ozone rule?

On July 18, 1997 (62 FR 38856), EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the ''1997 8-hour ozone NAAQS''). In an April 30, 2004 final rule (69 FR 23858), EPA designated and classified most areas of the country under the 1997 8-hour ozone NAAQS promulgated in 40 CFR 50.10. We designated the Baltimore area as nonattainment for the 1997 8-hour ozone NAAQS. This 8-hour ozone nonattainment area is composed of the same five counties and city as the 1-hour ozone nonattainment area. We classified this area as moderate under the 1997 8-hour ozone NAAQS. At the time of designation, the same area remained in nonattainment for the 1-hour standard.

On April 30, 2004 (69 FR 23951), EPA issued a final rule entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1'' (the ''Phase 1 Implementation Rule''). Among other actions, this rule revoked the 1-hour ozone NAAQS in the Baltimore area (as well as in most other areas of the country), effective June 15, 2005. *See,* 40 CFR 50.9(b); 69 FR 23951 at 23996, April 30, 2004; and 70 FR 44470, August 3, 2005.

Although EPA revoked the 1-hour ozone standard, 8-hour ozone nonattainment areas remain subject to certain 1-hour anti-backsliding requirements based on their 1-hour ozone classification. Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as 1-hour ozone anti-backsliding requirements.[2] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements from its anti-backsliding requirements. *See, South Coast Air Quality Management District* v. *EPA (SCAQMD* v. *EPA*), 472 F.3d 882 (DC Cir. 2006) rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

Thus, the Court vacated the provisions that excluded these requirements. As a result, states must continue to meet the obligations for 1-hour ozone NAAQS contingency measures and, for severe and extreme areas, major source fee programs. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the 1-hour standard. *See,* 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

III. What is the rationale for and effect of these proposed determinations for the Baltimore area?

A. What is the rationale for the proposed determination of failure to attain by applicable attainment date?

After revocation of the 1-hour ozone standard, EPA must continue to provide a mechanism to give effect to the 1-hour anti-backsliding requirements. *See, SCAQMD* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to 1-hour anti-backsliding contingency measures and section 185 fee programs, EPA proposes to determine that the Baltimore area failed to attain the 1-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the South Coast court decision, upon revocation of the 1-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the 1-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here—that the area did not attain the 1-hour ozone standard by the November 15, 2005 deadline (based on data for 2003–2005) is linked solely to two required 1-hour ozone anti-backsliding measures: *i.e.,* 1-hour contingency measures for failure to attain under section 172(c)(9) and fee programs under sections 182(d)(3), 182(f) and 185.

A final determination of failure to attain by the area's 2005 1-hour ozone attainment date will not result in reclassification of the area under the revoked 1-hour standard. As a severe 1-hour ozone nonattainment area, the Baltimore area is not subject to reclassification for the 1-hour ozone standard, and in any event EPA is no longer required to reclassify any area to a higher classification for the 1-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. *See,* 40 CFR 51.905(e)(2)(i)(B).

EPA's proposed determination that the area failed to attain the 1-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two 1-hour ozone anti-backsliding requirements whose implementation would be triggered by a finding of failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) ad 185 major stationary source fee programs.

B. What is the status of the Maryland State Implementation Plan (SIP) regarding the 1-hour ozone anti-backsliding requirement for contingency measures?

With respect to the 1-hour ozone anti-backsliding requirement for contingency measures, EPA has previously approved the State of Maryland's 1-hour ozone attainment demonstration, reasonably available control measures and reasonable further progress (RFP) [3] plans, and RFP/ROP contingency

[1] This action designated the Metropolitan Baltimore Intrastate Air Quality Control Region (*see,* 40 CFR 81.28), which has the same boundaries as the Baltimore 1-hour ozone nonattainment area, as nonattainment for ''photochemical oxidants.'' The term ''photochemical oxidants'' was replaced by ''ozone'' in a February 8, 1979 final rule (44 FR 8202 at 8220).

[2] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

[3] For the 1-hour ozone NAAQS, RFP was termed ''rate-of-progress (ROP).''

measures for Baltimore. *See,* 66 FR 49108, September 26, 2001, 66 FR 54666, Oct. 30, 2001; 68 FR 61103, October 27, 2003; 69 FR 7133, February 13, 2004); 64 FR 70397, December 16, 1999; 68 FR 40861, July 9, 2003; 65 FR 4638, July 28, 2000; 66 FR 36964, July 16, 2001; and September 7, 2001, 66 FR 44760, September 7, 2001.

While EPA did not approve contingency measures for failure to attain the 1-hour ozone NAAQS in the Baltimore area, EPA has reviewed reductions that resulted from measures that were not relied upon in the attainment demonstration, and believes that these measures provided more reductions than necessary to serve the purpose of contingency measures for this area.

Contingency measures for failure to attain aim to provide for a 3 percent reduction in emissions. The amount of reductions required is computed from the same baseline as is used for computing reductions needed for RFP/ROP for the attainment year. In the case of the Baltimore area, 3 percent of the ROP baselines for the 2005 attainment year equates to 8.23 tons per day (TPD) of volatile organic compounds (VOC) or 13.77 TPD of nitrogen oxides (NO_X).

An RFP/ROP plan includes a target level of emissions needed to meet the RFP requirement and a demonstration that the projected levels of emissions in the area by the RFP deadline date will be equal to or less than the target level after accounting for growth. *See,* 57 FR 13498 at 13507–13508, April 16, 1992.[4] As a severe 1-hour ozone nonattainment area the ROP plan included target levels of VOC and NO_X emissions for November 15, 2005, which was the Baltimore area's attainment date for the 1-hour ozone NAAQS. As a moderate 1997 8-hour ozone nonattainment area, the RFP plan for the Baltimore area included target levels of VOC and NO_X emissions for December 31, 2008. EPA has approved the ROP/RFP plans for 2005 and 2008; *see,* 69 FR 7133, February 13, 2004 and 75 FR 31709, June 4, 2010, respectively. These plans contain projected levels of actual emissions for November 15, 2005 and for December 31, 2008. The RFP/ROP plan for 2005 and for 2008 each uses consistent methods for projecting growth in emissions-related activities after the baseline years and most importantly use the same emissions factor model, MOBILE6, for developing emissions factors for on-road or highway mobiles sources. Comparison of the 2005 and 2008 projected levels of actual emissions suggests that the Maryland SIP provided for reduction in total emissions of 2.05 TPD of VOC and 66.97 TPD of NO_X emissions after 2005 but by December 31, 2008. As noted above, the contingency measure requirement for failure to attain for the Baltimore area under the 1-hour ozone NAAQS was 8.23 TPD of VOC or 13.77 TPD of NO_X. For further details of the ROP/RFP plans for the Baltimore area and the derivation of the projected reductions between 2005 and 2008 refer to the technical support document prepared for this proposed action.

Based upon the air quality monitoring data for 2006 and later years (discussed in section V.B of this document), EPA can conclude that the Maryland SIP provided for sufficient emission reductions after November 15, 2005 to attain the 1-hour ozone NAAQS, as evidenced by attainment of the 1-hour ozone standard by 2008 and continued attainment thereafter.

C. What would be the effects of these proposed determinations for the Baltimore area?

As noted above, EPA is also proposing a separate and independent 1-hour ozone determination that the Baltimore area currently attains the 1-hour ozone standard, based on complete, quality-assured and certified ozone data for 2008–2010, and preliminary data available for 2011.[5] If this determination is finalized, then even if EPA finalizes its proposed determination that the area failed to attain the 1-hour ozone standard by the 2005 deadline, it will not result in any 1-hour ozone contingency measure obligations for the area. Under EPA's ''Clean Data Policy'' interpretation,[6] which was articulated first for the 1-hour standard and later codified for the 8-hour ozone standard (40 CFR 51.918), a determination of attainment suspends obligations to make submissions for attainment-related requirements (including contingency measures) for that standard.[7] *See,* for example, determination of 1-hour ozone attainment for Baton Rouge, 75 FR 6570, February 10, 2010.

With respect to the 1-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section 185. Section 185 requires 1-hour ozone SIPs for severe areas to provide that, if the area has failed to attain by the attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee to the state. Thus a final determination of failure to attain by the area's 1-hour attainment date would trigger the 1-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3) 182(f) and 185, unless that obligation is terminated.

IV. How does EPA compute whether an area complies with the 1-hour ozone NAAQS?

A. What is the level and form of the 1-hour ozone NAAQS?

The relevant regulation, 40 CFR 50.9(a), states the following regarding the 1-hour ozone NAAQS:

1. The level of the national 1-hour primary and secondary NAAQS for ozone is 0.12 parts per million; and

2. The 1-hour ozone NAAQS ''is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million is equal to or less than 1, as determined by appendix H'' to 40 CFR part 50.

We consider that a monitor exceeds the 1-hour ozone standard when that ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm at least once in any given calendar day. Only the maximum 1-hour ozone concentration at the monitor during any calendar day is considered when determining if the 1-hour ozone NAAQS was exceeded on that day. That is, even when a monitor records more than one hourly concentration above 0.12 ppm during a calendar day, that day counts as only a single ''exceedance day.'' *See,* 40 CFR 50.9 ''National 1-hour primary and secondary ambient air quality standards for ozone'' and ''Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

[4] For specifics relating to the RFP/ROP plans for the Baltimore area, for example, *see* the following notices of proposed rulemaking: 75 FR 958, January 7, 2010, and 68 FR 75191, December 30, 2003

[5] As noted elsewhere in this proposed determination, the monitoring data show that the Baltimore area has been attaining the 1-hour ozone standard continuously since 2008.

[6] *See,* ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' (Clean Data Policy) dated May 10, 1995.

[7] The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the 1-hour standard. *See, NRDC* v. *EPA,* 571 F.3d 1245 (DC Cir. 2009); *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir.1996); *Sierra Club* v. *EPA,* 375 F.3d 537(7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9thCir. June 28, 2005) (memorandum opinion).

B. What are the relevant data handling and rounding conventions for the 1-hour ozone NAAQS?

Although the 1-hour ozone NAAQS as promulgated in 40 CFR 50.9 does not address specific data handling conventions, EPA's publicly articulated position and the approach that the air quality management community has long universally adopted, is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 ppm.

As early as 1979, EPA's guidance noted that the level as it is expressed in the standard defines the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. *See,* ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. *See,* 68 FR 19106 at 19111, April 17, 2003; 68 FR 62041 at 62043, October 31, 2003; and 69 FR 21717 at 21719, April 22, 2004. In the 1990 CAA Amendments, Congress expressly recognized the continuing validity of EPA guidance in the 1990 CAA Amendments. *See,* generally, *H Comm. Rep.* 101–490 pp. 197, 232 (1990) (House Energy and Commerce Committee Report).

C. How is the number of expected exceedance days determined and how is attainment determined under the form of the 1-hour ozone NAAQS?

A nonattainment area attains the 1-hour ozone NAAQS only when all monitors in that area attain the 1-hour ozone NAAQS. EPA determines if an area has attained the 1-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (*i.e.,* ''average number of expected exceedance days'') during the applicable 3-year period. *See,* generally the General Preamble, 57 FR 13498 at 13506, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994.

A monitor shows attainment when the average number of ''expected'' number of ''exceedance days'' per calendar year ''is less than or equal to one (1)'' when averaged over a 3-year period. *See,* 40 CFR part 50 appendix H and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' dated February 3, 1994. The level of the standard defines the number of significant figures to be used in comparisons with the standard, and, in this case, the number of significant figures to be used is one. The smallest value which will exceed the value of this standard is a value of 1.1, and, the average over a 3-year period is therefore rounded to one significant figure.

An observed daily maximum value at a monitor is considered to be valid if 75 percent of the hours from 9:01 a.m. to 9 p.m. were measured or if the highest hourly value measured is greater than the level of the standard. Where there are either no data for a day or data for less than the 75 percent of the hours between 9 a.m. and 9 p.m., a missing daily maximum ozone value may be assumed to be less than the level of the standard if the valid daily maxima on both the preceding day and the following day do not exceed 75 percent of the level of the standard. A day for which the daily maximum ozone value may be assumed to be less than 0.0125 ppm is termed ''day assumed less than the standard.'' *See,* appendix H to 40 CFR part 50.

To account for missing data, the procedures in appendix H to 40 CFR part 50 are used to adjust the actual number of observed exceedances of the standard in a year to yield the annual number of ''expected exceedance days'' at an air quality monitoring site.

The computation of ''expected exceedance days'' is rounded to one significant figure for both the purposes of estimating the annual number of expected exceedance days at a monitor and for the annual average number of expected exceedance days over a 3-year period.

For example, for the 3-year average, any value less than 1.05 rounds down to 1.0, and, any value of 1.05 or greater rounds up to 1.1. As stated in a preceding paragraph in this section of this document a violation occurs when the average number of expected exceedance days over a consecutive 3-year period is greater than or equal to 1.1. Therefore, to not violate the 1-hour ozone NAAQS, the maximum aggregate sum of expected exceedance days over a consecutive 3-year period allowed is 3.1 because 3.1 divided by 3 is 1.03333, which when rounded to one significant figure is 1.0 which does not exceed 1. An aggregate sum of 3.2 expected exceedance days over a consecutive 3-year period do not meet this standard because 3.2 divided by 3 equals 1.0666, which when rounded to one significant figure is 1.1 and which is greater than 1.0. For further details refer to the technical support document prepared for this proposed action regarding the conversion of observed daily maximum values to expected exceedance days for each monitoring site.

A determination of whether an area's air quality meets the 1-hour ozone standard is based upon three years of complete, quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies must annually certify that these data are accurate to the best of their knowledge, and, for calendar years 2010 and later, such certifications must be submitted by May 1st for the prior year's data. *See,* 40 CFR 58.15. Thus, the certification of the air quality monitoring data for calendar year 2011 is due no later than May 1, 2012. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. *See,* 40 CFR 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D, and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

V. What is EPA's analysis of the data regarding Baltimore's attainment of the 1-hour ozone standard?

As noted previously, the applicable attainment date under the 1-hour ozone NAAQS for the Baltimore area was November 15, 2005.[8] We base a determination regarding attainment of the 1-hour ozone NAAQS by this deadline on the average number of

[8] Pursuant to section 181(a)(5) of the CAA, the state may request, and EPA may grant up to two 1-year attainment date extensions, provided that certain criteria are met. One criterion is that there be no more than one exceedance of the 1-year ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required. As shown in Table 1, the Edgewood, Harford County monitoring site recorded two (2) exceedances in 2005, during the year of the attainment deadline. Therefore the Baltimore area was not eligible for an attainment date extension under section 181(a)(5) nor did the State request such an extension.

expected exceedance days per year for the period 2003–2005.

From 2003 through 2005, ambient air quality for ozone was monitored on a continuous basis at six monitoring sites within the Baltimore area. The minimum required monitoring season for the Baltimore area is 214 days from April 1st to October 31st of every year. *See,* 40 CFR 58.11(c) and Table D–3 ''Ozone Monitoring Seasons by State'' in appendix D to 40 CFR part 58.

A. What is EPA's analysis of whether the Baltimore area attained the 1-hour ozone standard by its 2005 attainment deadline?

During the entire 2003 to 2005 period, six ozone monitoring stations in the Baltimore area were in operation. Table 1 summarizes the ozone data collected at these six ozone monitoring stations during the 2003 to 2005 period and included in AQS for the Baltimore area. These data are complete and have been quality-assured and recorded in AQS. Maryland uses the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

TABLE 1—NUMBER AND AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS AND DESIGN VALUES PER YEAR BY MONITOR IN THE BALTIMORE AREA 2003 TO 2005

Monitor information	Annual number of expected exceedance days			Average number of expected exceedance days per year
Monitor (AQS ID No.)	2003	2004	2005	2003–05
Davidsonville Recreation Center, 3801 Queen Anne Bridge Road, Anne Arundel County (24–003–0014)	2.1	0.0	0.0	0.7
Padonia Elementary School, 9834 Greenside Drive, Cockeysville, Baltimore County (24–005–1007)	0.0	0.0	0.0	0.0
600 Dorsey Avenue, Essex, Baltimore County (24–005–3001)	1.0	0.0	1.0	0.7
1300 W. Old Liberty Road, Carroll County (24–013–0001)	0.0	0.0	0.0	0.0
Edgewood Chemical Biological Center (APG), Waehli Road, Edgewood, Harford County (24–025–1001)	1.0	1.0	2.0	1.3
3560 Aldino Road, Harford County (24–025–9001)	1.0	0.0	1.0	0.7

Source: EPA AQS Database, ''Quicklook Criteria Parameters,'' Report Request ID 843146, Report Code AMP450, dated March 3, 2011.

A complete listing of the ozone exceedances for each monitoring site, as well as a summary of EPA's calculations can be found in the technical support document prepared for this proposed action. As shown in Table 1, the average number of expected exceedance days per year exceeded 1.0 at the Edgewood, Harford County monitoring site. Only monitors with three complete years of data are shown in Table 1. Since at least one monitor in the Baltimore area failed to attain the 1-hour ozone NAAQS by November 15, 2005, this is sufficient to support the conclusion that the area failed to attain the 1-hour ozone standard by its applicable attainment date. Therefore, we propose to determine that the Baltimore area failed to attain the 1-hour ozone NAAQS by its applicable attainment date of November 15, 2005.

B. What is EPA's proposed determination of whether the Baltimore area is currently attaining the 1–hour ozone standard?

During the entire period from 2006 through 2011, the same seven ozone monitoring stations in the Baltimore area were in operation. Table 2 lists, for each monitor, its AQS identification number, its location, and its ''short name.''

TABLE 2—MONITOR INFORMATION BALTIMORE AREA 2006–2011

Monitor (AQS ID No.)	Location	Short name
24–510–0054	Furley E.S. Recreational Center, 4633 Furley Avenue, Baltimore City	Furley.
24–003–0014	Davidsonville Recreation Center, 3801 Queen Anne Bridge Road, Anne Arundel County	Davidsonville.
24–005–1007	Padonia Elementary School, 9834 Greenside Drive, Cockeysville, Baltimore County	Padonia.
24–005–3001	600 Dorsey Avenue, Essex, Baltimore County	Essex.
24–013–0001	1300 W. Old Liberty Road, Carroll County	South Carroll.
24–025–1001	Edgewood Chemical Biological Center (APG), Waehli Road, Edgewood, Harford County	Edgewood.
24–025–9001	3560 Aldino Road, Harford County	Aldino.

Source: EPA AQS Database, ''Quicklook Criteria Parameters,'' Report Request ID 843146, Report Code AMP450, dated March 3, 2011 and Report Request ID 937336, Report Code AMP450, dated December 13, 2011.

Table 3 summarizes the 1-hour ozone data collected at these six ozone monitoring stations during the 2006 to 2010 period and included in AQS for the Baltimore area. These data are complete and have been quality-assured and recorded in AQS. Maryland uses the AQS as the permanent database to maintain its data and to quality-assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

TABLE 3—NUMBER AND AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITOR IN THE BALTIMORE AREA 2006 TO 2010

Monitor information	Annual number of expected exceedance days					Average number of expected exceedance days per year		
Monitor—AQS ID No. & "Short Name"	2006	2007	2008	2009	2010	2006–2008	2007–2009	2008–2010
24–510–0054—Furley	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
24–003–0014—Davidsonville	0.0	1.0	0.0	0.0	0.0	0.3	0.3	0.0
24–005–1007—Padonia	0.0	0.0	1.0	0.0	0.0	0.3	0.3	0.0
24–005–3001—Essex	1.0	0.0	0.0	0.0	1.0	0.3	0.0	0.3
24–013–0001—South Carroll	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
24–025–1001—Edgewood	2.0	1.0	0.0	1.0	1.1	1.0	0.7	0.7
24–025–9001—Aldino	1.0	2.0	0.0	0.0	0.0	1.0	0.7	0.0

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011.

Table 4 summarizes the 1-hour ozone data collected at these six ozone monitoring stations during the 2009 to 2011 period and included in AQS for the Baltimore area. These data for 2009 and 2010 are complete and have been quality-assured and recorded in AQS. The data for 2011 are those entered in AQS as of December 13, 2011. Data for at least 90 percent of the 2011 monitoring season days has been entered into AQS but has not yet been certified by Maryland.[9] The data shows that only one monitor recorded an exceedance of the 1-hour ozone standard; the Edgewood site measured one exceedance of the 1-hour ozone standard during 2011. As of December 13, 2011, the 2011 data entered into AQS for the Edgewood site includes 209 days of valid data and also includes three days assumed less than the standard. Under the procedures discussed in Section IV of this document, the number of expected exceedances for the Edgewood site is only 1.0 for 2011.

TABLE 4—NUMBER AND AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITOR IN THE BALTIMORE AREA 2009 TO 2011

Monitor information	Annual number of expected exceedance days			Average number of expected exceedance days per year
Monitor—AQS ID No. & "Short Name"	2009	2010	2011	2009–2011
24–510–0054—Furley	0.0	0.0	0.0	0.0
24–003–0014—Davidsonville	0.0	0.0	0.0	0.0
24–005–1007—Padonia	0.0	0.0	0.0	0.0
24–005–3001—Essex	0.0	1.0	0.0	0.3
24–013–0001—South Carroll	0.0	0.0	1.0	0.0
24–025–1001—Edgewood	1.0	1.1	1.0	1.0
24–025–9001—Aldino	0.0	0.0	0.0	0.0

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011, for the 2009 to 2010 data and Report Request ID 937336, Report Code AMP450, dated December 13, 2011, for the 2011 data.

As shown in Tables 3 and 4, no monitor in the Baltimore area had a value of the average number of expected exceedance days per year exceeding 1.0 in the 3-year period 2006–2008. Furthermore, no monitor in the Baltimore area has had a value of the average number of expected exceedance days per year exceeding 1.0 in any 3-year period after 2006–2008, that is, during the subsequent 3-year periods 2007–2009 and 2008–2010. Thus the data show that the Baltimore area attained the 1-hour ozone standard in 2008 and has continued to attain this standard through 2010 based upon the most recent complete, quality-assured and certified data. Preliminary data available for 2011 indicate that the area continues in attainment for the 1-hour ozone standard for the period 2009 through 2011.

Therefore, we propose to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS based on the most recent three years of complete, quality-assured and certified ozone monitoring data, 2008–2010. Preliminary data available for 2011 indicate that the area continues in attainment of the 1-hour ozone standard. If we finalize this determination the State of Maryland's obligation to submit contingency measures for failure to attain the 1-hour ozone standard would be suspended.

VI. Proposed Actions

In this notice of proposed rulemaking, pursuant to EPA's authority to ensure implementation of 1-hour ozone anti-backsliding requirements (CAA sections 301 and 181(b)(2)) EPA is proposing two separate, independent, and severable determinations.

A. Proposed Determination of 1-Hour Ozone Attainment by the Attainment Deadline of November 15, 2005

Pursuant to EPA's authority to ensure implementation of 1-hour ozone anti-backsliding requirements (CAA section 301 and section 181(b)(2)) and based upon EPA's review of complete, quality-assured and certified ozone monitoring

[9] The deadline for certifying the 2011 data is May 1, 2012. *See,* 40 CFR 58.15.

data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Baltimore severe 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005.

B. Proposed Determination That the Baltimore Area Is Currently Attaining the 1-Hour Ozone Attainment

Second, however, EPA is proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS, based upon the most recent three years of complete, quality-assured and certified ambient air monitoring data (2008–2010). The preliminary data that is available for 2011 show that the area continues to attain the standard. Moreover, the Baltimore area has monitored attainment of the 1-hour ozone NAAQS since the 2006–2008 monitoring period. If this proposed determination is made final, the obligation for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore severe 1-hour ozone nonattainment area would be suspended. These proposed determinations regarding the 1-hour ozone standard, if finalized, would bear on the Baltimore area's obligations with respect to the 1-hour ozone anti-backsliding requirements for section 172(c)(9) contingency measures for failure to attain that standard, and sections 182(d)(3) and 185 major stationary source fee programs.

VII. Statutory and Executive Order Reviews

This action proposes to make determinations of attainment and nonattainment based on monitored air quality data and does not impose additional requirements beyond those imposed by statute or regulation. For that reason, these proposed actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; 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, these proposed actions regarding attainment of the 1-hour ozone NAAQS in the Baltimore area do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness Areas.

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

Dated: January 24, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2012–2222 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2010–0279; FRL–9336–8]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of December 28, 2011, concerning proposed significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 17 chemical substances which were the subject of premanufacture notices (PMNs). In order to address public comments, EPA is reopening the comment period for 45 days.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0279, must be received on or before March 19, 2012.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 28, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: This document reopens the public comment period established in the **Federal Register** of December 28, 2011 (76 FR 81447) (FRL–9326–2). In that document, EPA proposed SNURs under section 5(a)(2) of TSCA for 17 chemical substances which were the subject of PMNs. Fifteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. EPA received comments in response to the proposed SNURs, noting that the proposed SNURs and corresponding consent orders present many complicated technical and scientific issues and meaningful public input will require a substantial amount of time and effort. The commenters requested that additional time be allotted to provide interested parties an appropriate opportunity to develop meaningful comments on the agency's proposed action. EPA is hereby reopening the comment period for 45 days to allow for any public comments for any of the chemical substances in the proposed rule.

To submit comments, or access the docket, please follow the detailed instructions as provided under

ADDRESSES in the December 28, 2011 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 24, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–2200 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10–51 and 03–123; FCC 11–184]

Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission continues the process of reexamining the fundamentals of the Commission's Video Relay Service (VRS) rules to ensure the VRS program fulfills the goals set for the Commission in section 225 of the Communications Act (the Act). Specifically, the Commission sets forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

DATES: Interested parties may file comments on or before March 2, 2012, and reply comments on or before March 19, 2012.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 10–51 and 03–123, by any of the following methods:

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 10–51 and 03–123.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

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

FOR FURTHER INFORMATION CONTACT: Dana Wilson, Consumer and Governmental Affairs Bureau, (202) 418–2247; email: *Dana.Wilson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking, FCC 11–184, adopted December 15, 2011, and released December 15, 2011, in CG Docket Nos. 10–51 and 03–123, seeking comment on a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates. The full text of document FCC 11–184 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document FCC 11–184 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site, *www.bcpiweb.com,* or by calling 1–800–378–3160. FCC 11–184 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11–184. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

• Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter

may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

Initial Paperwork Reduction Act of 1995

Document FCC 11–184 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

I. Introduction

1. Video relay service (VRS) allows persons with hearing or speech disabilities or who are deaf-blind to use American Sign Language (ASL) to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection. In document FCC 11–184, the Commission continues the process of reexamining the fundamentals of the Commission's VRS rules to ensure the VRS program fulfills the goals set for the Commission in section 225 of the Act. Specifically, the Commission sets forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates. The Commission solicits comment on these options and proposals to ensure that this vital program is effective, efficient, and sustainable for the future.

II. Structural Issues With the Current VRS Program

2. Our overarching goal in this proceeding is to improve the VRS program so that it better promotes the goals Congress established in section 225 of the Act. Specifically, the Commission seeks to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud, and abuse that threaten its long-term viability. The Commission notes that this is largely consistent with the goals outlined in the recent Consumer Groups' TRS Policy Statement, and that the Commission seeks to reform VRS in accordance with these goals to the extent possible. In developing the records of the VRS-related proceedings discussed above, and in particular based on the submissions to the VRS program structure and practices proceeding (CG Docket No. 10–51), the Commission has identified a number of structural issues with the current program that have not only detracted from its historical success in providing communications services to individuals who are deaf, hard of hearing, deaf-blind, or have a speech disability, but may also threaten its future success. These issues—which the Commission seeks to address with the proposals set forth and the questions raised in document FCC 11–184—include the following: (i) Broadband affordability may be restricting the availability of VRS, (ii) VRS access technology standards may be insufficiently developed, frustrating the program's technology goals, and potentially resulting in inappropriate lock in of VRS users, (iii) the current VRS compensation mechanism is unpredictable and potentially inefficient, (iv) the structure of the VRS industry is potentially suboptimal and inconsistent with the goals of the Act, and (v) the current VRS compensation mechanism has proven vulnerable to waste, fraud, and abuse. The Commission discusses and seeks comment on each in turn below.

A. Broadband Affordability May Be Restricting the Availability of VRS

3. The National Broadband Plan identified broadband affordability as a major barrier to broadband adoption. Although the Commission unfortunately lacks systematic data, the Commission has anecdotal and other evidence to suggest that this broadband affordability barrier may be particularly acute for the deaf and hard of hearing community, such that some people who would benefit from VRS are unable to afford the required broadband Internet access service. For example, as one commenter observed, a disproportionate number of deaf American adults are unemployed, receive Social Security, live in poverty, or have household income below $20,000; broadband penetration among this community is therefore likely to be lower than the national average of approximately 65%. Thus, the Commission finds it reasonable to presume that some of those deaf Americans who have low incomes live in areas where broadband is available, yet they do not subscribe due to the expense. Further, though there is no definitive estimate of the number of Americans with hearing or speech disabilities who are fluent enough in ASL to use VRS, there are likely to be such individuals who would benefit from VRS but cannot afford the necessary broadband Internet access service.

4. The Consumer Groups' TRS Policy Statement urges the Commission to give consideration to regulatory initiatives that can ''meet the broadband access needs of people with hearing and speech disabilities.'' Indeed, any gap between the number of individuals who subscribe to VRS and the number of individuals who would subscribe but for the expense of broadband Internet access may represent a potential failure of our statutory obligation to make TRS ''available * * * to the extent possible,'' as the Commission believes VRS is effectively unavailable to those who cannot afford broadband Internet access. Now that the base of VRS users has grown significantly, the Commission is concerned that the broadband-penetration ceiling may have become a constraint on the availability of the program. The Commission seeks information and data from commenters that would help us better analyze whether there is a gap between potential VRS demand and actual VRS

subscribership attributable to the expense of broadband Internet access.

B. VRS Access Technology Standards May Be Insufficiently Developed

5. Under the present VRS model, multiple providers offer substantially similar services with no opportunity for price competition, as end users receive the service at no cost. Despite this, however, the program supports more than one provider to allow VRS users choice between providers who compete on factors such as quality of service, customer service, and technological development. This is consistent with the goal expressed by the Consumer Groups to ensure ''intense competition among a number of qualified vendors in the telecommunications relay services market to give the TRS user population a range of choices in features and services * * * .''

6. Although the Commission has adopted general rules to facilitate this non-price competition, such as requiring that VRS providers ensure interoperability with competing providers and that the technologies used to access VRS services be portable between providers, the record indicates that these rules, in practice, have met with limited success in two particular areas: Ensuring that VRS providers have a real opportunity to compete for other providers' VRS users, and facilitating VRS users' access to off-the-shelf VRS access technology. The Commission questions whether it makes sense to spend Fund resources supporting multiple providers to ensure that such choice is available *in principle* if most VRS users cannot *in practice* take advantage of such choice (*e.g.,* because of a lack of interoperability and/or portability of VRS access technology), and explore below new approaches to making consumer choice and effective competition a reality.

1. VRS Users May Be ''Locked In''

7. The Commission has adopted interoperability and portability rules to facilitate competition among providers. Every VRS provider is required to provide its users with the capability to register with that VRS provider as a ''default provider.'' Such registration is required: (1) To allow the VRS provider to take steps to associate the VRS user's telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures. On the other hand, our interoperability and portability rules are intended to (i) allow VRS users to make and receive calls through any VRS provider, and to choose a different default provider, without changing the VRS access technology they use to place calls, and (ii) ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.

8. Under the Commission's *Internet-based TRS Numbering Order,* published at 73 FR 41286, July 18, 2008 and 73 FR 41307, July 18, 2008; and *Second Internet-based TRS Numbering Order,* published at 73 FR 79683, December 30, 2008 (together, the *Internet-based TRS Numbering Orders*), providers must ensure that videophone equipment that they distribute retain certain, but not all, features when a user ports his number to a new default provider. Specifically, a default provider that furnishes videophone equipment to a consumer need not ensure that the videophone equipment's ''enhanced features'' (*e.g.,* address book, speed dial list) can be used when the consumer ports the number to and uses the videophone equipment with the new provider. Further, those enhanced features are, in most cases, impossible to port to new equipment obtained from the new default provider. Indeed, notwithstanding some level of industry effort, there is no set of common technical standards that will ensure such enhanced feature functionality remains after a customer ports to a new provider. Consequently, the Commission is concerned that VRS users may be effectively ''locked in'' to their existing providers by their wish to continue to use these non-standardized enhanced features. Indeed, many VRS users appear to be reluctant to switch to a new default provider because alternative default providers find it difficult to support many of the enhanced features of users' existing videophones, posing an unacceptably high switching cost. The Commission notes that the Consumer Groups' TRS Policy Statement emphasizes the importance of ''[t]otal interoperability * * * for equipment software and services from all vendors (for any forms of TRS) with no loss of core functionality.'' As consumers note, full interoperability, including the ability to make point to point calls, ''ensures greater protection for TRS users' safety, life, health, and property.''

9. The Commission seeks comment on the effectiveness of our current interoperability and portability requirements, and the role that existing VRS access technology standards—or the lack thereof—may play in frustrating the effectiveness of those requirements. Consumers further seek ''a conducive climate for healthy market competition'' in all forms of TRS.'' The Commission is concerned that VRS users may not be able to enjoy the benefits of non-price competition between multiple providers if, in fact, switching costs are so high that there is little prospect that consumers will actually switch default providers. Is the rationale for structuring the VRS program to afford competitive alternatives to VRS users drawn into question in the absence of technical standards that will reduce or eliminate such switching costs, including non-monetary costs such as those associated with the loss of enhanced features? If it is not possible to reduce switching costs to a level that does not frustrate the effectiveness of our current interoperability and portability requirements, should the Commission simply bid contracts for one or a limited number of VRS providers to offer VRS service, as smaller providers may have little hope of gaining market share by winning customers from larger providers? The Commission notes that such contracts would likely result in efficiency gains for the Fund by inducing price competition for the contract and/or eliminating the need to perpetually support sub-scale providers at higher rates. The Commission seeks comment on the impact such an approach would have on users. Given that the vast majority of users currently choose to obtain service from one provider, would it be correct to conclude that the impact would be minimal, or would the loss of additional competition—even by providers with small market shares—risk harmful consequences in terms of loss of innovation and consumer choice? If yes, the Commission asks commenters to provide specific details supporting this conclusion.

2. VRS Users May Not Have Appropriate Access to Off-the-Shelf Technology

10. When VRS was first launched a decade ago, videotelephony was a specialized, niche market requiring customized hardware and software, as well as frequently unavailable broadband Internet access service. It has now become a mainstream, mass-market offering. Indeed, currently available commercial video technology can provide closer functional equivalence, may be less costly, and is likely to improve at a faster pace than the custom devices supplied exclusively by VRS providers, so that the installed base of VRS access technology may be (or may soon become) inferior to ''off-the-shelf'' offerings.

11. As described in greater detail in Appendix B of document FCC 11–184, in 2006 the industry migrated to a

standard for transmitting real-time voice and video over packet-based networks called H.323, but has failed to make progress on the standardization needed to transition to the Session Initiation Protocol (SIP) family of standards, which has subsequently become the default for mass market Internet-based voice and video devices. In addition, as discussed in paragraph 8 above, there are no standards in place to facilitate transferring videophone equipment's enhanced features (*e.g.,* address book, speed dial list) when the consumer ports their number to and uses the videophone equipment with a new provider.

12. The Commission notes that the Consumer Groups' TRS Policy Statement emphasizes the need for the Commission to support technological innovation that will contribute to the quality and efficiency of TRS. In particular, the Consumer Groups request that we engage in ''[a]n ongoing effort * * * to 'raise the bar' in technological design and operations efficiency.'' The Commission seeks comment on whether the lack of progress on standards development in the VRS industry is serving as a barrier to the introduction of potentially superior, and less expensive, off-the-shelf technology into the VRS market. What other barriers limit introduction of off-the-shelf technology into the VRS market? Are there other mechanisms that can be used to encourage the introduction of off-the-shelf technology in the VRS market? How would advances for off-the-shelf technology be impacted if the Commission were to bid contracts for one or a limited number of VRS providers to offer VRS service?

C. The Current VRS Compensation Mechanism Is Unpredictable and Potentially Inefficient

13. As discussed above, the per-minute rate for compensating VRS providers has fluctuated significantly over time, resulting in uncertainty and controversy. Indeed, providers have frequently complained about uncertainty in the rate setting process due to the frequency with which rates have been recalculated and disagreements regarding the nature of the costs for which compensation may be provided. They explain that such uncertainty has impeded their ability to make long-term plans. The current rate setting mechanism has also negatively affected the telecommunications carriers that are required to contribute to the TRS Fund. The Commission would like to create stability and long-term predictability in the compensation mechanism, to the benefit of the providers, contributing carriers, and all consumers.

14. In addition to the problems related to the rate fluctuations described above, several features of the VRS program make it difficult to manage costs and reimbursements. First, although there are many VRS users and multiple VRS providers, the users neither receive nor send price signals because the service is provided at no charge to them. Thus, there is no opportunity for the market to set prices, enable price competition, determine industry structure, or influence demand. Second, the TRS Fund is effectively the sole purchaser of VRS services but, unlike a normal market participant, the Fund cannot ''choose'' the volume (*i.e.,* number of VRS minutes) to purchase, and so has no control over total expenditures once rates are set. Third, costs incurred by VRS providers are not necessarily aligned with the reimbursements the Fund provides on a per-minute basis. That is, many of a VRS providers' costs do not vary directly with the number of minutes of service provided (*e.g.,* equipment, call center infrastructure, CA supervision, marketing/outreach, general and administrative (G&A) expenses). Further, to the extent that that providers' other sources of revenue are *de minimis* and all VRS provider's costs are explicitly or implicitly supported by the Fund, there is frequent controversy over whether activities such as those related to customer acquisition and retention, equipment subsidies, and financing (*e.g.,* interest payments) are legitimate or not. For these reasons—as well as those related to waste, fraud, and abuse described below—the Commission is concerned with the efficiency of the current per-minute compensation scheme. The Commission seeks comment on this assessment of the efficiency of our per-minute compensation mechanism, and whether there are other factors that we should consider in restructuring the VRS compensation mechanism to improve its predictability and efficiency.

D. The Current Structure of the VRS Industry Is Inefficient

15. At present, there are twelve companies eligible for reimbursement from the Fund for VRS. In addition, until recent rule changes, approximately fifty additional ''white label'' companies marketed or offered VRS under their own names and received compensation from the Fund indirectly. At present, however, a single provider is handling the vast majority of VRS minutes. As a result, while this provider enjoys significant economies of scale, the remaining providers are able to cover their costs only because of the Commission's adoption of a tiered rate structure, which compensates providers with fewer minutes of use at a higher rate per minute. As a result, as Table 1 shows, a disproportionate amount of the monthly compensation for VRS is paid at the subscale Tier I and Tier II rates. Indeed, if all minutes handled were compensated at the Tier III ''at scale'' rate, the Fund would immediately save over $2 million per month—a reduction in the size of the Fund of approximately 5%.

TABLE 1

Tier	Tier structure	Minutes compensated	Compensation rate	Reimbursement (millions)	Reimbursement %	Minutes %	$/minute (ratio)
I	≤ 50,000 minutes	315,157	$6.24	$2	4.19	3.56	1.18
II	50,001–500,000 minutes	1,491,340	6.23	9.3	19.77	16.84	1.17
III	> 500,000 minutes	7,047,330	5.07	35.7	76.04	79.6	0.96
	Totals	8,853,827	n/a	47	100	100	n/a

16. Recognizing that the industry structure going forward may be influenced by factors including the desire and ability of existing VRS users to switch providers, the number of new VRS users who enter the market, and the rate structure (*e.g.,* the willingness of the Fund to support subscale players for a definite or indefinite period of time and the absolute level(s) of compensation), the Commission seeks comment on whether the current market

structure—namely, a single large provider with numerous subscale providers—represents an appropriate balance between consumer choice and efficiency.

E. The Current VRS Compensation Mechanism Has Proven Vulnerable to Waste, Fraud, and Abuse

17. The compensation of VRS providers on a per-minute basis creates an inherent incentive for providers to seek ways to generate minutes of use solely for the purpose of generating ''compensable minutes,'' rather than to provide legitimate services to VRS users. Illegitimate minutes are difficult to detect on an *ex post* basis, particularly when comingled with legitimate minutes or submitted by eligible providers on behalf of non-eligible ''white label'' providers. The U.S. Department of Justice, working in cooperation with the FCC's Office of Inspector General (OIG), has actively pursued individuals alleged to have manufactured and billed the TRS Fund for illegitimate minutes of use, and the Commission has adopted rules to bolster the certification process and discourage fraud and abuse. Even the best auditing mechanisms are imperfect, however, and so it is preferable to change the structural incentives of providers to discourage such abuse in the first place and increase our ability to detect it if it does occur along with strong oversight and auditing.

III. Proposed Reforms To the VRS Program To Address Structural Issues

18. The Commission sets forth below detailed proposals to address the structural issues identified in section II, above. The Commission seeks comment on these proposals, and emphasizes the importance of comments being detailed, specific, and supported by data wherever appropriate.

A. Ensuring That VRS is ''Available''

19. To the extent that the record shows that there is unaddressed demand for VRS, the Commission proposes to (i) promote residential broadband adoption via a pilot program to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication, and (ii) provide an incentive payment to providers for adding new-to-category customers.

1. Promoting Residential Broadband Adoption by Low-Income Americans With Disabilities

20. Commenters in this docket have advocated for the creation of a program to subsidize or otherwise make available broadband Internet access to Americans who are unable to access VRS because they cannot afford broadband Internet access. Such a program would be consistent with the recommendations of the National Broadband Plan, the Commission's broader efforts to meet the 21st century communications needs of low-income consumers, and the Act.

21. The Commission therefore seeks comment on establishing a ''TRS Broadband Pilot Program'' (TRSBPP) to utilize the TRS Fund to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. The Commission aims to ensure that any such program is both effective, by expanding the potential base of VRS users to include those who could not otherwise afford broadband, and efficient in its structure and operation. A detailed proposal to implement a TRSBPP is set forth in Appendix A of document FCC 11–184. The Commission seeks comment on our legal authority to implement such a program in section VI.

2. Providing Incentives to Providers for Adding New-To-Category Customers

22. A VRS provider's legitimate marketing and outreach costs are currently compensable from the Fund as part of the per-minute rate. Providers argue that marketing and outreach is a critical component of the service they provide. However, the appropriateness of certain marketing and outreach costs claimed by providers has been the source of controversy, as have provider marketing practices. Moreover, under the existing per-minute compensation system, providers have had a greater incentive to target existing VRS users than to focus outreach either on ''new-to-category users,'' *i.e.,* potential VRS users that are not yet registered with any provider as a VRS user or members of the general public.

23. The Consumer Groups' TRS Policy Statement asks the Commission to address deficiencies in outreach and research and development. They express the concern that countless Americans on fixed incomes may not be aware of resources for accessing TRS, or the capabilities and features that TRS has to offer. They also note that ''[r]elay services are equal access programs that are just as useful and critically important for those with or without hearing and speech disabilities,'' and advocate for TRS promotional activities to acquaint the public and private sectors, including employers, educational institutions, and businesses, about TRS to ''build familiarity and acceptance of TRS nationwide.'' Accordingly, the Commission seeks comment on ways to ensure that providers are making potential users aware of VRS in a manner consistent with the goals of section 225 of the Act. In particular, the Commission seeks comment on ways to provide incentives for providers to (i) Be more efficient in their marketing and outreach efforts, (ii) ensure that VRS is available to more potential users by focusing their efforts on new-to-category users instead of existing VRS users, (iii) determine whether such efforts are effective in reaching potential users, and (iv) ensure that their outreach efforts build familiarity about VRS within the general public. The Commission also seeks comment on how governmental and non-governmental entities, such as the FCC, the United States Department of Health and Human Services, state and local governments, and nonprofit organizations, can help make potential users aware of VRS.

24. One proposal would be to cease reimbursing providers for marketing and outreach based on their individual expenses for these activities, and instead implement a one-time, fixed incentive payment to VRS providers from the TRS Fund for each new-to-category VRS user they sign up, starting some time after the effective date of a final order in this proceeding. Such a system would align compensation with actual results and encourage VRS providers to focus their marketing and outreach efforts primarily on finding and signing-up new-to-category customers instead of merely trying to persuade existing VRS users to switch providers, which—while a valid commercial goal—is not a reasonable and legitimate expense for the Fund. By providing a fixed payment for each successful user sign-up, it would encourage providers to find the most efficient means of recruiting new users and focus Fund expenditures on fulfilling the goals set forth in section 225 of the Act. Further, to the extent that the marginal cost of adding a new customer is rising, for example, because providers are approaching the broadband-penetration ceiling, a fixed incentive payment could better compensate providers for the cost of adding a new-to-category customer. The Commission seeks comment on whether

such an incentive payment will better align Fund expenses and providers' incentives with the goals of efficiency and availability by replacing the unmeasurable effects of ''marketing and outreach'' with a concrete, transparent, and success-based mechanism.

25. If a new-to-category incentive payment were to be adopted, how could the Commission ensure that the payment is made only for signing up VRS users that were not previously registered for iTRS, or were not previously able to access VRS because, for example, they could not afford broadband Internet access? One proposal would be to define, for purposes of marketing and outreach compensation, the terms ''VRS user'' and ''new-to-category VRS user.'' For example, a ''VRS user'' could be defined as ''as an individual that has registered with a VRS provider as described in § 64.611 of the Commission's rules.'' This definition is consistent with our definition of ''Registered Internet-based TRS User,'' but distinguishes ''VRS users'' from the larger universe of Registered Internet-based TRS Users to reflect the changes the Commission proposes to make to the VRS program in document FCC 11–184. ''New-to-category VRS user'' could be defined as ''a VRS user that has never previously registered with any provider of Internet-based TRS.'' The Commission seeks comment on whether these definitions would appropriately limit new-to-category incentive payments, or whether different and/or additional definitions would better achieve the stated purpose of the new-to-category incentive payment. Should these definitions explicitly state that VRS users and new-to-category VRS users must be ''deaf, hard of hearing, deaf-blind, or [have] a speech disability?'' Should the new-to-category incentive payment be limited to one-per-household or one-per residence? Should other factors be considered? For example, should there be a minimum age requirement for VRS users, so as to ensure that infants or small children are not registered prior to their being able to actually use the service? Should incentive payments be limited to one-per-household or one-per-residence as is contemplated for the TRSBPP? The Commission seeks comment on whether a consumer's decision to obtain services supported by the TRSBPP, if adopted, should affect eligibility for the Lifeline or Link Up programs, or vice versa.

26. If a new-to-category incentive payment were to be adopted, how should providers prove eligibility for payments from the TRS Fund? What type of information should providers obtain to ensure that an individual that claims to be or appears to be a new-to-category VRS user is actually a new-to-category VRS user. Given that hearing individuals should not be Registered Internet-based TRS users, should proof that new-to-category VRS users are ''deaf, hard of hearing, deaf-blind, or [have] a speech disability'' be required? What method or methods should a provider use to verify or validate the information provided by a potential new-to-category VRS user? Should the Commission establish a standard certification form? Should providers establish a validation or verification process? Should the Commission establish guidelines or detailed rules governing what constitutes an acceptable verification or validation process? Should there be only one acceptable process, or should providers be entitled to use one of several methods to validate or verify information provided to support categorization as a new-to-category VRS user?

27. If a new-to-category incentive payment is adopted, how should the Commission calculate the amount of such payment? One methodology would be to use as a basis the average or median cost per gross addition (CPGA) of certified VRS providers over the most recent one year period. The Commission therefore requests that all commenting parties submit their CPGA for their most recent fiscal year, including a description of how the CPGA was calculated and the cost, revenue, and subscriber data used to calculate the figure. Another methodology would be to set the incentive payment as the sum of the reasonable costs of adding a new customer, which would include marketing, equipment, setup, and other reasonable costs. To the extent commenters support such a methodology, the Commission requests that they submit a proposed list of costs and fully justified estimates for those costs. To the extent commenters wish to propose another method for setting the incentive payment, they should provide a detailed explanation and justification for their proposed dollar amount per new-to-category user. The Commission invites comment on all aspects of this new-to-category incentive payment proposal.

28. If a new-to-category incentive payment is adopted, what impact would such adoption have on the Fund contribution factor? Would the reduction in reimbursements for individual provider marketing and outreach expenses offset claims for incentive payments? Is it necessary to ensure that there is not a sudden increase in the Fund contribution factor? One proposal would be to cap the number of incentive payments at a fixed number per year. For example, if incentive payments were limited to 50,000 per year, and there is a pool of 200,000 potential new-to-category VRS users who could register, it would spread the cost over at least four years. The Commission seeks comment on whether an annual cap on the number of payments is appropriate and, if so, at what level the cap should be set. The Commission also seeks comment on whether the duration of the incentive payment should be limited. Should the incentive payment continue to be available in perpetuity, or is it sufficient to make the payment available only during the transition period discussed in section IV.B.15?

29. The Commission seeks comment on whether a new-to-category incentive payment program could help address the market structure issue addressed in section II.D above. Could those certified VRS providers that are currently subscale increase their growth prospects if the new-to-category incentive payment is limited to providers that have less than the number of users the Commission estimate is necessary to achieve minimum efficient scale? As the Commission explains in greater detail below, we believe that having all providers of VRS operating at minimum efficient scale will improve the efficiency of the VRS program by ensuring that the Fund does not indefinitely subsidize providers that have less efficient cost structures. The Commission proposes that new users would not be prohibited from registering with providers that already have more than the number of users it takes to achieve scale—but such providers would not be eligible for the incentive payment because they already have achieved minimum efficient scale and presumably have less need for an additional financial incentive to promote awareness of their brand (as well as greater financial resources for marketing and outreach). The Commission seeks comment on this proposal.

30. The Commission seeks comment on whether there are additional specific steps the Commission should take to incent providers to refocus their efforts away from merely churning users between providers and toward finding and adding new-to-category VRS users who have not been able to benefit from VRS to date. The Commission also seeks comment on steps that it should take to reduce the increasing incidence of relay hang-ups by businesses and others who not acquainted with TRS, as well as

general measures needed to familiarize the general public about the existence and purpose of TRS. Finally, the Commission seeks comment on whether there are specific actions the Commission should take to supplement provider outreach efforts to expand the availability of VRS to more users and build acceptance of VRS in the greater community.

31. If a new-to-category incentive payment is adopted, what impact would such adoption have on research and development relating to VRS and, more broadly, TRS? Would providers have sufficient incentive and means to invest in research and development on VRS access technology, improving their call platforms, and/or other aspects of the provision of VRS? Would the introduction of standards for iTRS access technology facilitate research and development by VRS providers? Would such standards incent equipment manufacturers that have not traditionally invested in VRS and other TRS technologies to do so going forward? What other steps could the Commission take to promote research and development in VRS and other forms of TRS?

B. Addressing VRS User Lock In and Access to Advanced Technology

1. Defining VRS Access Technologies

32. The Commission in the *First Numbering Order* used the defined term ''CPE'' to describe ''TRS customer premises equipment,'' or the technology used to access Internet-based TRS. Because the use of this term has created some confusion among providers as new access technologies have been brought to market, and to distinguish the equipment, software and other technologies used to access VRS from ''customer premises equipment'' as that term is defined in section 3 of the Act, the Commission proposes to amend §§ 64.605 and 64.611 of its rules by replacing the term ''CPE'' where it appears with the term ''iTRS access technology.'' The Commission proposes to define ''iTRS access technology'' as ''any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call.'' Thus, any software, hardware, or other technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers, including ''provider distributed equipment'' and ''provider based software,'' whether used alone or in conjunction with ''off-the-shelf software and hardware,'' would qualify as ''iTRS access technology.'' Given the differential treatment of VRS and IP Relay proposed in document FCC 11–184, the Commission further proposes to refer separately to iTRS access technology as ''VRS access technology'' and ''IP Relay access technology'' where appropriate. The Commission seeks comment on this proposal.

2. Establishing Standards for iTRS Access Technology

33. Prior to the Commission's establishment of its Part 68 rules in 1975, terminal equipment was manufactured almost exclusively by Western Electric, which was part of the Bell System of companies that included the monopoly local exchange and long distance providers in most parts of the country. This ensured that no harmful terminal equipment was connected to the public switched telephone network, but also created a monopoly in the development and manufacture of terminal equipment. The Part 68 rules are premised on a compromise whereby providers are required to allow terminal equipment manufactured by anyone to be connected to their networks, provided that the terminal equipment has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules. The Commission's Part 68 rules have facilitated a vibrant, competitive market for terminal equipment, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.

34. The Commission seeks comment on whether the effectiveness of our interoperability requirements and functional equivalence could be improved by the creation of VRS access technology standards that are conceptually similar to the Part 68 standards for traditional CPE. Development of such standards may help to resolve the issue of VRS user lock in described in section II.B.1 by giving VRS users assurance that they will be able to continue to use their existing VRS access technology even if they choose to register with a new VRS provider, and that they will not lose access to enhanced features that have proven to be of particular importance to end users. The Commission also expects that a properly developed set of standards, and a properly developed, consensus driven process for maintaining and updating those standards, is consistent with, and could serve as a step towards, the accessibility of interoperable video conferencing services under the CVAA, and ultimately could result in widespread use of off-the-shelf technology both for VRS and for point-to-point calls.

35. Appendix B of document FCC 11–184 sets forth a detailed proposal for developing and maintaining VRS access technology standards based primarily on SIP. The Commission seeks comment on this proposal. The process described in that appendix is intended to develop an open, competitive VRS market, and is designed to facilitate interoperability, portability, affordability, supportability and compatibility goals that the Commission has long pursued and consumers have requested. Establishing VRS access technology standards may give providers a fair chance to compete and grow and could resolve the problem of users being locked in to their existing providers because of iTRS access technology constraints.

36. To ensure all VRS access technologies that VRS providers issue, lease, or otherwise provide to VRS users are compliant with any standards that we establish in this proceeding, we propose to adopt, or to incorporate by reference into our rules, any such standards. Non-compliance would then constitute an enforceable violation of Commission rules. The Commission seeks comment on this proposal. What effect would such a proposal have on existing VRS access technology currently in use? Should VRS providers that issued, leased, or otherwise provided VRS access technology to VRS users be required to ensure that such legacy VRS access technology is fully compliant with any standards adopted or, alternatively, removed from use within some discrete period of time (*e.g.,* 12–18 months)? The Commission notes that the burden of making the existing base compliant may be reduced to the extent that legacy devices are reaching the end of their natural lives. If the Commission's interoperability and portability rules are not effectively enforced with respect to the existing base of VRS users and new-to-category users, will this prevent smaller providers from growing, and hence prevent a more efficient industry structure from being attained? In practice, no provider has an incentive to make its customers more contestable, even if this benefits VRS users, and so the Commission seeks comment on how to ensure that any standards adopted are actually implemented. For example, should VRS minutes generated using equipment that does not meet any standards adopted be non-compensable?

37. The Commission notes that the Commission has previously sought comment on whether to ''mandate specific Internet protocols that VRS providers must use to receive and place VRS calls.'' The Commission's intent in document FCC 11–184 is not to lock

providers into a particular set of protocols, which could have the effect of discouraging or impairing the development of improved technology. Rather, our goal is to establish functional requirements, guidelines, and operations procedures for VRS that will encourage the use of existing and new technologies, and allow the industry to expand and evolve in a way that the lack of standards to date has inhibited, in particular by facilitating the use of off-the-shelf equipment and preventing the use of equipment and lock in as a tool for limiting consumers' choice of providers.

38. Given the focus of document FCC 11–184 on the VRS program, the Commission does not propose to establish standards for iTRS access technology used to access IP Relay or other forms of iTRS at this time. The Commission expects, however, that to the extent such standards are warranted, the establishment of standards for the VRS program may serve as a model for other Internet-based TRS programs.

3. Off-the-Shelf iTRS Access Technology

39. Commenters responding to the *VRS Technology Public Notice,* published at 76 FR 11462, March 2, 2011, generally state that off-the-shelf VRS access technology hardware (*i.e.,* commercially available computing and communications equipment such as laptops, mobile phones, and tablet computers with broadband Internet access and a front facing camera such as the Apple iPad2) is becoming increasingly available and popular among both VRS providers and VRS users—a dramatic change since VRS was first introduced. Commenters also note the benefits of developing VRS applications that run on off-the-shelf hardware, including that it is based on common commercial protocols and that ''competing VRS providers can all design for any open platforms.'' Conversely, commenters have argued that proprietary videophones developed by providers are a source of VRS user lock in. The Commission therefore seeks comment on whether the effort to develop and maintain VRS access technology standards discussed in the preceding section would be furthered by phasing in a requirement that all VRS access technology hardware used to make compensable VRS calls be ''off-the-shelf.'' Would limiting providers to making modifications to or developing software for existing commercial platforms help or hinder the effort to ensure portability and interoperability? Is such a rule consistent with the Commission's obligation to ''encourage * * * the use of existing technology and * * * not discourage or impair the development of improved technology?'' How should ''off-the-shelf'' be defined for the purpose of such a rule? Should special purpose videophones be treated differently than other hardware, such as laptops, tablets, or smartphones? What other factors must be considered if VRS providers are allowed to provide users only off-the-shelf VRS access technology hardware?

4. Funding iTRS Access Technology

40. The Commission has consistently held that costs attributable to the user's relay hardware and software, including installation, maintenance, and testing, are not compensable from the Fund. As the Commission has explained, ''compensable expenses must be *the providers'* expenses in making the service available and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment—whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.''

41. The Commission also recognizes, however, that providers continue to provide VRS access technology to VRS users free of charge, and that in many cases these providers' primary or only source of revenue may be the TRS Fund. The TRS Fund is likely, therefore, implicitly or indirectly funding iTRS access technology costs. But because this funding is implicit or indirect, the Commission has no data on how many units of hardware or software are being distributed by providers, how many users are receiving iTRS access technology from providers, how much money is being spent on manufacturing, installation and maintenance, or other data that could help the Commission ensure that the TRS program is being run in as efficient a manner as possible, and in a manner that fully meets the needs of VRS users.

42. The Commission does not seek to alter our prior decision that equipment costs are not ''costs caused by interstate telecommunications relay service.'' The Commission seeks comment, however, on whether the ''availability'' mandate in section 225(d)(3) of the Act, discussed in greater detail in section VI below, provides the Commission authority to collect contributions to the TRS Fund to support iTRS access technology for VRS users and to disburse the relevant support. Would providing explicit compensation for iTRS access technology help further the goal of ensuring that TRS is ''available, to the extent possible and in the most efficient manner?'' Would the Commission be in a better position to collect data on costs associated with iTRS access technology if an explicit funding mechanism were in place? Should iTRS access technology funding be limited to low income consumers, as is contemplated in the discussion of the TRSBPP above, or would it be more appropriate to allow iTRS access technology costs to be covered by the TRS Fund for all VRS users? If the TRS Fund is used to support iTRS access technology, should the Commission require that ownership of supported technology be passed to VRS users to help reduce the possibility of user lock in? What other legal and policy issues are relevant to the discussion of whether VRS access technology costs should be explicitly (rather than implicitly) compensable from the TRS Fund?

43. To the extent that the Commission finds it has the authority to provide compensation for iTRS access technology, the Commission does not, given the focus of document FCC 11–184 on the VRS program, propose to provide explicit compensation for iTRS access technology used to access IP Relay or other forms of iTRS at this time. The Commission expects, however, that to the extent a VRS access technology funding program proved successful, the VRS program may serve as a model for other Internet-based TRS programs.

C. Instituting a More Efficient Compensation Mechanism and Reducing Incentives for Waste, Fraud, and Abuse

44. The Commission long has questioned whether a per-minute compensation methodology is appropriate for VRS, due in no small part to the significant difficulty of determining a ''reasonable'' per-minute compensation rate for VRS, given issues concerning CA staffing, labor costs, and engineering costs particular to VRS. Although there has been significant effort directed to determining what categories of provider costs should be compensable from the Fund, the Commission has not recently examined the fundamental question of whether a tiered, per-minute compensation model is best suited to VRS.

45. Based on information VRS providers have submitted to the Commission, the Commission believes that a tiered, per-minute compensation model may not be the most appropriate for VRS because it does not align compensation with costs (leading to structural inefficiency and lack of transparency), it provides a structural incentive to increase the number of VRS

minutes billed to the Fund (leading to fraud), and it sustains numerous subscale players (leading to waste). The Commission recognizes that any compensation mechanism will have its benefits and its drawbacks, but in seeking a better alternative to the current model, the Commission notes the following with respect to the current compensation mechanism:

46. First, although the major cost item for each provider that varies with the number of VRS minutes is the direct CA cost, if the average number of VRS minutes per user is constant—as the Commission believes it is based on both discussions with providers and examination of historic usage data from the Fund administrator—then the CA cost is also effectively constant per user. That is, if the CA cost/minute is constant and the average minutes/user is also constant, then by definition the product of the two (*i.e.,* CA cost/minute * minutes/user = CA cost/user) is also constant when averaged over a period of time and customer base of reasonable size.

47. Second, the Commission notes that there are no other significant cost items that scale on a per minute basis. Indeed, all the other items (*e.g.,* iTRS access technology, installation, customer care, G&A, call center infrastructure, *etc.*) are either fixed or scale directly or indirectly with the number of users served.

48. Third, because a substantial fraction of the costs of providing VRS are not directly variable with either the number of users or equivalently the number of minutes handled, a providers' cost structure exhibits a scale curve, as illustrated in Figure 1. The minimum efficient scale (V*) is the point on the scale curve at which the volume of a firm's output is high enough to take substantial advantage of economies of scale so that the average costs are minimized. Put more simply, minimum efficient scale is the point at which the per-unit cost begins to ''flatten'' as the volume of output increases. The Commission implicitly acknowledged the existence of such a scale curve when adopting a tiered rate methodology by compensating providers with fewer overall minutes of use at a higher per-minute rate. The Commission notes, however, that the current scheme provides no limit on the duration of support for subscale providers, resulting in an industry structure in which the Fund compensates numerous providers at the lowest volume, highest cost Tier I rates ($6.24 per minute) and very few firms at the higher volume, lowest cost Tier III rates ($5.07 per minute).

49. The Commission seeks comment on these observations regarding the current compensation mechanism, in particular on the shape of the scale curve and the point at which minimum efficient scale is reached. The Commission also seeks comment on whether a more reasonable and transparent mechanism for compensating providers would be: (a) Based on a per user payment instead of a per minute payment, so that the compensation rate is better aligned with the costs of providing service, and so is easier to determine and more efficient; and (b) based on a predictable transition from the current tiered rates to a single at-scale rate. The Commission discusses (a) in the remainder of this section and (b) in section III.D.

FIGURE 1. ILLUSTRATIVE ECONOMIES OF SCALE IN PROVIDING VRS

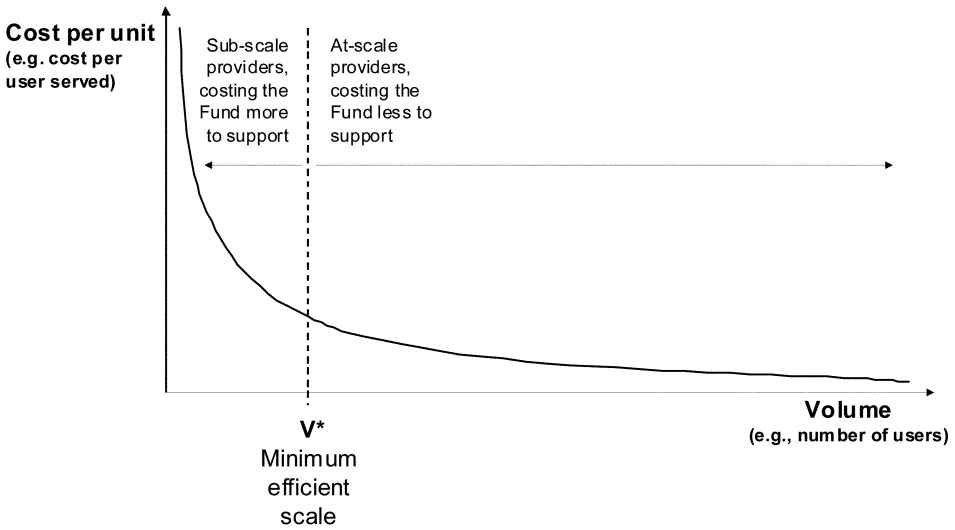

Figure 1

50. The Commission seeks comment on whether a per-user compensation mechanism would better align the compensation methodology with the providers' cost structure, and so be more efficient, easier to set, and more transparent. In addition, would such a mechanism eliminate providers' incentives to stimulate minutes of use, a common and difficult to detect form of VRS fraud? Would such a mechanism incent VRS providers to add new users rather than promote additional minutes of use, thus better aligning the incentives of VRS providers with the goal of ensuring that TRS is available ''to the extent possible and in the most efficient manner?'' What pitfalls regarding potential fraud would come with a per-user approach? Will shifting provider incentives from generating minutes of use to adding users result in the providers fraudulently adding or reporting users to generate additional compensation? Would it be easier to detect the existence of fraudulent users than fraudulent minutes of use (particularly *ex post facto*), thus rendering the program easier to monitor and audit? What safeguards could be

established to ensure that providers register only individuals that meet the requirements established in the statute and by our regulations? Would a per-user compensation mechanism render the program more transparent by allowing the Commission and the public to better understand the actual number of users of VRS and the cost per user—neither of which are known today despite the size of the program? Would the rate setting process be simplified, more predictable, and more transparent? Would a per-user mechanism, taken in combination with the transition plan described in sections III.D and IV.B.15, provide more certainty to VRS providers and investors, and better governance for the Commission? To provide a solid basis for discussion, a detailed explanation of a per-user compensation mechanism is set forth in Appendix C of document FCC 11–184. The Commission seeks comment on the per-user compensation mechanism described in Appendix C of document FCC 11–184. Would a per-user approach eliminate the need to provide funding for marketing to new-to-category customers?

51. *Active Users.* While a per-user compensation system would eliminate incentives to manufacture minutes of use, it would create incentives to enroll more users—even those who do not actually utilize the service and therefore do not generate costs for the VRS provider. It may also create incentives to enroll the same users with multiple providers. The Commission seeks comment on how these incentives can be lessened or eliminated. Should providers be compensated only for ''active users''—those registered VRS users that meet a minimum usage requirement? One proposal for defining active users is set forth in Appendix C of document FCC 11–184. The Commission recognizes that if it adopts a minimum usage requirement for VRS users, it will require VRS providers to continue tracking the monthly use of its service by users. The Commission seeks comment on what steps it can take to ensure that VRS providers do not use this information to encourage or entice users to meet the minimum usage requirement for being considered an active user.

52. *Enterprise Users.* The record indicates that there are an increasing number of individuals who use VRS in the course of their employment, and that those users may have higher average monthly usage than those who do not use VRS in the course of their employment. The Commission recognizes, for example, that a single deaf or hard of hearing individual may use VRS both as an ''enterprise user'' (*i.e.,* in the course of their employment) and for their own personal use, just as hearing individuals frequently have a phone provided by their employer for use at work, and separate phones for their personal use. The Commission therefore seeks comment on whether a VRS provider should receive additional compensation for ''enterprise users'' under a per-user compensation system.

53. An option for establishing a system to compensate VRS providers for enterprise users is set forth in Appendix C of document FCC 11–184. The Commission seeks comment on the benefits of establishing a separate enterprise user compensation rate in general, and on the option in Appendix C of document FCC 11–184 in particular. Would the proposal in Appendix C of document FCC 11–184 help reduce barriers to employment for VRS users—as is requested by the Consumer Groups—because VRS providers would have an economic incentive to work with businesses to ensure that the workplace has functionally equivalent communications with which those employees can perform their assigned duties? Would establishing a separate compensation rate for enterprise users help ensure that VRS providers are appropriately compensated for the reasonable costs of providing VRS? To what extent would this option impact the obligations of employers under Title I of the ADA to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship?

54. The Commission notes that under the existing compensation mechanism, VRS calls made by or to a VRS provider's employee, or the employee of a provider's subcontractor, are a provider business expense and are not eligible for compensation from the TRS Fund on a per-minute basis. The Commission proposes that the same logic applies under a per-user compensation mechanism, and that the cost of calls made to and by employees of VRS providers and their affiliates, or subcontractors of VRS providers and their affiliates should be treated as a cost of providing service which is recovered through the compensation provided for service rendered to non-affiliated VRS users. The Commission therefore seeks comment on what safeguards should be put in place to ensure that VRS providers are not compensated at the enterprise rate for providing service to individuals who work for VRS providers or their affiliates and subcontractors of VRS providers and their affiliates. For example, should employees of VRS providers and their affiliates be required to use a separate 10-digit number at work to denote VRS calls made in the course of their employment? Should the definition of Enterprise VRS Employer include an exclusion of these entities? Should the Enterprise VRS Employers of each Enterprise User be listed in the iTRS database? Should rules associated with call detail records be modified so that Enterprise Users and Enterprise VRS Employers are readily identifiable? How should self-employed VRS users be treated for the purpose of an enterprise rate?

D. Transitioning the Industry Structure To Ensure Economies of Scale

55. Each of the structural reforms discussed above is worth exploring on its own merit. A major additional benefit of these reforms, if adopted, would be to create an opportunity to transition away from the current inefficient industry structure by giving all providers an opportunity to achieve minimum efficient scale. Specifically, the proposed TRSBPP could make VRS available to a significant pool of new-to-category potential VRS users, and the implementation of iTRS access technology standards could reduce switching transaction costs and make the existing base of VRS users more contestable than is currently the case (*i.e.,* more easily able to switch from their current provider to a new provider). At the end of a successful transition period, an industry structure could consist of multiple, at-scale providers serving a larger number of users than at present, with each provider being compensated at the same at scale per-user rate set by the Commission (see Figure 2). The ultimate result could be a program in which providers' incentives are aligned with the statute's goals of efficiency, functional equivalence, choice, and maximizing access to VRS, the Fund could be paying an effective rate per user that may better reflect the actual costs of providing VRS than is currently the case, and which could eliminate the current tiered rates, which provide seemingly indefinite support for subscale providers and introduce extra complexity into the management of the program.

FIGURE 2. TRANSITIONING TO MORE EFFICIENT INDUSTRY STRUCTURE

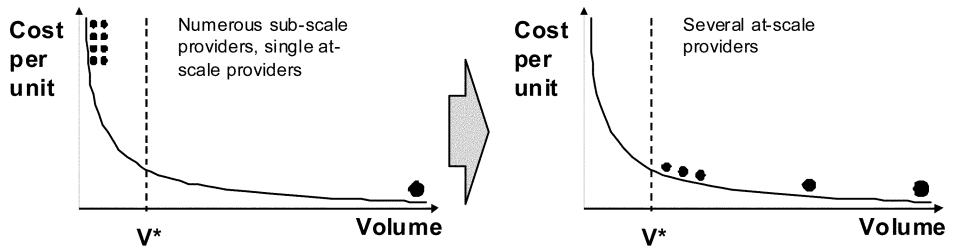

Figure 2

56. The Commission notes, however, that implementation of these reforms, if adopted, would need to be phased in over time, as some of the reforms would need to be conducted sequentially. For example, appropriate VRS access technology standards must be in place before providers can be expected to compete effectively for existing users. Further, providers that are currently subscale will not be able to achieve scale overnight, and some providers may have chosen to adopt capital structures requiring a level of profitability that may not be reflected in a reformed program, for example, because of increased competition or better alignment of rates with the actual costs of providing service. The Commission therefore seeks comment in section IV on how the reforms in this section, if adopted, could be implemented so as to minimize the risk of inappropriate disruptions that could result from the transition to an at-scale per-user rate.

57. The Commission notes that the transitions discussed in this section will be accompanied by risk. An appropriately implemented structural reform program and transition process potentially would give each provider a real opportunity to achieve minimum efficient scale during the transition period and may result in an end state for the program that is better for VRS users and VRS providers, as well as being more sustainable and efficient for the Fund. If, however, some providers are not able to manage their businesses, gain scale, or support their existing capital structures during a transition period, they will likely have to change their current business plans. This would be a reasonable result, and fully consistent with our settled policy, affirmed by the courts, that our duty is ''to protect competition, not competitors.'' The Commission seeks to enhance competition in the provision of VRS services because it appears to be an effective way of furthering the goals of section 225 of the Act, but will not act to preserve any particular competitor. The Commission does not believe that any provider has an inherent entitlement to receive compensation from the Fund, and so do not regard as a goal the protection of VRS providers who are high cost and/or uncompetitive.

IV. Implementing Structural Reforms

58. In this section, the Commission seeks comment on how to implement the structural reforms discussed in section IV above, to the extent they are adopted. The Commission also seeks comment on whether any additional amendments or new rules are necessary to implement any reforms that are adopted.

A. VRS User Database

59. The Commission seeks comment on whether the Commission should establish a VRS User Database to facilitate four primary functions required to implement the reforms proposed in document FCC 11–184: (i) Ensuring that each VRS user has at least one default provider, (ii) allowing for the identification of new-to-category users, (iii) supporting the operation of the TRS Broadband Pilot Program discussed in section III.A.1 and Appendix A of document FCC 11–184, and (iv) ensuring efficient program administration. A proposal for establishing a VRS User Database is set forth in Appendix D of document FCC 11–184.

B. Rules Governing the VRS program

60. Implementation of the reforms discussed in document FCC 11–184 will require that the rules governing the operation of the VRS program be amended. The Commission seeks comment on the need to modify existing rules or add new rules consistent with the proposals set forth in document FCC 11–184.

1. Restructuring Section 64.604

61. Section 64.604 of the Commission's rules has become somewhat unwieldy since it was adopted in 2000. Initially focused on TRS mandatory minimum standards, the section now includes subsections that govern, *inter alia,* the administration of the TRS Fund and procedures for making complaints against providers. The Commission seeks comment on whether, regardless of any substantive changes that are made in response to document FCC 11–184, § 64.604 of its rules should be broken into separate sections, each of which addresses a particular regulatory issue. To this end, the Commission seeks comment on whether it should adopt service-specific rules (*e.g.,* VRS, speech-to-speech, captioned telephone relay service), transmission-specific rules (*i.e.,* PSTN-based TRS vs. iTRS), or some other structure.

2. Improving Functional Equivalence in the Workplace

62. The Commission notes that in the employment context, the employer, rather than the employee, generally holds the contractual right to control certain aspects of the communications services and products used on the job. For example, employers generally procure telephone service and telephone numbers for their employees, and it is the employer that pays the phone bill (directly or indirectly), interacts with the providing carrier, and has the contractual right to port or reassign numbers through their carrier partner. This generally is not the case in the context of VRS.

63. As discussed in section III.C and in Appendix C of document FCC 11–184, the Commission seeks comment on whether to provide additional compensation to VRS providers for providing service to VRS users in the course of their employment if a per user compensation mechanism is adopted. The Commission further seeks comment on whether, if such a proposal is adopted, it can be implemented such that VRS service is provided in the workplace in a manner that is functionally equivalent to the way

telecommunications services are provided to hearing employees.

64. Specifically, the Commission seeks comment on whether enterprises that have deaf employees could be treated as ''VRS Users'' for the purposes of our VRS program, except to the extent necessary to ensure that VRS providers appropriately receive and process calls, including emergency calls, from individual employees. Thus, for example, a business that contracts with a VRS provider to make VRS available to all of its deaf employees would be considered a ''user'' as that term is used in connection with the registration and number portability obligations set forth in § 64.611 of the Commission's rules, but each individual employee would be considered a user for the purposes of the emergency access obligations set forth in § 64.605 of its rules. The Commission seeks comment on what changes to its rules, if any, would be necessary to implement such a proposal, particularly in the context of the more general proposals and requests for comment set forth in the remainder of this section IV.B.

3. Removing the Need for Free Dial Around

65. Under our existing interoperability rules, Internet-based TRS users must be able to ''dial around'' to competing providers. Specifically, § 64.611(a)(2) of the Commission's rules obligates default VRS providers, to ''route and deliver all of that user's inbound and outbound calls *unless the user chooses to place a call with, or receives a call from, an alternate provider.''* If providers are compensated on a per-user basis, however, they will not be compensated for calls placed through them by another VRS provider's registered user. If VRS users were permitted to dial-around their default provider under a per-user compensation mechanism, providers would have a perverse incentive to encourage their VRS users to dial around so as to avoid incurring the costs of processing their VRS calls. Dial around may also encourage VRS providers that seek to provide less than full service to free ride on other providers.

66. The Commission recognizes, however, that some consumers might value the ability to dial around to different providers for various reasons. For example, the availability of dial around could facilitate competition among providers to answer calls more quickly. In that case, some consumers might value the dial around feature because it allows them to direct their call to an alternate provider that they believe might be even more responsive than their default provider in particular instances.

67. Given these competing considerations, the Commission seeks comment on whether to modify or eliminate the dial around requirement if the Commission adopts a per-user compensation mechanism. Would it be appropriate to mandate dial around functionality only for the purpose of accessing emergency services? Could providers continue to offer dial around capability on a commercial basis (*e.g.,* on a charge per call basis)?

68. The Commission notes that eliminating the dial around requirement for VRS will make the way VRS service is provided more consistent with the way that most communications services are provided today. For example, a subscriber to an interconnected VoIP service cannot make free calls via a second interconnected VoIP service to which she does not subscribe. However, the Commission recognizes that the availability of dial around currently serves as an incentive for VRS providers to meet or exceed ''speed of answer'' requirements because a customer who does not get their call answered quickly enough can redirect the call—and the per-minute compensation associated with the call—to another VRS provider. The Commission therefore seeks comment below on whether we need to revise this standard and whether there are other modifications that must be made to the Commission's mandatory minimum standards so that they better reflect the actual minimum standards that are reasonable for VRS users to expect.

69. The Commission seeks comment on whether it should require VRS providers to accept 911 calls from users who are not their registered users should the proposal to require VRS users to sign a contract with a specific provider be adopted. The Commission has anecdotal evidence that some VRS providers require users to register with them before completing the user's 911 call. Such a requirement would be similar to the requirement that wireless providers complete 911 calls even if the caller's contract for service has lapsed.

4. One Free Provider Per VRS User

70. Under the existing per-minute compensation mechanism, registering with multiple VRS providers is not necessarily problematic from an efficiency perspective, as the total reimbursements paid from the TRS Fund for each VRS user's minutes of use will be roughly the same, regardless of which providers process the calls. As described in Appendix C of document FCC 11–184, however, a per-user rate should cover an at scale provider's reasonable, annual costs to provide VRS service. Thus, under a per-user mechanism, allowing VRS users to register with multiple providers could result in significant increases in reimbursements paid from the Fund. Allowing individuals to register with multiple providers also makes it difficult to assess how many VRS users there are, and what the usage patterns of VRS users are, as well as facilitating fraud and/or abuse of the Fund by allowing providers to obtain compensation from the Fund without necessarily providing all aspects of service that might be expected from a committed, at scale VRS provider. The Commission seeks comment on limiting VRS users to registering with a single VRS provider for the purposes of making and receiving calls that are reimbursable from the Fund. Would this be an effective means of ensuring that VRS is provided in an efficient manner, while at the same time making VRS available to all potential users?

71. If so, what mechanisms should a provider use to ensure that a user that it registers is not already registered with another provider? Would the existence of the VRS User Database (VRSURD) be sufficient to ensure that multiple registrations do not occur? Are there specific requirements that should be placed on users that choose to register to use this service? What type of information should providers obtain to ensure that an individual is not already registered with another provider? What method or methods should a provider use to verify or validate the information provided by a potential VRS user? Should the Commission establish a standard certification form? Should providers establish a validation or verification process? Should the Commission establish guidelines or detailed rules governing what constitutes an acceptable verification or validation process? Should there be only one acceptable process, or should providers be entitled to use one of several methods to validate or verify information provided to ensure that a VRS user is registered with only one VRS provider? What information will be required beyond that which providers generally collect today?

72. The Commission seeks comment on the impact that a ''one free provider per VRS user'' rule would have on consumers. Some VRS users have recommended that ''consumers not be restricted to one service provider for both fixed and mobile services,'' arguing that ''consumers may have different service providers preferences depending on the type of service and that

consumers should be able to choose between different providers.'' Were the Commission to adopt a rule allowing dual registration (*i.e.,* for fixed and mobile services) would we be able to achieve the efficiencies sought after in this proceeding? How would this approach be implemented? The Commission notes that data provided by some providers suggests that when a VRS user utilizes both fixed and mobile services, that user's mobile minutes tend to replace, rather than supplement, that user's fixed minutes. If this is the case, would VRS providers be incented to offer high quality service on multiple platforms (*e.g.,* mobile and fixed) to attract more customers? In this manner could ''a one free provider per VRS user'' rule encourage competition and innovation between VRS providers, especially given the lack of price competition? Could providers offer users a single ten digit number that would allow inbound calls to be received on all platforms that a user possesses? Could providers offer additional paid services (*i.e.,* services that are not needed to achieve functional equivalency) on a commercial basis, as some currently do for remote interpreting services? Would ''one free provider per VRS user'' be consistent with the mandate of section 225 of the Act?

73. Consistent with section IV.B.1 and Appendix C of document FCC 11–184, should an Enterprise VRS User's Enterprise VRS Employer be considered the ''user'' for the purposes of this restriction?

5. Contracts

74. The Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (*i.e.,* have not previously signed up for VRS) or (ii) switching from another VRS provider to enter into a service contract starting one year after the adoption of a per-user compensation mechanism. The Commission also seeks comment on whether VRS providers should be allowed to require Enterprise VRS Employers to enter into a service contract starting one year after the adoption of a per-user compensation mechanism. Some providers use service contracts in other communications markets, and the Commission seeks comment on the possible harms and benefits of allowing them in the context of a per-user compensation mechanism in the VRS industry. For example, are there costs attributable to VRS user registration, start-up, or connection such that service contracts could make the program more cost efficient and administrable by restricting VRS users and Enterprise VRS Employers' ability to change their default providers with great frequency? Would explicitly allowing contracts lessen the incentive for providers to frustrate interoperability and portability by allowing providers to recoup the costs of providing iTRS access technology, customer setup, enrollment, and other upfront costs? Would service contracts increase the stability of providers' revenues and reduce the amount of customer churn, lessening the incentives of providers to spend excessive funds on marketing and winback activities? Would limiting VRS providers to requiring contracts from new-to-category, switching VRS users, and Enterprise VRS Employers for some period of time help prevent VRS providers from contractually locking in their existing user bases, thus ensuring that the existing installed base of users is contestable (*i.e.,* users can easily switch from one provider to another) during the transition period described in section IV.C? What harms may arise due to service contracts? For example, would a VRS providers have an incentive to provide subpar service to save costs and increase profits once it gains new subscribers because they could be locked in for a period of time? Would revising our speed of answer and other mandatory minimum standards be sufficient to offset this possible harm? Should the Commission require VRS providers to offer a trial period? If so, what period of time for a trial period would be appropriate?

75. If the Commission was to adopt a per-user compensation mechanism and allow VRS providers to require service contracts, what would be an appropriate service term? Is a one-year term appropriate, or should terms be longer or shorter? What protections would need to be put in place for consumers? Should consumers be permitted to be released from a contract if the provider breaches its obligations to provide service in accordance with the Commission's TRS mandatory minimum standards? Conversely, if consumers are being provided free or discounted VRS access technology as part of their service contract, should providers be allowed to impose an early termination fee (ETF) if consumers wish to exit the contract before its expiration? Are there other costs that providers intend to recover over the course of a contract that might justify the use of an ETF? Would such fees be consistent with the requirements of section 225 of the Act, including that TRS users pay rates no greater than the rates paid for functionally equivalent voice services? If so, should a VRS provider be allowed to ''buy out'' a VRS user's or Enterprise VRS Employer's ETF with a competing provider in order to allow that user to switch without incurring a pecuniary transaction cost? Are there other terms that should be permitted or required that would address up-front costs? Likewise, are there other contract terms that should be required for or prohibited in such contracts?

6. Mandatory Minimum Standards (Performance Rules)

76. In view of the purpose of TRS, Congress specifically mandated in section 225 of the Act that relay services offer access to the telephone system that is ''functionally equivalent'' to voice telephone services. The ''functional equivalence'' standard serves as a benchmark for determining the services and features TRS providers must offer to consumers, and is reflected in the TRS mandatory minimum standards contained in the Commission's rules. TRS mandatory minimum standards are defined in the Commission's Part 64.604 rules in terms of ''operational standards,'' ''technical standards'' and ''functional standards.'' These standards ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user.

a. Operational Standards

77. The Commission seeks comment on whether the options set forth in document FCC 11–184 necessitate modifications to its TRS operational standards, or the establishment of separate operational standards for VRS. How would the adoption of a new-to-category incentive payment impact our rules governing data collection from TRS providers and information filed with the Administrator? Would the data for registered new VRS users be quantified by the certified VRS provider and submitted or quantified by the TRS Fund Administrator? If a per-user compensation system is adopted, how and by whom would the data for ''Active Users'' be quantified? Do provider incentives under a per-user compensation system change such that the Commission will need to take extra precautions to ensure that providers will not be motivated to discourage high volume users from contracting with them or from making VRS calls? How can the Commission ward off such incentives, to ensure the continued provision of high quality service to all users, regardless of the quantity of calls they make? Should specific training requirements or qualifications be

established for VRS CAs different from or beyond those general requirements set forth in § 64.604(a)(1) of the Commission's rules to ensure that providers maintain a certain level of CA qualifications for all calls handled? If specific qualifications are imposed on VRS CAs, what affect would this have on the current pool of VRS CAs who may or may not meet those qualifications? What effect, if any, would different qualifications have on the ability of VRS providers to comply with the speed of answer requirement? Is there any need to modify the confidentiality and conversation content standards set forth in § 64.604(a)(2) of the Commission's rules to protect consumers from compromises in call quality? Should obligations with respect to the types of calls VRS providers must process be modified if a per-user compensation mechanism is adopted? Are there other operational standards that should be adopted or modified to ensure high quality VRS for all users?

b. Technical Standards

78. As discussed in section III.B.2 and Appendix B of document FCC 11–184, the Commission seeks comment on establishing detailed iTRS access technology standards. The Commission seeks comment on whether those proposals, or the other proposals set forth in document FCC 11–184, necessitate modifications to our TRS technical standards, or the establishment of separate technical standards for VRS. For example, as discussed in section IV.B.3 above, should the speed of answer requirements set forth in § 64.604(b)(2) of the Commission's rules be modified? If adopted, would standards consistent with those set forth in Appendix D of document FCC 11–184 render the need for rules on equal access to interexchange carriers and caller ID treatment unnecessary?

c. Functional Standards

79. The Commission seeks comment on whether the proposals set forth in document FCC 11–184, if adopted, necessitate modifications to its TRS functional standards, or the establishment of separate functional standards for VRS. For example, should VRS providers maintain the same types of consumer complaint logs as other providers of TRS?

80. The Commission's TRS functional standards rules contain a number of subsections that govern unrelated aspects of the TRS program. Consistent with section IV.B.1 above, the Commission seeks comment on restructuring our rules into separate logical sections and, in the following paragraphs, seeks comment on the substance of these rules.

7. Public Access to Information

81. In the *2010 VRS Reform NOI,* the Commission noted that it has been difficult to assess the effectiveness of funded outreach programs. Outreach to the hearing community continues to be necessary; we are aware, for example, that some businesses refuse to accept relay calls, perhaps due to a failure to understand the nature of TRS. The Commission does not, however, believe that its existing practice of relying on VRS providers to conduct effective outreach has been effective. The Commission seeks comment on whether the Commission should establish an independent outreach program to educate the general public about TRS, including VRS. Should such a program be conducted specifically by the FCC, a specialized contractor, consumer organizations, state and local governments, or some other entity or combination of entities? The Commission notes that it recently authorized the expenditure of $500,000 annually from the Fund to allow entities that have significant experience with and expertise in working with the deaf-blind community to conduct outreach to deaf-blind individuals to make them aware of the availability of specialized CPE to low-income individuals who are deaf-blind. Would this effort serve as a model for VRS?

8. Jurisdictional Separation of Costs

82. The Commission does not propose to modify our rules that govern jurisdictional separation of costs or cost recovery, but nonetheless seek comment on whether modifications to these rules are necessary.

9. Telecommunications Relay Services Fund

a. Contributions and Contribution Computations

83. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, including implementing a TRSBPP or reimbursing expenses for iTRS access technology through the TRS Fund, what modifications, if any, should be made to its rules governing contributions and contribution computations?

b. Data Collection

84. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, what modifications, if any, should be made to its rules governing data collection from TRS providers and information filed with the Administrator? For example, is the general grant of authority to the Administrator to request information reasonably ''necessary to determine TRS Fund revenue requirements and payments'' sufficient? Should the Commission explicitly require providers to submit additional detailed information, such as information regarding their financial status (*e.g.,* a cash flow to debt ratio)?

c. Payments to TRS Providers

85. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, including adoption of a per-user compensation mechanism, implementing a TRSBPP or reimbursing expenses for iTRS access technology through the TRS Fund, what modifications, if any, should be made to its rules governing payments to TRS providers, eligibility for payments from the TRS Fund, and notice of participation in the TRS Fund?

d. Administrator Reporting, Monitoring, and Filing Requirements; Performance Review; Treatment of TRS Customer Information

86. Many of the possible changes set forth in this item contemplate a role for the Administrator. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, what modifications, if any, should be made to its rules governing the obligations of the Administrator, Commission review of the Administrator's performance, and treatment of TRS customer information?

e. Enforcement

87. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, what modifications to its rules, if any, are necessary to ensure that they are enforceable?

10. Consumer Complaints

88. If the Commission should choose to adopt any of the options set forth in document FCC 11–184, what modifications, if any, should be made to its informal and formal complaint procedures?

11. Registration Process

89. The Commission seeks comment on whether the options set forth in document FCC 11–184 necessitate modifications to its iTRS registration rules. In particular, the Commission seeks comment on what modifications, if any, would be necessary to implement the proposals regarding VRS in the workplace discussed in section IV.B.2

above. What additional verification standards would be needed?

12. Emergency Calling Requirements

90. The Commission seeks comment on whether the options set forth in document FCC 11–184 necessitate modifications to its emergency calling requirements. In particular, the Commission seeks comment on what changes, if any, are necessary to accommodate the elimination of dial around discussed in section IV.B.3, above, a one provider per-user system as discussed in section IV.B.4 above, or the treatment of VRS in the workplace discussed in section IV.B.2 above.

13. Preventing Discrimination

91. Section 225 of the Act requires the Commission to ensure that relay services ''are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.'' Section 225(d)(1) of the Act charges the Commission with the obligation of adopting regulations that, among other things, ''prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services.'' Pursuant to these statutorily mandated responsibilities and other Commission requirements, the Commission has issued a number of orders finding that specific types and forms of discrimination and fraudulent practices are unlawful and prohibited by the Act and our rules. As discussed in Section III.E above, however, some VRS providers' still have engaged in unlawful practices.

92. Under a per-user compensation mechanism, the Commission recognizes that VRS providers may continue to engage in unlawful practices. Under the per-minute compensation reimbursement method, these unlawful practices have generally occurred through discrimination (*e.g.,* favoring high-volume users over low-volume users), often resulting in waste, fraud, and abuse of the TRS Fund (*e.g.,* seeking payment for non-compensatory minutes through discriminatory practices and outright fraud). By way of example, anecdotal evidence suggests that the per-minute compensation scheme provides unintended incentives to VRS providers to give call priority to high-volume users by placing them first in line for connections and to favor such users by providing them with newer and better VRS access technology before low-volume users. Under a per-user compensation framework, providers likewise may have the incentive to discriminate against high-volume users in favor of low-volume users because providers would be compensated at the same level for all users, regardless of their call volume. Similarly, some providers may utilize a variety of practices geared toward ensuring that low-volume users make the minimum number of calls required to qualify as an ''active user'' for purposes of compensation from the Fund. Both call discrimination and practices aimed at acquiring and maintaining low-volume ''active users'' that would not otherwise utilize VRS could result in waste, fraud, and abuse of the TRS Fund and threaten the long-term sustainability of the VRS program.

93. It has become increasingly apparent that our ''piece meal'' approach to detect and outlaw discriminatory and fraudulent practices has not always worked. As the Commission noted in Section III.E, in many cases, ''when directed not to engage in certain calling activities,'' for example, ''some providers have merely shifted to other arrangements that are not specifically prohibited and have engaged in attempts to make non-compliant calls in ways that have made them more difficult to detect.'' To the extent that VRS providers discriminate in the manner in which they handle calls (*e.g.,* the type of call or caller), except as provided for in the Commission's rules, they create inefficiencies in the VRS call processing system. Likewise, when a VRS provider engages in fraudulent practices by encouraging or causing VRS calls to be made that would not otherwise be made, or VRS users to be enrolled that would not otherwise be enrolled, except for a provider's desire to drive up its compensation from the TRS Fund, the VRS system is made inefficient. These types of unlawful practices artificially tie up CAs and limit the ability of legitimate callers to use VRS contrary to section 225 of the Act.

94. Further, unlawful VRS provider practices not only allow dishonest providers to obtain a competitive advantage over providers that operate in compliance with the Act and the Commission's rules, but undermine the key goals of Congress in enacting section 225 of the Act. VRS provider practices that result in waste, fraud, and abuse threaten the sustainability of the TRS Fund and are directly linked to the efficiency and effectiveness of the TRS Fund support mechanisms upon which VRS providers rely for compensation. As the Commission has previously found, fraudulent diversion of funds robs the TRS Fund for illicit gain and ''abuses a highly valued Federal program that, for the past twenty years, has been critical to ensuring that people with hearing and speech disabilities have the same opportunities to communicate over distances—with family, friends, colleagues, and others—as everyone else.'' Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice subscribers, interconnected VoIP, and others.

95. Accordingly, in furtherance of the Commission's express authority under section 225(b)(1) and section 225(d)(1)(E) of the Act and the goals underlying the provision and regulation of TRS, it proposes to adopt regulations prohibiting VRS providers from engaging in practices that result in waste, fraud, and abuse of the TRS Fund, including discriminatory practices (*e.g.,* screening for or refusing to register individuals who are likely to be high volume users, discrimination based on length of calls or call volume, and favoring some users with free or low-cost iTRS access technology based on call volume), and seek comment on this proposal. The Commission concludes that such regulations should apply to all VRS providers as reasonably ancillary to the effective performance of its responsibilities under the Act, including its mandate to ensure that relay services ''are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.'' The Commission seeks comment on this conclusion, and generally on the Commission's authority to adopt such regulations as proposed.

14. Preventing Slamming

96. As discussed above and in the *VRS Call Practices R&O and Certification FNPRM,* the current VRS per-minute compensation structure has been vulnerable to unforeseen and difficult-to-detect waste, fraud, and abuse. The Commission recognizes that a per-user compensation structure could lead to other abuses by providers in order to increase the number of their active users and generate revenue. For example, under a per-user compensation scheme, VRS providers would have an incentive to engage in ''slamming'' and misleading marketing practices because reimbursement would be based on the number of registered users rather than on the total minutes of use.

97. The Commission has previously sought comment on the need for VRS specific rules against slamming to protect relay consumers against

unauthorized default provider changes. The Commission incorporates by reference comments previously filed on this issue and seek to refresh the record on this issue. To protect VRS users from unwanted changes in their default provider, the Commission seeks further comment on whether it should adopt rules governing a user's change in VRS providers. The Commission seeks comment on the types of safeguards that should be put in place to protect users from unauthorized changes in their VRS default provider. The Commission also seeks comment on what type(s) of authorization providers must obtain prior to switching a subscriber's default provider and how verification of any such authorization should be obtained and maintained by the receiving provider. Additionally, the Commission seeks comment on whether and how providers may use information obtained when receiving notification of a user's service change to another provider, whether for marketing, win-back, or other purposes.

15. Audits.

98. Section 64.604(c)(5)(iii)(C) of the Commission's rules states that the TRS Fund Administrator ''and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.'' The Commission seeks comment on whether the TRS Fund Administrator or the Commission requires additional authority to conduct audits under the rules its propose in document FCC 11–184.

C. Implementing the Transition From per-Minute to per-User Compensation

99. As discussed in section III.D, implementation of the reforms discussed in document FCC 11–184, if adopted, would need to be phased in according to a well-developed and transparent plan. In this section, the Commission seeks comment on how to conduct such a transition.

1. Phases

100. A transition from a per-minute to a per-user compensation mechanism can be conceptualized as consisting of three phases. The first phase would be the ''implementation phase,'' during which all conditions necessary to prepare for the switch from per-minute to per-user compensation would be met, including measures to make the existing base of customers more contestable and bring new VRS users into the program. The implementation phase would begin immediately after the adoption of a final order in this proceeding, and terminate with the initiation of per-user compensation at an initial per user rate. The second phase would be the ''growth phase'' during which smaller providers would have the opportunity to achieve scale by adding users and all providers would transition from their initial per-user rate set during the implementation phase to a unitary at-scale ''base rate'' discussed in Appendix C of document FCC 11–184 (if those rates are different). The third and final phase would be the ''scale phase,'' during which all providers are compensated at a per-user compensation mechanism selected by the Commission to reflect the cost of providing VRS service at scale. The Commission seeks comment on whether these three phases are the appropriate logical structure for a transition from per-minute to per-user compensation. The Commission also seeks comment, in the following sections, on how each of the phases of a transition should be conducted.

a. Implementation Phase

101. As described above, the ''implementation phase'' would be the time period during which all conditions necessary to prepare for the switch from per-minute to per-user compensation would be met. The implementation phase would begin upon the adoption of a final order in this proceeding, and terminate with the initiation of per-user compensation. The Commission seeks comment in this section on how an implementation phase should be conducted.

(i) VRS Provider Compensation During Implementation Phase

102. The Commission seeks comment on how VRS providers should be compensated during the implementation phase. As discussed in greater detail in the following paragraphs, the Commission and the Administrator will need to gather data from VRS providers before an initial per-user rate can be established. The Commission therefore seeks comment on what the per-minute rate should be during the implementation phase. The Commission stated in the *2011 VRS Rate Order* that the interim rates currently in effect would ''be in effect on an interim basis until the Commission completes its examination of VRS rates and compensation as part of the *2010 VRS NOI* proceeding'' because ''extending the current interim rates and compensation structure temporarily provided the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to the *2010 VRS NOI* proceeding.'' Should the Commission extend the current interim rates during the implementation period to provide continued certainty during the implementation phase?

(ii) Actions To Be Conducted During the Implementation Phase

103. The Commission seeks comment on what actions need to be taken during the implementation phase and the timing of such actions. If the Commission adopts a per-user mechanism, it propose to require that each of the following occur during the implementation phase:

- The VRSURD be established and operational;
- The TRSBPP be established and operational;
- iTRS access technology standards be adopted and implemented;
- ''One provider per user'' be implemented (*i.e.,* VRS users must select a single VRS provider); and
- The initial per-user rate (or rates) be calculated and published.

The Commission describes in greater detail and seeks comment on these conditions in the following paragraphs.

104. *VRSURD.* As discussed in section IV.A and Appendix D of document FCC 11–184, a VRSURD would be essential to (i) ensure that each VRS user has at least one default provider, (ii) allow for the identification of new-to-category users, (iii) support the operation of the TRS Broadband Pilot Program discussed in section III.A.1 and Appendix A of document FCC 11–184, and (iv) ensure efficient program administration. In order to establish a VRSURD, the neutral database administrator must be selected, construct the database, work with industry to populate the database, test the functionality of the database, and be prepared to support the functionality described in Appendix D of document FCC 11–184 before the Commission can effectively implement a ''one provider per user'' rule. The data that will be submitted to the VRSURD also will be critical to establishing a per-user rate.

105. The Commission notes that the Commission completed the comparable task of establishing the iTRS numbering directory in six months. The Commission seeks comment on whether this is a reasonable timeframe for the establishment of the VRSURD. Are there issues that would make the process of establishing a VRSURD take more—or less—time than was needed to establish the iTRS numbering directory? If so, what are those issues, and what impact would they have on the timing?

106. *TRSBPP.* As discussed in section III.A.1 and Appendix A of document

FCC 11–184, the Commission proposes, to the extent there is unaddressed demand for VRS, to promote residential broadband adoption via a pilot program to provide discounted broadband Internet access to low-income Americans who are deaf, hard of hearing, deaf-blind, or speech disabled. The Commission notes that implementation of a TRSBPP would require that a VRSURD be established and that the Administrator, VRS providers, and broadband providers all take steps to establish and implement appropriate procedures. The Commission seeks comment on how much time should be allowed for the TRSBPP to be implemented. The Commission also seeks comment on whether it would be necessary to have the TRSBPP operational before the end of the implementation period, or whether that program, to the extent adopted, could be implemented at a later time.

107. *iTRS access technology standards.* Appropriate VRS access technology standards must be in place before VRS providers can be expected to compete effectively for VRS users. The Commission seeks comment on how much time the Commission should allocate for each of the actions described in Appendix D of document FCC 11–184, including the adoption of iTRS access technology standards, the time necessary for any standards transition phases for the installed base of VRS access technology and/or for new VRS users, the establishment of a conformance and interoperability testing regime, and the establishment of an ongoing standards governance process. To what extent must the steps described in Appendix D of document FCC 11–184be completed during an implementation phase? Could certain steps be completed during the growth phase?

108. *One provider per user.* As discussed in section IV.B.4, users must select a single default provider under a per-user compensation system. At what point during the implementation phase would it be appropriate to implement such a requirement? How long should VRS users be given to make a provider selection? What should happen if VRS users fail to select a default provider during the time allotted? How long before the end of the implementation period should the selection period end to ensure that the Commission and the Administrator have accurate counts of each VRS providers' user base on which to rely when establishing per-user rates?

109. *Calculation of initial per-user rate(s).* As discussed above, the Commission contemplates that the implementation phase would terminate with the initiation of per-user compensation. The Commission seeks comment on how the initial per-user compensation rate for each VRS provider should be calculated. Should all VRS providers be compensated at the same initial rate, or is it more appropriate to set a separate initial per-user rate for each provider? Should providers immediately be paid at the ''target base rates'' established as discussed in Appendix C of document FCC 11–184? Should each VRS provider be compensated at an initial per-user rate that keeps them revenue neutral *(i.e.,* each provider would continue to receive the same amount of revenue immediately before and immediately after the switch to a per user rate)?

110. To the extent initial revenue neutrality is a goal, would the first year of the implementation phase be the appropriate reference period for determining the appropriate revenue level, or would some other time period be more appropriate? How would the appropriate level be established? When should a VRS provider's number of users be determined? Would it be appropriate to use the VRS user count immediately after VRS users are required to select a single default provider, or should a ''settling in'' period be allowed to pass first to allow for customers to switch providers? How long should such a settling in period be? The Commission notes that to the extent that providers are kept revenue neutral between the end of the per minute mechanism and the start of the per user mechanism, they may have an incentive to depress their initial user count to inflate the corresponding initial per user rate. The Commission seeks comment on ways to prevent this.

111. What other factors should be taken into account when establishing an initial per-user rate? For example, should there be a maximum per-user compensation rate established so as to ensure that VRS providers with very few users at the end of the implementation period are not paid an ''excessive'' per-user rate? Should a VRS provider's capital structure be taken into account when establishing their initial per-user rate? To what extent should the Commission be concerned that an initial per-user rate might increase the likelihood of a VRS provider being unable to sustain its current capital structure? How disruptive would such financial restructuring be to the service experienced by VRS users? How, if at all, would such a proceeding affect the TRS Fund in the long term?

112. *Other possible conditions.* The Commission seeks comment on what, if any, additional conditions should be met during the implementation phase. For example, should the new-to-category incentive payment, if adopted, be available during the entirety of the implementation phase, or should that incentive payment be made available only after the TRSBPP has been implemented? This would help to ensure that a new-to-category incentive is not paid for registering individuals who already are aware of the VRS program but did not register solely due to the cost of a broadband Internet connection.

113. *Duration.* Should the total duration of the implementation period be limited in time, or only by the achievement of the necessary conditions? If limiting the total duration of the implementation period is appropriate, what should the deadline be? Should there be interim deadlines established for meeting any of the conditions set pursuant to the discussion in the paragraphs above? What should those deadlines be? For the sake of clarity, commenters responding to these questions should reference the date that a final order is adopted in this proceeding (*e.g.,* ''the deadline for such action should be one year from the adoption of a final order'').

114. What should be the result if any deadlines established pursuant to the discussion in the preceding paragraph are not met? Would it be appropriate to implement one of the default alternatives discussed in section V?

b. Growth Phase

115. The ''growth phase'' of a transition from per-minute to per-user compensation would be that time during which small providers would have the opportunity to achieve scale by adding users and transition from their initial per-user rate to the unitary, at-scale ''target base rate'' discussed in Appendix C of document FCC 11–184 (if those rates are different). The growth phase would terminate once all VRS providers are being compensated at the target base rate.

116. The growth phase would be defined primarily by three factors: the initial per-user rate for each VRS provider, the target base rate, and the transition from the initial per-user rate(s) to the target base rate. As we seek comment above on how to establish the initial per-user rate(s) and below on setting the target base rate, we focus our inquiry in this section on the transition path.

117. As illustrated in Figure 3 below, two questions must be answered once initial per-user rates and the target base rate are established. First, how long

should the growth period be? That is, how much time should elapse between $t_{initial}$ and t_{final}? Second, what should the per-user rate be during the growth period? Or, put another way, what should be the shape of the rate curve between $t_{initial}$ and t_{final}? The Commission seeks comment on these questions.

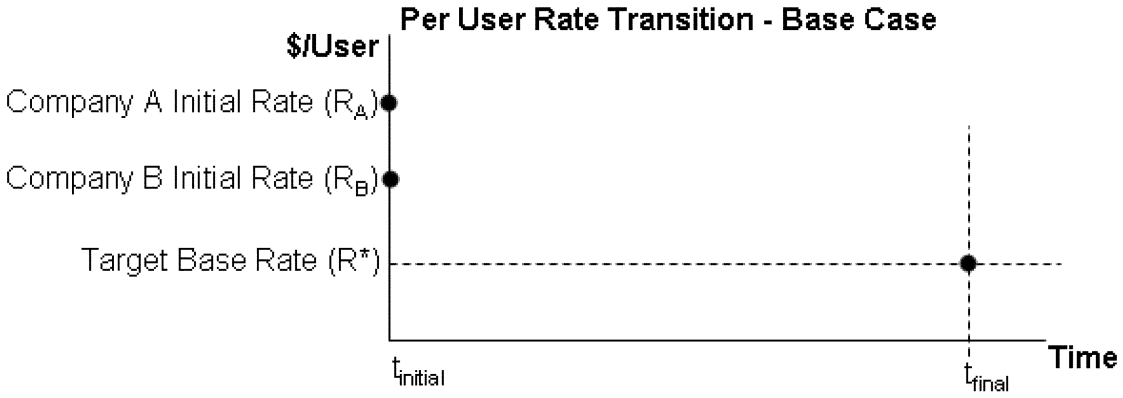

Figure 3

118. *Duration of growth period.* The Commission seeks comment on the appropriate duration of the growth period. How should the Commission balance the need to give providers a fair chance to adapt their cost structures to the new reimbursement scheme (*e.g.,* by attaining scale economies and/or adjusting their financing commitments) against the knowledge that every year of paying rates above the target base rate, R*, could be considered an unnecessary expenditure of Fund resources? What other factors should be taken into account when determining the appropriate duration of the growth period?

119. *Shape of the rate curve.* The Commission seeks comment on the appropriate per-user rate over the course of the growth period. One approach, illustrated in Figure 4, would be to simply compensate each VRS provider at the initial per-user rate established during the transition period. As discussed above, such rates could be unique to each provider (*e.g.,* R_A and R_B as shown in Figure 4) or common to all providers (*e.g.,* the target base rate, R*, or another unitary rate).

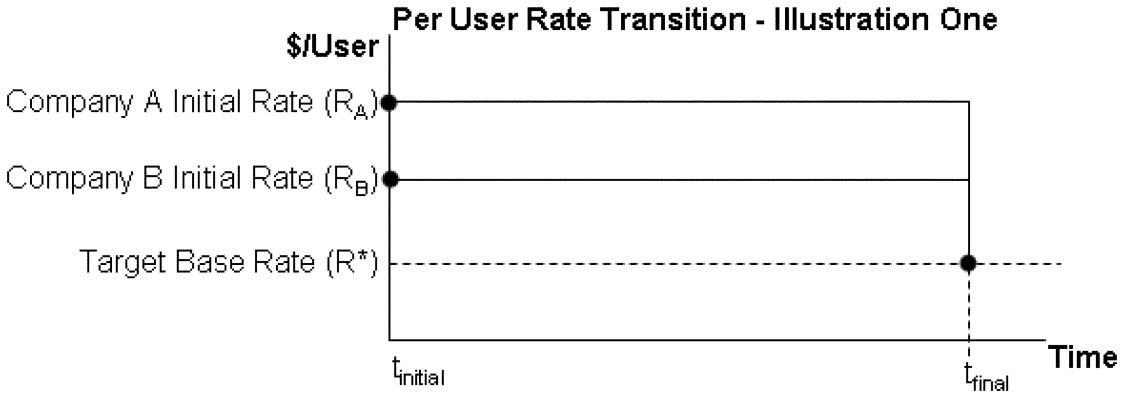

Figure 4

120. An alternative approach, illustrated in Figure 5, would be to reduce each provider's per-user compensation rate during the course of the growth period until the target base rate is reached. Figure 5 illustrates a simple version of this approach, with each VRS provider's per-user compensation being reduced to the target base rate in two steps, the first at t_1 and the second at t_{final}.

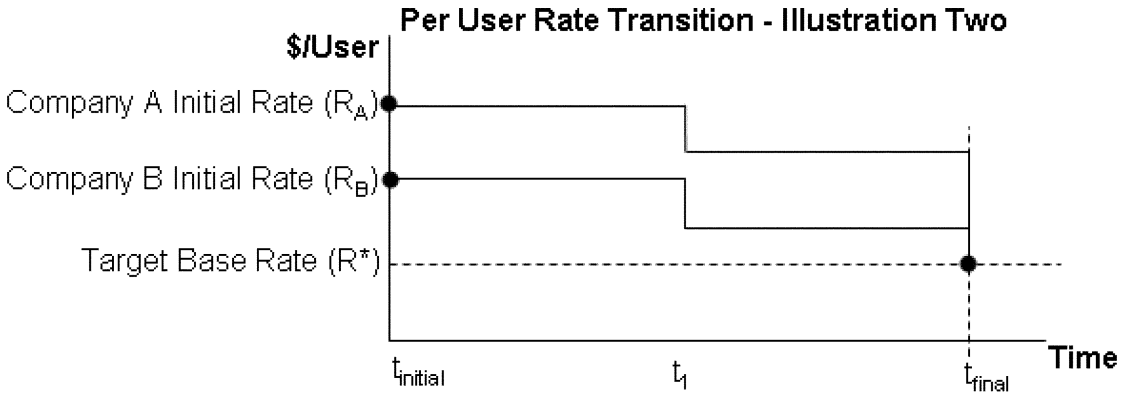

Figure 5

121. Note that, regardless of the shape of the rate curve, providers will benefit from the certainty of a pre-determined trajectory during the duration of the growth period, which will allow them to make operational and financing plans with minimal regulatory risk. The Commission seeks comment on the rates that should be paid during the growth period. Should there be a single rate during the growth period, or should the rate be reduced in steps over time? If the rate should be reduced, what should the duration of each step be, and how should the amount of the reduction be calculated? Commenters should provide detailed explanations of and justifications for their recommendations, to include any financial data necessary to support the use of a particular rate curve. If the Commission transitions to a per user rate following document FCC 11–184, it expects to set $t_{initial}$, t_{final}, R*, and the trajectory as soon as possible as part of the initial rate setting process to provide multi-year certainty for providers. Further discussion of the target base rate can be found in Appendix C of document FCC 11–184.

122. *New entrants.* To the extent newly certified VRS providers are authorized to be compensated by the Fund and begin to provide service during the transition period (''new entrants''), how should those entrants be compensated? Should they be compensated at the target base rate, the weighted average rate being paid to existing providers at the time of entry, or some other rate?

c. Scale Phase

123. The third and final phase of a transition from a per-minute to a per-user compensation mechanism would be the ''scale phase,'' during which all providers are compensated at the same per user rate selected by the Commission. Thus, the scale phase would be the ''steady state'' that exists after compensation has transitioned to a per-user mechanism and all providers are being compensated at the efficient target base rate. The Commission seeks comment on the appropriate way to determine the annual per-user compensation rate during the scale phase.

124. If the Commission adopts a per-user mechanism, it proposes to adopt for the scale phase a price cap mechanism consistent with that adopted by the Commission for IP Relay in the *2007 Rate Order,* 73 FR 3197. January 18, 2008. Under that plan, the compensation rate is set for a period of three years, ''during which time the rates would be adjusted upward annually for inflation (according to a pre-defined inflation factor) and downward to account for efficiency gains (according to a factor also set at the outset of price caps).''

125. Specifically, the Commission proposes to adopt the general model established for IP Relay in the *2007 Rate Order,* with the exception of how the base rate is calculated. As described in the *2007 Rate Order:*

> As a general matter, the price cap plan applies three factors to a base rate—an Inflation Factor, an Efficiency (or ''X'') Factor, and Exogenous Costs. The basic formula takes a base rate and multiplies it by a factor that reflects an increase due to inflation, offset by a decrease due to efficiencies. The Inflation Factor will be the Gross Domestic Product—Price Index (GDP–PI). The Efficiency Factor will be set as a figure equal to the Inflation Factor, less 0.5 percent (or 0.005) to account for productivity gains. As a result the rate for a particular year will equal the rate for the previous year, reduced by 0.5 percent (*i.e.,* $Rate_{Year\ Y} = Rate_{Year\ Y-1}\ (1 - 0.005)$). Reducing the rate by this amount will encourage VRS providers to become more efficient in providing the service. The Commission will also adjust the rate, as necessary, due to exogenous costs, *i.e.,* those costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment. Therefore, to the extent the Commission adopts new service requirements, it will determine whether the costs of meeting the new requirements warrant an upward exogenous adjustment.

126. A number of providers asserted at that time that a price cap approach would have at least three benefits: (1) It would create incentives for providers to lower costs; (2) the three year time frame gives providers ''predictability about revenue to allocate money to programs that will reduce costs in the future;'' and (3) it simplifies the rate setting process, saving time and money. One provider also emphasized that under price caps, providers would focus on increasing efficiencies to accommodate decreasing rates. The Commission notes that many of the same providers supported the establishment of a cost recovery methodology for VRS at that time, and believe that the benefits attributed to the adoption of a price cap methodology in that context will adhere equally in the VRS context.

127. The Commission seeks comment on this proposal. Should the specifics of this methodology be modified for VRS? For example, should the Commission adopt a different Inflation Factor or Efficiency Factor? Should the standards for an exogenous cost adjustment be modified? Is a three year time frame appropriate for VRS? What other factors might be appropriate for inclusion in such a methodology?

2. Contracts

128. In section IV.B.5 above, the Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (*i.e.,* have not previously

signed up for VRS) or (ii) switching from another VRS provider to enter into a service contract after the adoption of a per-user compensation mechanism. If the Commission was to adopt such a proposal, during what phase of the transition described above would it be appropriate to allow providers to require VRS users to enter into contracts?

V. Alternatives To Structural Reform

129. The Commission seeks comment on the rate methodology the Commission should adopt should (i) the Commission choose not to adopt the per-user rate methodology proposed in document FCC 11–184 or (ii) should the transition to a per-user methodology be terminated before it is completed. The Commission notes that each of the reform proposals described in this NPRM—increasing VRS availability (via broadband subsidies, new to category incentives, and enterprise VRS), ensuring the interoperability and portability of VRS access technologies via standards, compensating VRS providers at a single at-scale rate, and moving to a per-user compensation scheme—is worth pursuing in itself to improve the program, although as they are mutually reinforcing it explores implementing them all, sequenced appropriately.

130. The Commission notes that the Commission in the *2010 TRS Rate Methodology Order,* 75 FR 49491, August 13, 2010, adopted interim VRS rates representing the average of the tiered rates established in 2007, which were based on providers' projected costs, and the Administrator's 2010 proposed rates, which, in turn, were based on providers' actual, historical costs. These interim rates reflect a balance between the goal of ensuring that VRS providers recover from the Fund only the reasonable costs caused by their provision of VRS and the goal of ensuring quality and sufficient service during the pendency of this proceeding. In anticipation of the proposals set forth in document FCC 11–184, CGB waived the May 1, 2011 Fund Administrator filing requirement for VRS payment formulas and revenue requirements for the 2011–12 TRS Fund year, and subsequently concluded that it would be more efficient and less disruptive to extend the existing interim rates while concluding the evaluation of the issues and the substantial record developed in response to this proceeding.

131. The Commission proposes that if a per-minute rate methodology is retained, the Commission adopt, consistent with the recommendations of the Administrator for the 2010–2011 fund year, a per-minute rate based on weighted average actual per-minute provider costs for the most recently completed fund year. The Commission in the *2010 TRS Rate Methodology Order* found that the Administrator's ''proposed rates based on actual costs [were] reasonable and supported by record evidence,'' and that it was suitable that ''the Commission exercise its discretion to use them as a basis for setting an interim rate for the 2010–2011 Fund year.'' Although the Commission has, during this interim period, allowed providers to recover their costs at rates well above those based on actual cost data so as to avoid ''a significant and sudden cut to providers' compensation,'' in the event that broader structural reform is not possible at this time, the Commission finds it reasonable to move to a rate based entirely on providers' actual costs. The Commission seeks comment on this proposal.

132. The Commission further proposes to eliminate the current tier structure and utilize a single rate based on the weighted average of providers' actual costs. The rationale for adopting the tiers in the *2007 TRS Rate Methodology Order* was that providers with a relatively small number of minutes generally have higher costs. The Commission expects data from providers will show that this remains the case today. Consistent with its analysis above, however, the tiered rate structure supports an unnecessarily inefficient market structure, and apparently provides insufficient incentive for VRS providers to achieve minimal efficient scale. Further, its findings in the *2010 TRS Rate Methodology Order* continue to hold true: ''[t]o the extent that one provider commands a substantial share of the VRS market, the Commission finds that [the Administrator's] use of weighted averages is appropriate, and properly balances, on one side, the greater relative costs incurred by smaller providers with, on the other, not penalizing providers operating at lower costs for their greater efficiency. The Commission therefore concludes that [the Administrator's] methodology, and use of actual cost information submitted by the providers and certified under penalty of perjury to be true and correct, [was] reasonable.'' The Commission seeks comment on this proposal to eliminate the current tier structure and utilize a single rate based on the weighted average of providers' actual costs.

133. The Commission seeks comment on what steps the Commission and the Administrator should take to implement these proposals, should the Commission choose to adopt them. For example, by when should the Administrator require VRS providers to file the requisite cost data? To what extent should the Administrator, or providers, obtain independent audits of the data to be submitted? Should the Commission accept late filed data, or simply calculate the rate based on data submitted by the deadline established by the Commission or the Administrator? What other steps must the Commission or the Administrator take to ensure that a per-minute rate based on providers' actual costs can be established in an expeditious fashion? Finally, the Commission seeks comment on whether there are other viable alternatives to adopting a per user or per minute rate methodology. The Commission proposes that ignoring the last ten years of experience with the TRS program, both good and bad, and the technological progress that has occurred over the same period, and simply continuing with the program as currently structured (perhaps with relatively minor tinkering around the margins) is simply not a viable option for the Commission in its duty to manage responsibly the contributions of millions of Americans to a program that disburses over half a billion dollars a year. The Commission therefore discourages commenters from assuming a Panglossian stance with respect to a status quo that is increasingly failing to meet the needs and expectations of its stakeholders including, especially, actual and potential VRS users.

VI. Legal Authority

134. The Commission seeks comment on our legal authority to adopt each of the options and proposals discussed in document FCC 11–184. As noted above, section 225 of the Act requires the Commission ''to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation,'' and directs that ''the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.'' Section 225 of the Act further requires that the Commission, among other things, ''establish functional requirements, guidelines, and operations procedures for telecommunications relay services,'' ''establish minimum standards that shall be met in carrying out [the

provision of TRS],'' and ''require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services.'' Does section 225 of the Act, standing alone, provide sufficient authority for the options and proposals contemplated in document FCC 11–184? Do the Commission's grants of authority in the Act, including those in sections 1, 2, 4(i), 255, and 303(r), and section 706 of the Telecommunications Act of 1996, provide additional authority? Does section 254 of the Act, which sets forth the goal that ''consumers in all regions of the nation, including low-income consumers, * * * should have access to telecommunications and information services,'' provide additional legal authority for proposals in this item targeted towards low-income consumers?

135. The Commission seeks additional comment on our authority to establish the TRSBPP. Specifically, the Commission seeks comment on our authority to collect contributions to the TRS Fund to support broadband Internet access for low income VRS users and to disburse the relevant support. Section 225 of the Act provides that the Commission ''shall ensure that interstate and intrastate telecommunications relay services are *available,* to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.'' The Commission seeks comment on whether VRS is not ''available'' to a potential user who is unable to afford broadband Internet access. Does section 225(b)(1) of the Act, standing alone, provide authority for the Commission to assess contributions and disburse support for broadband Internet access?

136. Section 225 of the Act does not explicitly describe how the Commission must ensure that TRS is available. The subsection that most nearly describes how TRS providers should be compensated is section 225(d)(3) of the Act, which addresses recovery of costs in the context of jurisdictional separations. Section 225(d)(3)(A) of the Act requires the Commission to ''prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section,'' which the Commission construe to mean that it should specify how providers distinguish between interstate and intrastate costs. Subsection (B) further provides that the Commission's regulations ''shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service.'' The statute does not address how those costs are to be recovered from subscribers, nor how payments are to be disbursed to providers. In the absence of such guidance, the Commission chose to establish a shared funding mechanism—the TRS Fund—over other possible funding mechanisms.

137. Does section 225(d)(3)(B) of the Act limit the Commission's ability to disburse support only for ''costs caused by interstate telecommunications relay services,'' or does the Commission have authority to disburse additional funds to the extent necessary to ensure that the mandate of section 225(b)(1) of the Act—to make TRS ''available''—is met? Would section 225(d)(3)(B) of the Act authorize the Commission to require contributions to the TRS Fund to support broadband Internet access if the Commission finds that broadband Internet access is necessary to meet its section 225(b)(1) of the Act mandate? Are there other considerations?

138. Does section 706(b) of the Telecommunications Act of 1996 provide additional support for the TRSBPP? The Commission found in the Seventh Broadband Progress Report that broadband is not ''being deployed to all Americans in a reasonable and timely fashion.'' Section 706(b) of the Telecommunications Act of 1996 directs the Commission, in light of that determination, to ''take immediate action to accelerate the deployment'' of broadband. Does this directive provide the Commission with additional authorization to utilize the TRS Fund to promote broadband availability in conjunction with the goal of promoting the availability of TRS?

139. The Commission notes another, more recent legislative development on this issue. Congress in the CVAA authorized the Commission to provide up to $10 million support annually from the Fund for programs for ''the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind.'' Does this explicit authorization to utilize the TRS Fund to pay for equipment used to make non-TRS services available to Americans with disabilities limit the Commission's authority to utilize the TRS Fund to effectuate the availability mandate in section 225(b)(1) or other mandates in the Act?

140. The CVAA also directs the Chairman to create an Emergency Access Advisory Committee ''[f]or the purpose of achieving equal access to emergency services by individuals with disabilities.'' The Committee is charged, among other things, with making recommendations about ''what actions are necessary as a part of the migration to a national Internet protocol-enabled network * * * that will ensure access to emergency services by individuals with disabilities,'' and ''for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficiency technologies and methods to enable access to emergency services by individuals with disabilities.'' The Commission has authority to implement the recommendations of the Committee, and to promulgate ''any other regulations * * * as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.'' Ensuring that individuals with hearing and speech disabilities who use ASL have access to VRS would, by definition, ensure that those people would have access to an ''Internet protocol-enabled emergency network,'' as (i) VRS providers must afford their users access to 911 service and (ii) VRS requires that the user obtain a high speed internet connection to access the service. Ensuring access to VRS also would facilitate the phase out of TTY technology to the extent that the cost of broadband Internet access is preventing current TTY users from transitioning to VRS or other forms of Internet-based TRS. The Commission seeks comment on whether these provisions provide the Commission with authority, to the extent recommendations of the Committee are consistent, to create the TRSBPP. The Commission seeks comment also on any other sources of authority that would enable the Commission to require contributions to the TRS Fund and disburse funds from the TRS Fund for the purpose of supporting broadband Internet access for low-income individuals who are deaf, hard of hearing, have a speech disability, or are deaf-blind and use ASL as their primary form of communication.

141. The Commission also seeks comment on its authority to collect contributions to the TRS Fund to provide reimbursements for relay hardware and software used by the consumer, including installation, maintenance costs, and testing. Does the ''availability'' mandate in section

225(b)(1) of the Act discussed in the preceding paragraphs provide authority for such reimbursements? Does Section 706(b) of the Telecommunications Act of 1996 or the CVAA provide additional authority?

VII. Other Issues

142. The Commission seeks comment on other issues related to the issues addressed in document FCC 11–184.

A. Data Security and Privacy

143. The Commission notes that the privacy-based limitations on the government's access to customer information in Title II of Electronic Communications Privacy Act (ECPA), section 222 of the Act, and its implementing rules and the privacy provisions of the Cable Act, may be implicated by the collection of the data discussed in document FCC 11–184. The Commission seeks comment on whether any of these pre-existing regulatory or statutory requirements create any concerns with respect to its ability to adopt the proposals discussed in document FCC 11–184, including the storage by a database administrator of customer data discussed in Appendix D of document FCC 11–184. The Commission seeks comment on how best to address these concerns. Would it be appropriate or necessary to require VRS users to consent to certain disclosures as a condition of receiving service in order to ensure that the VRS program is operated efficiently and the Commission and the Fund Administrator can fulfill their auditing and management functions effectively? What would be the appropriate extent of such a consent requirement, and what other regulatory privacy protections, if any, would be necessary if such a requirement were adopted?

B. Request for Data

144. The Commission requests that providers and other interested parties provide such data as is necessary to support their comments in response to document FCC 11–184. The Commission notes that it may find factual information supported by affidavit or certification to be more persuasive than information that is not so supported. In that regard, the Commission further notes that any submissions containing knowing or willful misrepresentations, whether or not supported by affidavit or certification, are punishable by fine or imprisonment.

C. Support of Certification Applications and Annual Reports by Certification Under Penalty of Perjury

145. In the *2011 VRS Certification Order,* the Commission adopted interim rules requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under § 64.606(g) of the Commission's rules are truthful, accurate, and complete. The Commission found good cause to adopt these interim rules to ensure that providers seeking certification and providers holding certifications may be held accountable for their submissions as they seek to secure or retain certification under the rules adopted in the *2011 VRS Certification Order.* The Commission concluded that interim rules requiring certification by a Chief Executive Officer, Chief Financial Officer, or other senior executive of an iTRS provider, under penalty of perjury, to the truthfulness, accuracy, and completeness of certification applications and annual compliance filings were a necessary and critical component of its efforts to curtail fraud and abuse. In particular, the Commission found that these interim rules would help to ensure that it has true and complete information, thereby ensuring that only qualified providers are eligible for compensation from the Fund.

146. Specifically, the Commission adopted the following interim rules:

> The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am _____ (name and title), _____ an officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete. The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section, must, with each such submission, certify as follows: I swear under penalty of perjury that I am _____ (name and title), _____ an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

147. The Commission tentatively concludes that it should adopt these rules permanently, and seeks comment on this tentative conclusion. The Commission also seeks comment on whether there are any additional elements that should be covered by these proposed certifications, and, in general, whether there are any additional safeguards that it should adopt as rules to ensure the veracity and completeness of provider submissions, and to help ensure that providers comply with the Commission's TRS rules and policies.

VIII. Initial Regulatory Flexibility Analysis

148. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 11–184. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments to document FCC 11–184. The Commission will send a copy of document FCC 11–184, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

149. In document FCC 11–184, the Commission seeks comment on a series of proposals to improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence—particularly given advances in commercially available technology—and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

150. Among these proposals, the Commission proposes to establish a ''TRS Broadband Pilot Program'' (TRSBPP) to utilize the TRS Fund to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication, and providing incentives to providers for adding new-to-category customers. The Commission proposes such a subsidy to meet the objective of increasing utilization of VRS by eligible

individuals who cannot currently afford broadband.

151. The Commission seeks comment on whether the TRSBPP should support fixed services, mobile services, or both. Fixed connections—whether wireline or wireless—that are advertised as capable of delivering 256 kbps, generally deliver such speeds to their customers, and can be shared by all members of a residential unit. The Commission proposes that broadband providers will provide discounts to eligible households or residences and receive reimbursement from the TRS Fund for the provision of such discounts. The Commission proposes to establish the discount amount for the TRSBPP at a level that will make broadband Internet access service capable of supporting VRS at no cost, or very low cost, to consumers. The Commission seeks comment on how to set the amount of the discount that should be provided to qualifying households or residences. Given the Commission's experience in administering the Lifeline and Link Up programs, it proposes to adopt the Lifeline and Link Up certification and verification rules that are ultimately adopted in the *Lifeline and Link Up Modernization NPRM* proceeding, modified as necessary to reflect the differences between possible future changes in the Lifeline program and the proposed TRSBPP.

152. In addition, the Commission proposes to concretely define iTRS access technology, which will help ensure that the rules governing VRS can be applied equally to any medium used to access VRS. The goal of establishing standards for iTRS access technology is to meet the Commission's policy objectives of facilitating an open, competitive market for VRS by supporting interoperability, portability, affordability, supportability and compatibility of VRS equipment. Specifically, the Commission proposes: (1) Defining ''iTRS access technology'' as ''any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call''; (2) establishing standards for iTRS access technology; and (3) supporting the use of off-the-shelf iTRS access technology. The Commission intends to apply its definitions and standards in a manner that will allow for the use of VRS through off-the shelf technology because this will give VRS users enhanced choice and accessibility to utilize VRS. Accordingly, the Commission seeks comment on the proposal.

153. In addition, the Commission seeks comment on the extent to which the statute supports the use of the Fund to support iTRS access technology research and development costs. Research and development would help to achieve the goals of establishing standards and furthering technological advancements that both meet the needs of VRS users, and provide compatibility with mainstream, off-the-shelf equipment. If research and development are supported by the Fund, then the Commission's goals of providing greater access to VRS will be better achieved.

154. Next, the Commission explores the option of instituting a more efficient compensation mechanism that reduces incentives for waste, fraud, and abuse by shifting from a per-minute to a per-user compensation mechanism with a specific plan for transitioning the industry structure to ensure economies of scale. Per-minute compensation has provided an incentive for the manufacturing of illegitimate minutes by some providers in order to increase reimbursements. Shifting to a per-user compensation mechanism will remove the incentive to increase VRS traffic through illegitimate means. The Commission states, ''[t] he ultimate result could be a program in which providers' incentives are aligned with the statute's goals of efficiency, functional equivalence, choice, and maximizing access to VRS, the Fund could be paying an effective rate per user that may better reflect the actual costs of providing VRS than is currently the case, and which could eliminate the current tiered rates, which provide seemingly indefinite support for subscale providers and introduce extra complexity into the management of the program.''

155. The Commission specifically proposes a greater per-user reimbursement rate to VRS providers for their registered *enterprise users* vs. *residential users.* This proposal is intended to serve two objectives: (1) To account for the potentially greater volume of calls an *enterprise user* may make, and (2) to provide an incentive to providers to market and support their services to deaf individuals in the workplace. Accordingly, the Commission seeks comment on this separate proposal.

156. The transition phase for restructuring VRS as described above is intended to account for current subscale providers who may need time to attempt to achieve scale. By subscale, the Commission refers to providers whose cost of delivering VRS may be higher than costs other providers may incur because of their small market share. The Commission notes that any transition will be accompanied by risk. However, if adopted, an appropriately implemented structural reform program and transition process will give each provider a real opportunity to achieve minimum efficient scale during the transition period and result in an end state for the program that is better for VRS users, as well as being more sustainable for the Fund. To that end, the Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (*i.e.,* have not previously signed up for VRS) or (ii) switching from another VRS provider, to enter into a service contract after the adoption of a per-user compensation mechanism in order to support the growth of smaller providers under the new structure.

157. The rules addressed in this section raise questions about related new reporting requirements that will be addressed in section 0. Even though the Commission record is not yet ample enough for it to propose specific rules, the Commission raises questions about record-keeping, reporting and info-gathering, *e.g.,* info-gathering pursuant to the PRA, and seek comments on these issues, because comments received on those areas may guide us toward a more efficient administration of its proposed use of a per-user mechanism; its proposed expanded use of R&D; and its proposed changes in the definition of iTRS. Comments on proposed changes in the Commission's record-keeping, reporting and information gathering actions are directly related to these major proposed structural changes in VRS rules because proposed changes in these recordkeeping and informational areas will in all likelihood facilitate an improved monitoring of all costs imposed on impacted small entities by all of its proposed general structural reforms. For example, the Commission may, to facilitate improved monitoring of the costs of its overall structural reforms, decide to require service providers of all kinds, including broadband-based services providers, to provide certain specific types of reports on their activities and may require them to hire accountants to prepare independent audits of their activities and operations in this context. The specific questions the Commission raise with regard to record-keeping, reporting, and info-gathering, and the comments it seeks on these issues, are discussed in greater detail in Section 0, the Section 0 of this IRFA where an expanded treatment of such issues is required.

B. Legal Basis

158. The legal basis for any action that may be taken pursuant to document

FCC 11–184 is contained in sections 1, 2, 4(i), 225, 255, 303(r), and 706 of the Communications Act of 1934, as Amended, 47 U.S.C. 151, 152, 154(i), 225, 254, 255, 303(r), and 1302(b).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

159. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. Entities that provide VRS could generally be referred to as, ''Wired Telecommunications Carriers'' or ''All Other Telecommunications.''

160. Wired Telecommunications Carriers. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''

161. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category of these 3,188 firms, only 44 had 1,000 or more employees. While the Commission could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.

162. *All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category ''All Other Telecommunications (NAICS Code 517919)'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.''

163. In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small.

164. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (''PCS''), and Specialized Mobile Radio (''SMR'') Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

165. The Commission notes that under the standards listed above some current VRS providers and potential future VRS providers would be considered small businesses. There are currently ten eligible VRS providers, five of which may be considered small businesses. In addition, there are several pending applications from entities seeking to become certified to provide VRS that may be considered small businesses. Although the Commission does not estimate a significant adverse economic impact on such entities, it nevertheless seeks comment on the potential impact of the rules and policies proposed in document FCC 11–184 due to the fact that some affected entities would likely be considered small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

166. Certain rule changes proposed in this proceeding would, if adopted, modify rules governing data collection obtained from TRS providers and might also modify the filing of information with the Administrator. For example, the Commission may decide that it is sufficient to grant to the Administrator a general authority to request information, or it may decide to require providers to submit additional detailed information, such as information regarding their financial status, *e.g.,* a cash-flow-to-debt ratio. Proposed rule changes may also modify records of calls so that Enterprise Users and Enterprise VRS Employers can be readily identified based on their call history. Such changes my also authorize the Administrator to require VRS providers to file the requisite cost data, and may require the Administrator and/or providers to obtain independent audits of the data to be submitted. Additional rule changes may result in a Commission decision to accept late-filed data, or in the alternative to calculate the VRS rate based on data submitted by the deadline established by the Commission or the Administrator.

167. Section 64.604(c)(5)(iii)(C) of the Commission's rules requires TRS providers to ''provide the administrator with true and adequate data necessary to determine TRS Fund § 64.604(c)(5)(iii)(C) of its rules requires TRS providers to ''provide the administrator with true and adequate data necessary to determine TRS Fund revenue requirements and payments.'' The Commission has proposed to place the primary responsibility for managing the TRSBPP enrollment, certification, and eligibility verification processes on VRS providers. This may result in a Commission decision to require VRS providers to collect and maintain user

enrollment, initial certification, and verification of eligibility for TRSBPP support documentation for submission upon request to the TRS Fund Administrator or the Commission. The Commission may also determine that the TRS Fund Administrator should be empowered to collect additional data under the proposals in document FCC 11–184. For example, the Commission may decide that broadband providers that receive disbursements from the TRS Fund should be required to report certain information.

168. The Commission is also considering record keeping requirements regarding individuals seeking TRSBBP support. One possibility would be to adopt the existing Federal Lifeline program eligibility criteria. As discussed in the *Lifeline and Link Up Reform and Modernization NPRM,* Lifeline discounts are available to eligible consumers in households that qualify as ''low-income,'' but there is no uniform national definition of households for all programs.

169. The Commission will provide an analysis of the costs associated with any new record keeping or reporting requirements it adopts based in part on the record in this proceeding. The costs of compliance with new rules adopted in this proceeding will be fully reimbursed by the TRS Fund as the costs of compliance with the current VRS are reimbursable from the TRS Fund.

170. Current VRS providers and newly certified VRS providers that may fall into the small business categories listed in section C above will be subject to the costs imposed by any rules adopted as a result of this proceeding. If the Commission adopts any new information collection requirements, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment from the public on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

171. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

172. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, the proposed rules generally confer benefits as explained below. Therefore, the Commission limits its discussion of an alternative to paragraph number twenty-four below.

173. The purpose of the proposed TRSBPP is to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. Such a program would be consistent with the recommendations of the National Broadband Plan, the Commission's broader effort to meet the 21st century communications needs of low-income consumers, and the Act. In addition, the TRSBPP will help to ensure that Fund resources are not spent on merely transferring existing users back and forth between providers, and instead are used to expand the availability of VRS to more users. This in turn would confer a benefit on small entities operating as VRS providers in that it would increase the current user base, thereby offering greater business opportunities for VRS providers.

174. As noted above, the Commission seeks comment on new iTRS definitions and standards that will facilitate the use of VRS through mainstream equipment and provide better functionality for VRS users. The Commission believes that setting such uniform definitions and standards for VRS technology will stabilize the VRS market and allow for the greatest number of potential users to avail themselves of VRS. The more users who are registered, the more financial gain for VRS providers. In addition, with established definitions and standards, a level playing field for all providers will be possible. Finally uniform application of VRS rules to all forms of VRS equipment will provide predictability for VRS providers. Therefore, the Commission believes that such measures to provide definitions and standards will benefit all industry participants including small businesses.

175. Moreover, if the Commission adopts rules based on the record received in response to its proposal to support research and development through the Fund, the Commission believes that all entities, small and large, will benefit from such funding. The Commission seeks comment on this position.

176. The Commission considers an alternative to structural reform by proposing the possibility of adopting per-minute rates based on a criterion not discussed above, *i.e.,* weighted average actual per-minute provider costs for the most recently completed fund year, and by eliminating the current tier structure. Although the Commission believes this alternative would neither achieve the policy goals set forth above, nor minimize the adverse economic impact on small entities, the Commission nevertheless seeks comment on this alternative proposal.

177. Applications to become a certified VRS provider are voluntarily submitted. If a small entity, as defined by the SBA, applies for certification by showing that it can comply with all of the Commission's rules, including the proposed new rules in document FCC 11–184, its expenses will be reimbursed from the Fund once it becomes a certified provider, regardless of whether the Commission adopts the proposed structural reforms to the VRS program. The Interstate TRS Fund is sized each year based on the foreseeable costs associated with providing service in compliance with the Commission rules. A contribution factor based on this proposed Fund size is then used to determine the amount each entity responsible for paying into the Fund must contribute. The Commission believes that its proposals will not impose an adverse financial burden on entities, including small businesses, because entities that are able to provide VRS in compliance with these proposed structural reforms will continue to be promptly reimbursed from the Interstate TRS Fund for all costs associated with compliance with the Commission's proposed reforms. Although all participating VRS providers will be compensated from the Fund for the costs of providing service, the Commission seeks comment on whether there may still be some adverse financial impact on a substantial number of small entities resulting from restructuring VRS.

178. Each of the proposed rules, with the exception of the alternative discussed above in paragraph twenty-four, confers a benefit rather than imposes a significant adverse economic impact on regulated small businesses.

Therefore, the need for consideration of alternatives is very limited. However, the Commission asks for comment on the reimbursement of all costs incurred via compliance with new structural reforms in case there are costs of such compliance that may not have been considered fully or may not be compensable from the Fund under the proposed structural reforms.

F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules

179. None.

IX. Ordering Clauses

Pursuant to sections 1, 2, 4(i), 4(j), 225, 251, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 254, 303(r), document FCC 11–184 *is adopted.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of document FCC 11–184, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–2058 Filed 1–31–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0114; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the San Bernardino Flying Squirrel as Endangered or Threatened With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the San Bernardino flying squirrel (*Glaucomys sabrinus californicus*) as endangered or threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the San Bernardino flying squirrel may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the San Bernardino flying squirrel is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this subspecies. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before April 2, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES**, below) is 11:59 p.m. Eastern Time on this date. After April 2, 2012, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT**, below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Enter Keyword or ID box, enter FWS–R8–ES–2011–0114, which is the docket number for this action. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Submit a Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0114; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, by telephone at 760–431–9440, or by facsimile to 760–431–9624. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the San Bernardino flying squirrel from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The potential effects of climate change on the species and its habitat, including information on the upwards shifts in high-elevation forest habitat and changes in the availability of food resources.

If, after the status review, we determine that listing the San Bernardino flying squirrel is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species'' within the geographical area currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission, such as scientific journal articles, other supporting publications, or data, to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On August 25, 2010, we received a petition dated August 24, 2010, from the Center for Biological Diversity (CBD), requesting that the San Bernardino flying squirrel be listed as endangered or threatened and to designate critical habitat concurrent with listing under the Act. The petition clearly identified itself as a petition, was dated, and included the requisite identification information required at 50 CFR 424.14(a). On October 5, 2010, we sent the petitioner a letter acknowledging our receipt of the petition, and responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that due to court orders and court-approved settlement agreements for other listing and critical habitat determinations under the Act, our listing and critical habitat funding for Fiscal Year 2011 was committed to other projects. We said that we would be unable to address the petition at that time, but would complete the action when workload and funding allowed. This finding addresses the petition.

Previous Federal Actions

The San Bernardino flying squirrel is a subspecies that was previously recognized in four Notices of Review published in the **Federal Register**. On September 18, 1985, the Service issued the first Notice of Review identifying vertebrate animal taxa native to the United States being considered for possible addition to the List of Endangered and Threatened Wildlife (List), including the San Bernardino flying squirrel (50 FR 37958). Subsequently, three additional Notices of Review dated January 6, 1989 (54 FR 554), November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), were issued and presented an updated compilation of vertebrate and invertebrate animal taxa native to the United States, including the San Bernardino flying squirrel, that were being reviewed for possible addition to the List. This subspecies was categorized in these reviews as a ''C2'' taxon, meaning that listing was possibly appropriate but for which more information was needed before a final decision to list could be made. In 1996 the Service ceased using the C2 list. Subsequent Notices of Review contained only taxon for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as endangered or threatened, but for which listing is precluded at present by other listing activity. These species are known as candidate species. Thus, the San Bernardino flying squirrel is not a candidate species.

Species Information

The San Bernardino flying squirrel (*Glaucomys sabrinus californicus*) is 1 of 25 subspecies of northern flying squirrel (*Glaucomys sabrinus*). There has been little research done on the subspecies (*G. s. californicus*); therefore, much of the biological information presented is based on other closely related subspecies of northern flying squirrel. The species (*G. sabrinus*) is a small gliding tree squirrel that lives in mixed-conifer forests (Weigl 2007, p. 898).

The northern flying squirrel's geographic range encompasses southern portions of the Appalachian Mountains in the east and the Rocky Mountains, Sierra Nevada mountain range, and San Bernardino Mountains in the west (Smith 2007, p. 862). The San Bernardino flying squirrel is the most southerly distributed subspecies of northern flying squirrel on the western coast of the United States. It is separated and isolated geographically from the Sierra Nevada subspecies by 164 miles (265 kilometers) and the Mojave Desert (Brylski *et al.* 1998, p. 90). Historically, the San Bernardino flying squirrel was observed in the San Bernardino and San Jacinto Mountains of southern California (San Bernardino County and Riverside County; Grinnell and Swarth 1913, p. 328). The San Gorgonio pass, which probably linked the two ranges during the last ice age, now forms a barrier between the San Bernardino Mountains and San Jacinto Mountains (USFS 2005a, p. 1127). During the last ice age, the northern flying squirrel would have existed farther south than its observed range of the San Bernardino

and San Jacinto Mountains, and it is believed that the San Bernardino flying squirrel represents ancestral populations that have been isolated in forested, higher elevation refugia by a warming climate (Butler *et al.* 1991, p. 4; Arbogast 2007, p. 844; Weigl 2007, p. 897).

The subspecies was first described by Rhoads (1897) based on four specimens collected near Squirrel Inn in the San Bernardino Mountains at 5,200 feet (ft) (1585 meters (m)). Grinnell and Swarth (1913, p. 328) also trapped a San Bernardino flying squirrel in the San Jacinto Mountains in the unincorporated community of Idyllwild. Since 1913, there have been anecdotal sightings of San Bernardino flying squirrels in the San Jacinto Mountains, but no verified sightings or trapping records (USFS 2005a, p. 1228). A study of owl pellets from the San Jacinto Mountains did not find any San Bernardino flying squirrel remains (Stephenson and Calcarone 1999, p. 204). Additionally, the San Jacinto Centennial Resurvey by the San Diego Natural History Museum has failed to detect San Bernardino flying squirrels in their trapping efforts thus far (San Diego Natural History Museum 2011). Therefore, this historical habitat in the San Jacinto Mountains may no longer by occupied by the San Bernardino flying squirrel.

The San Bernardino flying squirrel is genetically distinct from other subspecies of northern flying squirrels (Arbogast 2007, p. 844), and is morphologically different from other flying squirrels. The San Bernardino flying squirrel is paler in color and the smallest in size on a spectrum of subspecies from Alaska to the San Bernardino Mountains. The San Bernardino flying squirrel is an animal that belongs to the Order Rodentia, Family Sciuridae, and Subfamily Petauristinae (Wells-Gosling and Heaney 1984, p. 1). It is designated as a species of special concern by the California Department of Fish and Game and identified as a sensitive species by the U.S. Forest Service (U.S. Forest Service [USFS] 2005a, p. 1127).

The San Bernardino flying squirrel is an arboreal (lives in trees) rodent that is active year-round and primarily nocturnal (Smith 2007, p. 862). Mature squirrels are typically 11–12 inches (in) (28–31 centimeters (cm)) in length and 3.5–5.5 ounces (98–158 grams) in weight (Grinnell and Swarth 1913, p. 329; Sumner 1927, p. 316; Butler *et al.* 1991, p. 12). The San Bernardino flying squirrel's coloration is gray to wood-brown to cinnamon on the upper side of the body and pale cream or white on the underside (Wells-Gosling and Heaney 1984, p. 2). As a subspecies of northern flying squirrel, it uses a furred membrane called a patagium that extends from wrist to ankle, thus enabling it to glide between trees (Wells-Gosling and Heaney 1984, p. 2). The San Bernardino flying squirrel can easily glide over 60-ft (18-m) expanses and has been known to glide more than 300 ft (91 m) (Butler *et al.* 1991, p. 19). This species tends to be long-lived with individuals living 4–7 years or more (Weigl 2007, p. 900). Northern flying squirrels are considered seasonal breeders (March through May) with typically one small litter (two to four young) per year; substantial energy is put into each offspring (Wells-Gosling and Heaney 1984, p. 4; Smith 2007, p. 862). Two types of nests are normally used by northern flying squirrels: External leaf nests constructed on branches and nests in cavities of trees (Smith 2007, p. 866) that protect the squirrels from the elements, particularly during cold winters.

The main food preference for San Bernardino flying squirrels is truffles, a type of hypogeous (underground) fungi that occurs 2–6 in (5–15 cm) below the surface of the forest floor. San Bernardino flying squirrels have been found to eat fungi from three genera: *Melanogaster, Hymenogaster,* and *Gymnomyces* (Butler *et al.* 1991, p. 20). These fungi form symbiotic relationships with the roots of trees under the surface of the soil. Squirrels digest the nutrients from the truffle while simultaneously spreading the truffle spores and inoculating trees throughout the forest and habitat of the squirrel (Pyare and Longland 2001, p. 681; Weigl 2007, p. 900). When snow covers this food resource in the winter, the squirrels eat arboreal lichens and vegetation (Hall 1991, p. 616, Pyare and Longland 2001, p. 684; Smith 2007, p. 869).

San Bernardino flying squirrels are also hunted as prey by other species. Wells-Gosling and Heaney (1984, p. 4) identified the following known predators of northern flying squirrels: barn owls (*Tylo alba*), great horned owls (*Bubo virginianus*), red-tailed hawks (*Buteo jamaicensis*), spotted owls (*Strix occidentalis*), martens (*Martes americana*), domestic house cats (*Felis catus*), wolves (*Canis lupus*), weasels (*Mustela* spp.), and foxes (*Vulpes* spp. and *Urocyon* spp.) (Wells-Gosling and Heaney 1984, p. 4). Identification of San Bernardino flying squirrel remains have been found in spotted owl pellets in the San Bernardino Mountains, making the spotted owl a known predator of the subspecies (Butler *et al.* 1991, p. 19; Smith *et al.* 1999, p. 24).

We found no information in the petition or our files on the amount of space required by the San Bernardino flying squirrel. Other subspecies of northern flying squirrel have a range of 5–148 acres (ac) (2–60 hectares (ha)) of forest needed to support individuals of flying squirrels (Weigl 2007, p. 900). Typically, squirrels do not use all of this area on a daily basis, but can make longer journeys when searching for mates and food (Weigl 2007, p. 900). The San Bernardino flying squirrel inhabits high-elevation mixed-conifer forests approximately 4,000–8,500 ft (1,585–2,590 m) in elevation (Grinnell 1933, p. 136; Butler *et al.* 1991, p. 2; USFS 2005a, p. 1127). The vegetation of these areas commonly includes *Abies concolor* (white fir), *Quercus kelloggii* (black oak), and *Pinus jeffreyi* (Jeffrey pine) (Rhoads 1897, p. 323; Sumner 1927, p. 315; Grinnell 1933, p. 136; Butler *et al.* 1991, pp. 2, 5).

San Bernardino flying squirrels are typically found in mature old-growth forests, although second-growth stands may still support relatively high densities of the subspecies (Butler *et al.* 1991, p. 5). Microhabitat factors related to mature forests (such as stumps, snags, and dead trees) are used by the squirrel for nesting and foraging habitat (Butler *et al.* 1991, p. 5). The subspecies also tends to choose trees for dens or nests that are over 100 ft (30 m) tall with diameters (at breast height) greater than 30 in (76 cm) (Butler *et al.* 1991, p. 17). Moisture is also a key factor in San Bernardino flying squirrel habitat, especially within the drier forests found in southern California (Smith 2007, p. 866). San Bernardino flying squirrels tend to occur more often in riparian areas, such as near a stream or spring (USFS 2005a, p. 1129), which retain an increased level of moisture that helps promote the growth of truffles (Meyer and North 2005, p. 1015). The canopy of a mature forest also helps to retain moisture and provide both shelter and protection from predators (USFS 2005a, p. 1129). Larger and older trees with associated woody debris and decaying logs also tend to be correlated with more abundant truffles in the soil (Weigl 2007, p. 900). Therefore, the San Bernardino flying squirrel's habitat seems to be related to conditions that are optimal for nesting and provide an ample supply of food.

Trapping efforts historically detected low numbers of flying squirrels in the San Bernardino Mountains (Sumner 1927, p. 316). In our available information, we found only two recent trapping surveys (1991 and 1998) that

included searching for San Bernardino flying squirrels through the San Bernardino National Forest (Butler *et al.* 1991, p. 13; Driessen *et al.* 1998, p. 4). Butler *et al.* (1991, p. 14) estimated the density of San Bernardino flying squirrels in the San Bernardino Mountains at 0.94 flying squirrels per ha (2.5 ac) based on one trapping grid. This estimate is in the lower range of northern flying squirrel densities found in the western United States (0.9–3.07 squirrels per ha (2.5 ac); Butler *et al.* 1991, p. 6). Butler *et al.* (1991, p. 10) found 22 San Bernardino flying squirrels during trapping, with the greatest number of squirrels on the west side of the Bear Mountain Ski Area. A trapping effort in 1998 captured six San Bernardino flying squirrels at a site near the unincorporated community of Fawnskin and three squirrels at a site near Bear Mountain (Driessen *et al.* 1998, pp. 4–6). However, no recent studies have been done on the abundance of San Bernardino flying squirrels in the San Bernardino Mountains.

Butler *et al.* (1991, p. 26) looked for remains of San Bernardino flying squirrels in spotted owl pellets to estimate distribution of the species within the San Bernardino National Forest. They found 172 instances of San Bernardino flying squirrels within pellets from 43 owl nest sites between 1987 and 1991 (Butler *et al.* 1991, p. 19). Using these data, they extrapolated habitat occupied by San Bernardino flying squirrels to estimate the following range: Sugarpine Mountain and Lake Silverwood in the west, east to Lake Arrowhead and Big Bear Lake regions, and south to parts of San Gorgonio Wilderness, the Thurman Flats area along Mill Creek, and the Raywood Flat area along the Gorgonio River (Butler *et al.* 1991, pp. 19–26). Rangers and biologists of the Mountaintop Ranger District (San Bernardino National Forest) have received numerous anecdotal reports and photographs of San Bernardino flying squirrels in residential areas of the unincorporated communities of Big Bear, Angeles Oaks, Fawnskin, and Lake Arrowhead (USFS 2005a, p. 1128).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding potential threats to the San Bernardino flying squirrel, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. In several instances, the petitioner associated a potential threat with a factor different than the factor under which the Service generally analyzes that threat; those particular instances are noted below where appropriate and the threats are analyzed under the factor consistent with Service guidance. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Climate Change—Information Provided in the Petition

The petition states that the ecological impacts of climate change are causing alterations in the habitat of many species in response to rising temperatures (Bonfils *et al.* 2008, pp. 6421, 6422; CBD 2010, p. 26), changes in precipitation and precipitation extremes (Leung *et al.* 2004, pp. 75, 109; CBD 2010, p. 36), reduced snowpack in California mountains (Pierce *et al.* 2008, p. 6425; CBD 2010, p. 32), and increased drought duration and severity causing lower soil moisture (CBD 2010, p. 37; Dominguez *et al.* 2010, pp. 499, 500). The petition claims that these climate changes are leading to a loss of the mixed-conifer/black-oak forest habitat used by the San Bernardino flying squirrel. *Abies concolor* (white fir) and *Pinus jeffreyi* (Jeffrey pine) trees in the adjacent Santa Rosa Mountains have shown an upslope shift over the past 30 years, a trend that may suggest a similar change is also occurring in the San Bernardino and San Jacinto Mountains (Kelly and Goulden 2008, p. 11823; CBD 2010, p. 40). The petition states that high-elevation species have limited suitable habitat for movement in response to these climate-caused shifts in habitat, and may simply run out of suitable habitat to occupy. The petition states that San Bernardino flying squirrels are more vulnerable to climate change because they are a high-elevation species at the southern limit of the species' range where climate change impacts are expected to be more pronounced.

Climate Change—Evaluation of Information Provided in the Petition and Available in Service Files

After our evaluation of information provided in the petition, we find that the petition provides information to support the claim that the San Bernardino flying squirrel's habitat may be affected by impacts due to climate change. Consideration of ongoing and projected climate change is a component of our analyses under the Endangered Species Act. Described in general terms, ''climate change'' refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties (*e.g.,* temperature, precipitation) and that persists for an extended period, typically decades or longer (Intergovernmental Panel on Climate Change (IPCC 2007, p. 30). Various types of changes in climate can have direct or indirect effects on species, and these may be positive or negative depending on the species and other relevant considerations, such as the effects of interactions with nonclimate conditions (*e.g.,* habitat fragmentation). We use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change that are relevant to the San Bernardino flying squirrel. Climate is influenced primarily by long-term patterns in air temperature and precipitation. Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward (IPCC 2007, p. 33) and up mountain slopes (McDonald and Brown 1992, pp. 411–412; IPCC 2007, p. 33). These predicted climate shifts could lead to a loss in conifer/black oak forests, thus potentially eliminating suitable nesting sites, food, and other habitat requirements for San Bernardino flying squirrels. Flying squirrels occur more frequently near riparian ecosystems (USFS 2005a, p. 1129; Smith 2007, p. 866); therefore, changes in water regime or decreased flow could affect vegetation structure necessary for the species (Smith 2007, p. 864). In summary, we find the petition presents substantial scientific or commercial information indicating that the San Bernardino flying squirrel may be threatened by the effects of climate

change based on the present or threatened destruction, modification, or curtailment of its habitat or range.

Forest Fuel-Reduction Practices—Information Provided in the Petition

The petition notes that San Bernardino flying squirrel habitat is lost not only due to climate change, but also due to fuel reduction projects in the San Bernardino and San Jacinto Mountains. Salvage logging and construction or maintenance of fuel breaks and Wildland-Urban Interface (WUI) Defense and Threat Zones are also cited by the petitioner as threats to the habitat of the San Bernardino flying squirrel. The petition claims that these fuel-reduction practices reduce suitable habitat and also remove or damage important habitat components including important food resources (USFS 2005b, pp. 25–27; CBD 2010, p. 46). The petitioner states that fuel-reduction projects degrade the habitat of the flying squirrel.

Forest Fuel-Reduction Practices—Evaluation of Information Provided in the Petition and Available in Service Files

We evaluated the information in the petition and in our files and found that forest management practices in the urban-forest interface of communities in the San Bernardino Mountains, in combination with other habitat threats, may add to the degradation of habitat structure or loss of habitat needed by the San Bernardino flying squirrel. Fuel treatments used to reduce the intensity of fires and the amount of fuel in the forest include removing dead trees and thinning the forest (USFS 2005b, p. 27). These practices may remove habitat for San Bernardino flying squirrel nests (such as snags and dead trees) and the canopy structure needed to maintain a moist sheltered habitat. Additionally, fuel breaks and WUI defense zones are constructed along roads, ridgelines, and buildings to prevent the spread of wildfire (USFS 2005b, p. 27). All vegetation is regularly removed from these WUI areas. Where San Bernardino flying squirrel habitat occurs within fuel break areas, these practices remove some vegetation used by flying squirrels. Although these planned actions may affect San Bernardino flying squirrel habitat within the San Bernardino National Forest, the U.S. Forest Service has committed to strategically locating fuel treatments with respect to natural resources and sensitive habitat (USFS 2005b, p. 26). Therefore, the San Bernardino Land Management Plan diminishes the impacts to San Bernardino flying squirrel habitat by strategically placing fuel management areas.

Although we currently do not have information to support the determination that these practices decrease the food supply of San Bernardino flying squirrels, fuel-reduction practices near urban communities in the San Bernardino Mountains, combined with habitat loss from other sources, could impact the amount and quality of San Bernardino flying squirrel habitat. In summary, we find that the petition presents substantial scientific or commercial information indicating that the San Bernardino flying squirrel may be threatened by the effects of fuel-reduction practices in the San Bernardino Mountains.

Urban Air Pollution—Information Provided in the Petition

Urban air pollution was cited in the petition as a threat to the San Bernardino flying squirrel due to its ability to potentially change the availability of resources for food, cover, and nesting. Specifically, the petition claims that increased nitrogen deposition and ozone enrichment alter the diversity and availability of epiphytic lichen (a symbiotic organism composed of fungus and algae that grow on plants for mechanical support) communities that the squirrels depend on for food (Fenn *et al.* 2008, pp. 505, 508; CBD 2010, p. 56). This increase in nitrogen deposition and ozone enrichment was also cited by the petitioner as causing a decrease in the understory plant community that may provide protection from predators of flying squirrels (CBD 2010, p. 56). Additionally, air pollution was cited as being responsible for a decrease in the diversity of fungi and an increase in susceptibility of trees to drought (CBD 2010, p. 57).

Urban Air Pollution—Evaluation of Information Provided in the Petition and Available in Service Files

We evaluated the information in the petition and in our files and found no information that connects urban air pollution to the degradation or loss of San Bernardino flying squirrel habitat. The petition suggests that urban air pollution is a threat to the San Bernardino flying squirrel due to its ability to potentially change the availability of resources for food, cover, and nesting. We acknowledge that information in our files and in the petition indicates that urban air pollution affects the Los Angeles basin, including the San Bernardino Mountains (Fenn *et al.* 2003, p. 396; Fenn *et al.* 2008, p. 502), with nitrogen deposition impacts including eutrophication in water bodies, community composition changes in vegetation, low visibility in the area, and increased ozone pollutants (Fenn *et al.* 2003, pp. 391–392). However, nitrogen emissions within the southern California region decreased from 1975–2000 due to stricter regulations (Fenn *et al.* 2003, p. 401). Our evaluation of information in the petition and our files did not reveal a connection between urban air pollution and San Bernardino flying squirrel habitat.

Although urban air pollution has been observed in the region, the effects of this pollution on the San Bernardino flying squirrel are unknown. Fenn *et al.* (2008, p. 505) reported that increased nitrogen deposition can affect the diversity of acidophytes (symbiotic organisms that occur on host tress with an acidic pH) in a lichen community. While nitrogen deposition rates in the Los Angeles basin are high compared to the rest of the country, we do not have information on the impacts of decreased lichen diversity or availability to San Bernardino flying squirrels. There was no information presented in the petition or found in our files on the effects of urban air pollution on the flying squirrel's main source of food (truffles).

The petitioner also claims that nitrogen deposition and ozone enrichment cause declines in understory plant diversity and higher susceptibility to drought in plants. The petitioner did not support their claim or provide information that documents a connection between the loss of understory plant diversity and the main truffle food source of the squirrel. The loss of truffles is based on the assumption that the decreasing trend seen with lichens would be similar in truffles (CBD 2010, p. 57). Therefore, after our evaluation of the information, the petition does not present evidence on how urban air pollution might affect the San Bernardino flying squirrel's main food source. While research shows that urban air pollution could be affecting the San Bernardino Mountains, it is unclear how these changes in plant and lichen availability, diversity, and physiology will directly or indirectly affect San Bernardino flying squirrel.

With regards to urban air pollution, the petitioner does not provide citations to support assertions concerning the present or threatened destruction, modification, or curtailment of habitat or range for the San Bernardino flying squirrel. Their arguments rely on the loss of diversity and availability of acidophyte lichens, declines in understory plant diversity, and a higher

susceptibility to drought conditions in plants without drawing on evidence of how these changes are negatively affecting the San Bernardino flying squirrel. No information is provided to determine how these changes directly affect San Bernardino flying squirrels. Therefore, we find the petition, as well as other information in our files, does not present substantial scientific or commercial information to indicate that urban air pollution may present a threat to the San Bernardino flying squirrel such that the petitioned action may be warranted. We will, however, further investigate whether urban air pollution is a potential threat to the habitat of the San Bernardino flying squirrel in our 12-month status review.

Urban Development—Information Provided in the Petition

Urban development in the San Bernardino and San Jacinto Mountains was noted in the petition as a threat to San Bernardino flying squirrel habitat. The petition asserted that the expansion of existing communities and ski resorts, as well as new development, led to the loss and fragmentation of remaining habitat, accompanied by the need for further fuel reductions around these human structures (USFS 2005a, p. 1135; CBD 2010, pp. 57–59), and require expanded fuel management for WUI Defense Zones (CBD 2010, pp. 57–59). The petition states that the San Bernardino flying squirrel is threatened by loss and fragmentation of mature forest habitat in the San Bernardino Mountains area.

Urban Development—Evaluation of Information Provided in the Petition and Available in Service Files

Through the evaluation of the petition and information in our files, we found that several development projects are planned in areas that contain San Bernardino flying squirrels or within habitat considered suitable for the taxon (County of San Bernardino 2007, pp. 15, 37; Michael Brandman Associates 2010, pp. 2–2, 2–3; PCR Services Corporation 2010, pp. 2–3, 3.C–26; Vista Community Planners 2010, p. 1–3). The U.S. Forest Service states that urban development impacts the habitat of the San Bernardino flying squirrel (USFS 2005a, p. 1135). Urban development may affect San Bernardino flying squirrel habitat through direct loss of habitat, habitat fragmentation, and habitat modification through such activities as fuel treatment around structures (USFS 2005a, p. 1135). Habitat fragmentation may occur in some areas where openings created between trees are wider than 200 ft (61 m) and squirrels are unable to glide between trees (USFS 2005a, p. 1135). One recent survey has a confirmed observation of San Bernardino flying squirrels within a development area (PCR Services Corporation 2010, p. 3.C–26). Many urban development projects have incorporated best management practices during construction to benefit the San Bernardino flying squirrel (Michael Brandman Associates 2010, p. ES–26; PCR Services Corporation 2010, pp. ES–19, ES–20; Vista Community Planners 2010, p. 3–4).

Although the Service has received notification letters and has commented on proposed projects (USFWS 2006, pp. 1–4), the Service does not have a regulatory role in the review of these proposed development projects because the San Bernardino flying squirrel is not a listed species under the Act. These proposed projects are expected to result in the direct loss of habitat, habitat fragmentation, or habitat modification. Therefore, we find the petition presents substantial scientific or commercial information indicating that the San Bernardino flying squirrel may be threatened by urban development.

Summary of Factor A

In summary, we find that the petition and other information in our files present substantial information indicating that environmental impacts resulting from climate change, forest fuel-reduction practices, and urban development may be threats to the habitat or range of the San Bernardino flying squirrel. Coupled with range reduction due to the likely extirpation of the squirrel in the San Jacinto Mountains, and low density of squirrels detected within the San Bernardino Mountains, these habitat impacts may affect the San Bernardino flying squirrel. The petition and other information in our files do not present substantial information indicating that urban air pollution may be a threat to the San Bernardino flying squirrel, although we will further investigate urban air pollution in our 12-month status review.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition asserts that San Bernardino flying squirrels are considered a ''nuisance species'' by nesting in attics, and that their removal may cause injury or death. Additionally, the petition notes the potential for San Bernardino flying squirrels to be captured as pets. The petition also includes the potential threat of house cat predation, which we discuss below under Factor C (Disease or Predation).

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed information in our files and the information provided by the petition, and did not find substantial information to indicate that San Bernardino flying squirrels are being injured or killed by people, nor was any reference information provided to support that they are collected as pets. There is some evidence that San Bernardino flying squirrels have been run over by vehicles in the San Bernardino National Forest (Chris Brown 2010, pers. comm.); however, there was no information presented in the petition or found in our files on the effects of such mortality on the San Bernardino flying squirrel. We find that the petition does not present substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the San Bernardino flying squirrel such that the petitioned action may be warranted. However, we will further investigate whether injury or death caused by humans and collection as pets are potential threats to the San Bernardino flying squirrel in our 12-month status review.

C. Disease or Predation

Information Provided in the Petition

The petition claims that, although San Bernardino flying squirrel diseases have not been well-studied, some evidence suggests that disease could pose a threat to the species. West Nile virus has been detected in grey squirrels (*Sciurus griseus*) in the San Bernardino Mountains. Additionally, the petition states that climate change may lead to increases in temperature and humidity, allowing new pathogens to expand northward and upslope, exposing the subspecies to new threats from disease. The petition also notes that San Bernardino flying squirrels face an increasing risk of predation from domestic house cats due to the expansion of communities and development in the San Bernardino and San Jacinto Mountains.

Evaluation of Information Provided in the Petition and Available in Service Files

We did not find substantial information to indicate that West Nile virus presents a threat to the San Bernardino flying squirrel. There was no information provided in the petition

(nor in our files) to support the petitioner's claim that West Nile virus is the direct cause of grey squirrel population declines, nor is there evidence that San Bernardino flying squirrels are being affected by the virus. While the petition provides some information to suggest that rising temperatures can expand the range and reproductive output of some pathogens, no information was provided to indicate that this is occurring within the range of the San Bernardino flying squirrel, nor does information in our files indicate that new pathogens threaten the subspecies now or in the future. However, we will further investigate whether West Nile virus is a potential threat to the San Bernardino flying squirrel in our 12-month status review.

Information provided by the petitioner and readily available in our files indicates the San Bernardino flying squirrel may be threatened by predation from domestic and feral cats (Mitchell and Beck 1992, p. 200; USFS 2005a, pp. 1134, 1135), and this threat may be increasing due to increases in residential development within the range of this subspecies. Domestic cats can range and hunt across both urban and adjacent forested areas. Several residential development projects are planned in areas that contain San Bernardino flying squirrels or within suitable habitat for the species (County of San Bernardino 2007, pp. 15, 37; Michael Brandman Associates 2010, pp. 2–2, 2–3; PCR Services Corporation 2010, pp. 2–3, 3.C–26; Vista Community Planners 2010, p. 1–3). Domestic house cats are listed as a predator of northern flying squirrel species (Wells-Gosling and Heaney 1984, p. 4) and have been documented preying on the southern flying squirrel (*Glaucomys volans;* found through eastern North America south to Mexico and Honduras) (Mitchell and Beck 1992, p. 200). Additionally, Hall *et al.* (2000, p. 23) found California ground squirrels (*Spermophilus beecheyi*) occasionally in the scat of feral cats. Research shows that feral cats show a preference for hunting native species in riparian habitats (Hall *et al.* 2000, p. 23), and it is reasonable to assume that feral and free-ranging cat abundance would increase as more residential development occurs (Jurek 1994, p. 1; Hall *et al.* 2000, p. 20).

All species are subjected to some level of disease and predation under natural conditions, and the San Bernardino flying squirrel has many natural predators (see Background section). We do not have substantial information from the petition or in our files to suggest that this naturally occurring predation is outside the range of natural variation in the ecosystem. However, domestic and feral cats are an unnatural, nonnative, and possibly increasing predation threat to the San Bernardino flying squirrel (Mitchell and Beck 1992, p. 197).

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to predation of the San Bernardino flying squirrel by domestic and feral cats. As stated above, we will also further investigate whether West Nile virus is a potential threat to the San Bernardino flying squirrel in our 12-month status review.

D. The Inadequacy of Existing Regulatory Mechanisms

International, Federal, and State Greenhouse Gas Regulatory Mechanisms—Information Provided in the Petition

The petition states that current greenhouse gas regulatory mechanisms are inadequate to protect the San Bernardino flying squirrel and its habitat, particularly concerning impacts related to climate change. The United Nations Framework Convention on Climate Change and the Kyoto Protocol were noted as inadequate international regulatory mechanisms. The petitioners cite the Service's 2008 listing of the polar bear (*Ursus maritimus*), which concluded that there are no regulatory mechanisms that address the anthropogenic causes of climate change (such as greenhouse gas emissions) and the impact of warming temperatures and altered precipitation patterns on diminishing sea ice (73 FR 28288, May 15, 2008). California laws and initiatives (including the Global Warming Solutions Act of 2006 and California Environmental Quality Act (CEQA)) and the Federal Clean Air Act, Energy Policy and Conservation Act, Clean Water Act, and Endangered Species Act were all also listed as inadequate greenhouse gas regulatory mechanisms.

International, Federal, and State Federal Greenhouse Gas Regulatory Mechanisms—Evaluation of Information Provided in the Petition and Available in Service Files

For environmental impacts that may be due to climate change, as discussed above under Factor A, we will further explore any existing regulatory mechanisms that may ameliorate these effects in our 12-month status review.

San Bernardino National Forest Land and Resource Management Plan (LRMP)—Information Provided in the Petition

The San Bernardino National Forest Land and Resource Management Plan (LRMP) is listed by the petitioner as inadequate to protect the San Bernardino flying squirrel or its habitat. The petitioner claims the Plan's fuel reduction program degrades the mixed-conifer forest habitat and does not adequately allow for monitoring and evaluation of impacts to the squirrel.

San Bernardino National Forest Land Management Plan (LRMP)—Evaluation of Information Provided in the Petition and Available in Service Files

The San Bernardino National Forest LRMP was prepared in accordance with the National Forest Management Act of 1976 (NFMA), the regulatory mechanism directing the administration and management of national forests. The Plan's intent is to maintain forests in a sustainable manner to allow for social, economic, and ecological benefits to continue for future generations. The San Bernardino National Forest LRMP includes provisions specifically to reduce habitat loss and fragmentation and reduce conflicts with development (USFS 2005b, p. 23). While we agree that creating fuel breaks may remove some components of San Bernardino flying squirrel habitat, we do not find substantial information that the NFMA, or the level of monitoring of impacts performed by the Forest Service, is inadequate in addressing the threat of habitat loss in the San Bernardino National Forest. After evaluation of the petition and information in our files, the petitioner does not provide adequate information to support the claim that San Bernardino National Forest LRMP is an inadequate existing regulatory mechanism for the San Bernardino flying squirrel.

State Regulatory Mechanisms—Information Provided in the Petition

In addition to discussing State regulatory mechanisms related to greenhouse gas emissions, the petition claims local agencies are not adequately evaluating the individual and cumulative impacts of development projects on the San Bernardino flying squirrel despite its status as an ''Endangered, Rare, or Threatened Species'' under CEQA (CBD 2010, p. 62).

State Regulatory Mechanisms—Evaluation of Information Provided in the Petition and Available in Service Files

The petition provides no information to support the claim that local agencies are not adequately evaluating the individual and cumulative impacts of development projects on the San Bernardino flying squirrel under CEQA. CEQA does provide some protection for unlisted species through requiring public agencies to disclose environmental impacts of a project on native species and natural communities. CEQA also requires the identification and mitigation of project impacts, unless the agency makes a finding of overriding consideration. Therefore, CEQA does provide some protection for the San Bernardino flying squirrel and its habitat.

Summary of Factor D

We find that the petition does not present substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the San Bernardino flying squirrel such that the petitioned action may be warranted. However, we will further investigate whether the inadequacy of existing regulatory mechanisms is a potential threat to the San Bernardino flying squirrel in our 12-month status review.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition identified environmental impacts resulting from climate change as a factor impacting the San Bernardino flying squirrel. We know of no element of the San Bernardino flying squirrel's life history or physiology that would be directly affected by changes in climate. Predicted climate changes could impact forested environments upon which San Bernardino flying squirrels depend. Therefore, we addressed all climate change threats under Factor A above.

The petition did not identify any other natural or manmade factors that could potentially impact the San Bernardino flying squirrel.

Evaluation of Information Provided in the Petition and Available in Service Files

The available information in our files does not indicate any threat to the San Bernardino flying squirrel from other natural or manmade factors affecting its continued existence. The limited range and low density of the subspecies suggest that San Bernardino flying squirrels may be more vulnerable to stochastic events such as large wildfires, as seen in other species with small populations and narrow ranges (Kohlmann *et al.* 2005, pp. 85, 86). However, we have no information at this time in regard to San Bernardino flying squirrels to support this theory, although we will further investigate whether this is a potential threat in our 12-month finding. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors may present a threat to the San Bernardino flying squirrel such that the petitioned action may be warranted.

Finding

On the basis of our evaluation of the petition and other readily available data under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the San Bernardino flying squirrel throughout its entire range may be warranted. This finding is based on information provided under Factors A and C. We determine that information provided under Factors B, D, and E does not present substantial information.

Because we have found that the petition presents substantial information indicating that listing the San Bernardino flying squirrel may be warranted, we are initiating a status review to determine whether listing the San Bernardino flying squirrel under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 19, 2012.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–2135 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 21
Wednesday, February 1, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Republication

January 23, 2012.

Editorial Note: Notice document 12–01639 appeared in error in the issue of Thursday, January 26, 2012. It is being reprinted in its entirety in today's issue.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

DATES: Comments regarding these information collections are best assured of having their full effect if received by February 27, 2012. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

OMB Control Number: 0581–0110.

Summary of Collection: The Agricultural Marketing Act of 1946 directs the Department to develop programs that will provide and enable the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products so graded may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there must be written guides and rules, which in this case are regulations for the provider and user.

Need and Use of the Information: The Agricultural Marketing Service will collect information to ensure that the dairy inspection program products are produced under sanitary conditions and buyers are purchasing a quality product. The information collected through recordkeeping is routinely reviewed and evaluated during the inspection of the dairy plant facilities for USDA approval. Without laboratory testing results required by recordkeeping, the inspectors would not be able to evaluate the quality of dairy products.

Description of Respondents: Business or other for-profit.

Number of Respondents: 487.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 1,388.

Agricultural Marketing Service

Title: Regulations for Inspection of Eggs.

OMB Control Number: 0581–0113.

Summary of Collection: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide a mandatory inspection program to assure egg products are processed under sanitary conditions, are wholesome, unadulterated, and properly labeled; to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs and egg products that are unwholesome and inedible. Regulations developed under 7 CFR part 57 provide the requirements and guidelines for the Department and industry needed to obtain compliance. The Agricultural Marketing Service (AMS) will collect information using several forms. Forms used to collect information provide method for measuring workload, record of compliance and non compliance and a basis to monitor the utilization of funds.

Need and Use of the Information: AMS will use the information to assure compliance with the Act and regulations, to take administrative and regulatory action and to develop and revise cooperative agreements with the States, which conduct surveillance inspections of shell egg handlers and processors. If the information is not collected, AMS would not be able to control the processing, movement, and disposition of restricted shell eggs and egg products and take regulatory action in case of noncompliance.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 935.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,937.

Charlene Parker,

Departmental Information Collection Clearance Officer.

Editorial Note: Notice document 12–01639 appeared in error in the issue of Thursday, January 26, 2012. It is being reprinted in its entirety in today's issue.

[FR Doc. R1–2012–1639 Filed 1–31–12; 8:45 am]

BILLING CODE 1505–01; D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0120]

Notice of Request for Extension of Approval of an Information Collection; Treatments for Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the irradiation treatment of fruits and vegetables moving from Hawaii, Puerto Rico, and the U.S. Virgin Islands to the United States mainland. These regulations help prevent the spread of plant pests to noninfested areas of the United States.

DATES: We will consider all comments that we receive on or before April 2, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0120-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0120, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0120* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, and the U.S. Virgin Islands, contact Mr. David Lamb, Import Specialist, Regulatory Permits and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Treatments for Fruits and Vegetables.

OMB Number: 0579–0281.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Administrator of the Animal and Plant Health Inspection Service, which administers regulations to implement the PPA.

Regulations governing the interstate movement of plants and plant products from Hawaii and U.S. territories, including Guam, Puerto Rico, and the U.S. Virgin Islands, are contained in 7 CFR part 318, ''Hawaiian and Territorial Quarantine Notices.'' These regulations are necessary to prevent the interstate spread of plant pests such as the Mediterranean fruit fly, the melon fly, the Oriental fruit fly, green coffee scale, the bean pod borer, and other plant pests to noninfested areas of the United States.

Certain fruits and vegetables moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands must undergo irradiation treatment. Requirements for irradiation treatment of fruits and vegetables are contained in 7 CFR part 305, ''Phytosanitary Treatments.'' These requirements involve information collection activities, including the use of permits, certificates, requests for facility approval, and package marking.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0267 hours per response.

Respondents: Persons moving fruits and vegetables interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands, irradiation facility personnel, shippers, and State plant regulatory officials.

Estimated annual number of respondents: 23.

Estimated annual number of responses per respondent: 9.7826.

Estimated annual number of responses: 225.

Estimated total annual burden on respondents: 6 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–2110 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Smith-Lever 3(d) Extension Integrated Pest Management Competitive Grants Program

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: Section 7403 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (FCEA) amended section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)) to provide the

opportunity for 1862 and 1890 Land-Grant Institutions, including Tuskegee University and West Virginia State University to compete for section 3(d) funds. Section 7417 of FCEA also provided the University of the District of Columbia the opportunity to compete for section 3(d) funds. The Extension Integrated Pest Management Coordination and Support Program (EIPM–CS) is among the Extension programs funded under this authority. By this notice, NIFA is designated to act on behalf of the Secretary of Agriculture in soliciting public comment from interested persons regarding the future design and implementation of this program.

DATES: The public meeting will be held on Thursday, March 29, 2012, from 2 p.m. to 4 p.m. Central time. All comments not otherwise presented or submitted for the record at the meeting must be submitted by close of business Wednesday, May 2, 2012, to assure consideration in the next RFA.

ADDRESSES: The meeting will be held in the Nashville Meeting Room, Memphis Marriott Downtown Hotel, 250 North Main Street, Memphis, Tennessee 38103, phone—(888) 557–8740 (toll-free in USA); (901) 527–7300 (outside USA). You may submit comments, identified by NIFA–2012–0003, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: newEIPM@nifa.usda.gov. Include NIFA–2012–0003 in the subject line of the message.

Fax: (202) 401–1794.

Mail: Paper, disk or CD–ROM submissions should be submitted to newEIPM; Division of Plant Protection, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2220, 1400 Independence Avenue SW., Washington, DC 20250–2220.

Hand Delivery/Courier: newEIPM; Division of Plant Protection, Institute of Food Production and Sustainability, National Institute of Food and Agriculture, U.S. Department of Agriculture; Room 3105, Waterfront Centre, 800 9th Street SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and the identifier NIFA–2012–0003. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Ley, (202) 401–6195 (phone), (202) 401–1794 (fax), or *newEIPM@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule is anticipated for the March 29, 2012, meeting:

2–2:15 p.m. Introduction to the Extension Integrated Pest Management Coordination and Support Competitive Grant Program (EIPM).

2:15–4 p.m. Stakeholder input on general administration of EIPM, including: solicitation of proposals, types of projects and awards, length of awards, evaluation criteria, and protocols to ensure the widest program participation, allocation of funds including protocols to solicit and consider stakeholder input, determination of priority areas, and determination of activities to be supported.

4 p.m. Adjourn

Persons wishing to present oral comments at the March 29, 2012, meeting are requested to pre-register by contacting Elizabeth Ley, (202) 401–6195 (phone), by fax at (202) 401–1794, or by email to *newEIPM@nifa.usda.gov.*

Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations for oral comments will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting.

Written comments may also be submitted for the record at the meeting. All comments not presented or submitted for the record at the meeting must be received by close of business Wednesday, May 2, 2012, to be considered in the next RFA. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA Web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Ley as directed above.

Background and Purpose

Stakeholder listening sessions have been held by NIFA and its predecessor agency, CSREES, on October 6, 2008 and March 26, 2009 about the restructuring of the Smith-Lever 3(d) IPM program due to changes found in section 7403 of the FCEA. Changes to Smith-Lever 3(d) funding include: (1) The requirement for a competitive program delivery model as opposed to a long-standing formula-based delivery model; and (2) the inclusion of 1890 Institutions and the University of the District of Columbia as eligible entities to receive 3(d) funds. The primary intent of the listening session was to gather stakeholder input on program focus and design. Prior to the listening session, National Program Leaders presented stakeholders with the following questions:

1. What should be the primary goals and objectives of the program?

2. How can NIFA funding be optimized?

3. Should there be a limit on the number of proposals that can be submitted by each eligible institution?

4. What criteria should be used in the proposal review and selection process?

5. Should regional, multi-institutional or multi-state proposals be encouraged?

6. Should proposals addressing gaps in current program coverage (organic, small farms, etc.) be given greater emphasis in the evaluative process?

7. What limits should be set on funding and project duration?

The 2008 written comment period ran from October 6 through November 15, with over 400 written comments received. A written summary of the comments is available at *http://www.nifa.usda.gov/business/reporting/stakeholder.eipm_stakeholder.html.* Contained in the comments are many areas with broad agreement among stakeholders.

The Agency responded by promptly issuing the EIPM–CS RFA and proceeding with the competition on a compressed schedule and incorporating as many of the suggestions as allowable by law.

The additional input from the 2009 listening session helped to better define the program. Again, written comments were accepted for 5 weeks, from March 26 through April 29 and more than 300 comments were received. A written summary of the comments is available at *http://www.nifa.usda.gov/business/reporting/stakeholder.eipm_stakeholder.html.* Those comments were weighed and incorporated to the greatest degree possible.

Additional input is sought now regarding the structure of the program going forward. The March 2012, Listening Session is scheduled to assist NIFA leadership in more fully addressing stakeholder needs and assuring that the program has influence on the adoption of IPM principles and end users are best served.

Implementation Plans

NIFA plans to consider stakeholder input received from this public meeting as well as other written comments in developing the FY 2013 program guidelines. NIFA anticipates releasing the FY 2013 Request for Applications (RFA) by winter 2012–13.

Done at Washington, DC, this 25th day of January 2012.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2012–2106 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Capacity Building Grants for Non Land Grant Colleges of Agriculture Institutions Program

AGENCY: National Institute of Food and Agriculture (NIFA), USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is implementing a newly funded competitive grants program called the Capacity Building Grants for Non Land Grant Colleges of Agriculture (NLGCA) Institutions Program. By this notice, NIFA is designated to act on behalf of the Secretary of Agriculture in soliciting public comments and stakeholder input from interested parties regarding the development of the Capacity Building Grants for NLGCA Institutions Program.

DATES: The meeting will be held on March 26, 2012, from 9 a.m.–1 p.m.. All comments must be received by close of business on March 19, 2012.

ADDRESSES: The meeting will be held in room 1410A–D, Waterfront Centre Building, National Institute of Food and Agriculture, U.S. Department of Agriculture, 800 9th Street, SW., Washington, DC 20024. Meeting participants will need to provide photo identification to be admitted to the building. Please allow sufficient time to go through security.

You may submit comments, identified by NIFA–2012–0002, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: tpowell@nifa.usda.gov. Include NIFA–2012–0002 in the subject line of the message.

Fax: (202) 720–2030.

Mail: Paper, disk or CD–ROM submissions should be submitted to NLGCA; Institute of Youth, Family, and Community; Division of Community and Education; National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2251, 1400 Independence Avenue SW., Washington, DC 20250–2251.

Hand Delivery/Courier: NLGCA, Institute of Youth, Family, and Community; Division of Community and Education, National Institute of Food and Agriculture; U.S. Department of Agriculture, Room 4449, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and reference to NIFA–2012–0002. All comments received will be posted to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Tamia Powell, (202) 720–1973 (phone), (202) 720–2030 (fax), or *tpowell@nifa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Persons wishing to present oral comments at the March 26th, meeting is requested to pre-register by contacting Ms. Powell as directed above. Participants may reserve one 10-minute comment. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. All comments must be received by close of business March 19, 2012, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA web page for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Tamia Powell as directed above.

Background and Purpose

Section 1473F of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), (7 U.S.C. 3319i), authorizes the Secretary of Agriculture to make competitive grants to assist the NLGCA Institutions in maintaining and expanding their capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines.

NIFA is holding a public meeting to obtain comments to use in developing the Request for Applications (RFA) for the newly funded NGLCA. The meeting is open to the public. Written comments and suggestions may be submitted at the address above.

Summary of Non Land Grant Colleges of Agriculture

For fiscal year (FY) 2012, $5 million has been made available for the Capacity Building Grants for NLGCA Institutions program. NLGCA program funds will support efforts to maintain and expand the capacity of the NLGCA Institution to successfully compete for funds from Federal grants and other sources to carry out educational, research, and outreach activities that address priority concerns of national, regional, State, and local interest; to disseminate information relating to priority concerns to interested members of the agriculture, renewable resources, and other relevant communities; the public; and any other interested entity; and to encourage members of the agriculture, renewable resources, and other relevant communities to participate in priority education, research, and outreach activities by providing matching funding to leverage grant funds.

Implementation Plans

NIFA plans to consider stakeholder input received from this public meeting for developing the RFA. NIFA anticipates releasing a Request for Applications (RFA) by mid-May 2012.

Done at Washington, DC, this 25 day of January 2012.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2012–2101 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Solicitation of Input From Stakeholders Regarding the Agriculture and Food Research Initiative

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: In Fiscal Year 2009, the National Institute of Food and Agriculture (NIFA), created a new research, education, and extension program called the Agriculture and

Food Research Initiative (AFRI), pursuant to the requirements of section 7406 of the Food, Conservation, and Energy Act of 2008. In September of 2008 and June of 2010, NIFA solicited public comment from persons who use or conduct research, extension, or education regarding the implementing regulation to be developed for this new program. In addition, NIFA published an Interim Final Rule with request for comments regarding program-specific administrative provisions for the AFRI as subpart G of 7 CFR 3430, Competitive and Noncompetitive Non-Formula Federal Assistance Programs—General Award Administrative Provisions and Specific Administrative Provisions in the **Federal Register** on September 9, 2010 [75 FR 54759–54766]. It is anticipated that the Final Rule will be published in the **Federal Register** with request for comments within 90 days of this **Federal Register** notice.

In an effort to improve the quality of the AFRI program, NIFA is again holding a public meeting and soliciting public comments for consideration in the development of the Fiscal Year (FY) 2013 AFRI program solicitations and the FY 2014 Budget. All written comments received prior to the AFRI Listening Session on February 22, 2012, may be utilized in a question and response document and/or responded to during the session held on February 22, 2012 based on the applicability of the comment to the general population of AFRI stakeholders. However, all comments must be received by close of business on March 22, 2012, to be considered in the initial drafting of FY 2013 AFRI program solicitation documents.

DATES: The meeting will be held on Wednesday, February 22, 2012, from 8 a.m. to 5 p.m., Eastern Standard Time (EST). All written comments must be received by 5 p.m. EST on Thursday, March 22, 2012.

ADDRESSES: The meeting will be held in room 1410A–D, Waterfront Centre Building, National Institute of Food and Agriculture, United States Department of Agriculture, 800 9th Street SW., Washington, DC 20024. Meeting participants will need to provide photo identification to be admitted to the building. Please allow sufficient time to go through security.

You may submit comments, identified by NIFA–2012–0004, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: AFRI@nifa.usda.gov. Include NIFA–2012–0004 in the subject line of the message.

Fax: (202) 401–6488.

Mail: Paper, disk or CD–ROM submissions should be submitted to AFRI; Institute of Food Production and Sustainability (IFPS), National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 2220, 1400 Independence Avenue SW., Washington, DC 20250–2220.

Hand Delivery/Courier: AFRI, IFPS, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 3444, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and reference to NIFA–2012–0004. All comments received will be posted to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Joya, (202) 401–1282 (phone), (202) 401–6488 (fax), or *tjoya@nifa.usda.gov*.

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Persons wishing to present oral comments at the Wednesday, February 22, 2012 meeting are requested to pre-register by contacting Ms. Terri Joya at (202) 401–1282, by fax at (202) 401–6488 or by email to *tjoya@nifa.usda.gov*. Participants may reserve one 5-minute comment period. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting. All comments must be received by close of business March 22, 2012, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA Web page, *http://www.nifa.usda.gov/funding/afri/afri_listen_session.html*, for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Joya as directed above.

Additional Program-specific webinars will occur after the public meeting to obtain public comments for use in developing the following activities: Foundational priority areas; Childhood Obesity Prevention; Climate Change; Food Safety; Global Food Security; Sustainable Bioenergy; and NIFA Fellowships Grant Program. The date and time for each webinar will be posted to the following URL: *http://www.nifa.usda.gov/funding/afri/afri_faq_webinars.html*.

Background and Purpose

Section 7406 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (*i.e.,* the 2008 Farm Bill) amends subsection (b) of the Competitive, Special, and Facilities Research Grant Act (7 U.S.C. 450i(b)) to authorize the Secretary of Agriculture to establish a new competitive grant program to provide funding for fundamental and applied research, extension, and education to address food and agricultural sciences. AFRI supersedes the National Research Initiative. AFRI Grants shall be awarded to address priorities in United States agriculture in the following areas: (A) Plant health and production and plant products; (B) Animal health and production and animal products; (C) Food safety, nutrition, and health; (D) Renewable energy, natural resources, and environment; (E) Agriculture systems and technology; and (F) Agriculture economics and rural communities.

To the maximum extent practicable, NIFA, in coordination with the Under Secretary for Research, Education, and Economics (REE), will make grants for high priority research, education, and extension, taking into consideration, when available, the determinations made by the National Agricultural Research, Extension, Education, and Economics Advisory Board. The authority to carry out this program has been delegated to NIFA through the Undersecretary for REE.

The program authorizes grants for FY 2009–12, of which the Secretary may retain no more than 4 percent for administrative costs. Funds will be available for obligation for a two-year period beginning in the fiscal year for which funds are first made available. Grants will be awarded on the basis of merit, quality, and relevance and may have terms of up to 10 years.

Subject to the availability of appropriations to carry out the AFRI program, the Secretary may award grants to State agricultural experiment stations; colleges and universities; university research foundations; other research institutions and organizations; Federal agencies; national laboratories; private organizations or corporations; individuals; or any group consisting of two or more of the aforementioned entities. Please see the details in the Request for Applications.

NIFA is holding a public meeting to obtain comments to consider in developing the Fiscal Year 2013 solicitations for the AFRI competitive grants program. The meeting is open to the public. Written comments and suggestions on issues that may be considered in the meeting may be submitted to the NIFA Docket Clerk at the address above.

Implementation Plans

NIFA plans to consider stakeholder input received from this public meeting as well as other written comments in developing the Fiscal Year 2013 solicitations for this program.

Done at Washington, DC, this 25th day of January 2012.

Chavonda Jacobs-Young,

Acting Director National Institute of Food and Agriculture.

[FR Doc. 2012–2100 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Applications for Grants To Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the USDA Rural Development mission area, announces the availability of two individual grants: one single $500,000 grant from the rural transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single $250,000 grant for Federally Recognized Native American Tribes (FRNAT) from funds appropriated for the RBEG program. RBS will administer these awards under the Rural Business Enterprise Grant (RBEG) program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2012. Each grant is to be competitively awarded to an eligible applicant which historically has been a qualified national non-profit organization. One grant is for the provision of technical assistance to rural transportation (RT) projects and that the other grant will be for the provision of technical assistance to RT projects operated by FRNATs only.

Expenses incurred in developing applications will be at the applicant's risk.

DATES: The deadline for receipt of applications in the USDA Rural Development State Office is no later than 4:30 p.m. (local time) on April 2, 2012. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2012 funding.

ADDRESSES: Entities wishing to apply for assistance should contact the appropriate USDA Rural Development State Office to receive copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers are as follows:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7707/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8702/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, Federal Building, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, Denver Federal Center, Building 56, Room 2300, P.O. Box 25426, Denver, CO 80225–0426, (720) 544–2903/TDD (800) 659–3656.

Delaware-Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 East Hancock Avenue, Stop 300, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8302/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5601/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6201/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 4/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2777/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9161/TDD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002–2999, (413) 253–4302/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4211/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 2229 Boot Hill Court, P.O. Box 850, Bozeman, MT 59715, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (308) 632–2195/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7700/TDD (856) 787–7784.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2015/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2390/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 Northeast Lloyd Boulevard, Suite 801, Portland, OR 97232, (503) 414–3305/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2262/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Plaza Munoz Rivera Avenue, Suite 601, San Juan, PR 00936–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1071, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4321/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6080/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014, (804) 287–1552/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715, (360) 704–7715/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 1550 Earl Core Road, Suite 101, Morgantown, WV 26505, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7671/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, P.O. Box 11005, 100 East B Street, Room 1005, Casper, WY 82601, (307) 233–6703/TDD (307) 233–6733.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact the appropriate USDA Rural Development State Office as provided in the **ADDRESSES** section of this Notice.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Solicitation Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on April 2, 2012, to be eligible for FY 2012 grant funding. Applications received after this date will not be eligible for FY 2012 grant funding.

I. Funding Opportunity Description

The RBEG program is authorized by section 310B(c) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 1942, subpart G. The primary objective of the program is to improve the economic conditions of rural areas. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under the Programs may include the provision of on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, ''Application for Federal Assistance;'' RD 1940–20, ''Request for Environmental Information;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' SF LLL, ''Disclosure of Lobbying Activities;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' a letter stating Board authorization to obtain assistance; and a letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit Federally Recognized Native American Tribes, at least 75 percent of the benefits of the project must be received by members of Federally Recognized

Native American Tribes. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities for the purpose of improving passenger transportation service or facilities. To be considered ''national,'' RBS requires a qualified organization to provide evidence that it operates rural transportation assistance programming in multiple States. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Definitions

The definitions are published at 7 CFR 1942.304.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2012.

Total Funding: $750,000.

Approximate Number of Awards: Two.

Average Award: One single $500,000 grant and another single $250,000 grant for FRNAT's.

Anticipated Award Date: May 16, 2012.

III. Eligibility Information

A. Eligible Applicants

To be considered eligible, an entity must be a qualified national non-profit organization serving rural areas. Grants will be competitively awarded to qualified national non-profit organizations.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from qualified national non-profit organizations to provide technical assistance for rural transportation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements. If due to a change made in the appropriation, additional information is needed, then applicants that submitted complete applications prior to the application deadline will be provided additional time in which to provide that information.

IV. Fiscal Year 2012 Application and Submission Information

A. Address to Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you begin the application process through Grants.gov in sufficient time to complete the application before the deadline date.
- You may submit all documents electronically through the Web site, including all information typically included on the application and all necessary assurances and certifications.
- After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.
- Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov*.

All applicants, whether filing applications through *www.Grants.gov* or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–(866) 705–5711 or at *http://www.dnb.com*.

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

C. Submission Dates and Times

Application Deadline Date: No later than 4:30 p.m. (local time) April 2, 2012.

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the deadline date.

V. Application Review Information

RBS will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail. Grantees must further comply with applicable

provisions of 7 CFR parts 3015, 3016, 3019, and 3052.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a Dun and Bradstreet Data Universal Number System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–(866) 705–5711 or online at *http://fedgov.dnb.com/webform.*

Similarly, in accordance with 2 CFR part 25, all applicants must be registered in the Central Contractor Registration (CCR) prior to submitting an application. Applicants may register for the CCR at *http://www.ccr.gov* or by calling 1–(866) 606–8220 and press ''1'' for CCR. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Stop 9410, Washington, DC 20250–9410 or call toll-free at (866) 632–9992 (English) or (800) 877–8339 (TTD) or (866) 377–8642 (English Federal-relay) or (800) 845–6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Dated: January 20, 2012.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2012–2099 Filed 1–31–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Turning Point Solar LLC: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment for Public Review.

SUMMARY: The Rural Utilities Service (RUS) has prepared an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and RUS's Environmental and Policies and Procedures (7 CFR part 1794) in relation to possible financial assistance for a proposal by Turning Point Solar LCC (TPS). The proposal consists of constructing a 49.9 megawatt (MW) ground-mounted solar photovoltaic generating facility in Noble County, Ohio. Turning Point Solar LLC is requesting that RUS provide a loan or loan guarantee for the proposal. RUS is considering funding this proposal, thereby making it an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470(f), and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800).

DATES: Written comments on this Notice must be received on or before March 2, 2012.

ADDRESSES: A copy of the EA may be viewed at the following RUS Web site: *http://www.rurdev.usda.gov/UWP-ea.htm,* and at the following repository: Caldwell Public Library, 517 Spruce Street, Caldwell, Ohio 43724–0230; Telephone: (740) 732–4506 for operating hours.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the EA, to comment on the EA, or for further information, contact: Ms. Lauren McGee, Environmental Scientist, USDA/RUS, 1400 Independence Ave. SW., Room 2244–S, Stop 1571, Washington, DC 20250–1571, Telephone: (202) 720–1482, fax: (202) 690–0649, or email: *lauren.mcgee@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Turning Point Solar LLC proposes to construct a 49.9 MW solar generating facility in Brookfield Township, Noble County, Ohio. The proposal involves the installation of high-efficiency monocrystalline photovoltaic panels mounted on fixed solar racking equipment and the construction of access roads, a powerhouse, transmission improvements, and other supporting facilities. The preferred site is located eight miles northwest of Caldwell, Ohio, on approximately 771 acres of reclaimed strip-mined land owned by Columbus Southern Power Company and Ohio Power Company, collectively American Electric Power Ohio (AEP Ohio). The land was mined by the Central Ohio Coal Company between 1969 and 1991, after which time it was reclaimed. The proposed generating facility would interconnect to AEP Ohio's South Cumberland 69kV substation, subject to completion of the Pennsylvania-New Jersey-Maryland (PJM) Generation Interconnection application process.

As part of its environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet its responsibilities to solicit and consider the views of the public during Section 106 review. RUS has determined that no historic properties listed in or eligible for listing on the National Register of Historic Places (NRHP) will be affected by the proposal.

Alternatives considered by RUS and TPS include (a) no action, (b) project alternatives, and (c) project alternative sites. An environmental report that describes the proposal in detail and discusses its anticipated environmental impacts has been prepared by URS Corporation. RUS has reviewed and accepted the document as its EA of the proposal. The EA is available for public review at the addresses provided in this Notice. Questions and comments should be sent to RUS at the mailing or email addresses provided in this Notice. RUS should receive comments on the EA in writing by March 2, 2012 to ensure that they are considered in its environmental impact determination.

Should RUS, based on the EA of the proposal, determine that the impacts of the construction and operation of the proposal would not have a significant environmental impact, it will prepare a

Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in newspapers with circulation in the proposal area. Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in RUS's Environmental Policies and Procedures (7 CFR part 1794).

Dated: January 25, 2012.

Nivin Elgohary,

Assistant Administrator, Electric Programs, USDA, Rural Utilities Service.

[FR Doc. 2012–2203 Filed 1–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1396.

Background

On November 7, 2011, the Department of Commerce (the Department) issued the preliminary rescission of the new shipper review under the antidumping duty order on chlorinated isocyanurates from the People's Republic of China for Heze Huayi Chemical Co. Ltd. (Heze Huayi) covering the period June 1, 2010, through December 31, 2010. *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review,* 76 FR 70705 (November 15, 2011). The final results of review are currently due on February 6, 2012.[1]

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) provide that the Department will issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department concludes that a new shipper review is extraordinarily complicated, the Department may extend the 90-day period to 150 days. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Final Results

The Department determines that this new shipper review is extraordinarily complicated because of the additional unreported sales to the United States during the period of review by Heze Huayi. On December 16, 2011, Heze Huayi submitted an extensive case brief regarding these sales and the Department's preliminary decision to rescind the review. On December 22, 2011, Clearon Corp. and Occidental Chemical Corporation, Petitioners in the original investigation, submitted an extensive rebuttal brief. The issues raised in the case and rebuttal briefs regarding these unreported sales and how they should be evaluated in the context of a new shipper review are complex and multifaceted. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department finds that this case is extraordinarily complicated and is extending the time limit for the final results from 90 days to 150 days. Accordingly, the final results will now be due no later than April 5, 2012.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(I) of the Act.

Dated: January 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2236 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a

[1] Because the calculated final results signature date falls on Sunday, February 5, 2012, the signature date for the final results is moved to the next business day, February 6, 2012. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after February 2012, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request a Review: Not later than the last day of February 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period of review
Antidumping Duty Proceedings Period of Review	
Brazil:	
Frozen Warmwater Shrimp A–351–838	2/1/11–1/31/12
Stainless Steel Bar A–351–825	2/1/11–1/31/12
France:	
Uranium A–427–818	2/1/11–1/31/12
India:	
Certain Cut-To-Length Carbon-Quality Steel Plate A–533–817	2/1/11–1/31/12
Certain Preserved Mushrooms A–533–813	2/1/11–1/31/12
Frozen Warmwater Shrimp A–533–840	2/1/11–1/31/12
Stainless Steel Bar A–533–810	2/1/11–1/31/12
Indonesia:	
Certain Cut-To-Length Carbon-Quality Steel Plate A–560–805	2/1/11–1/31/12
Certain Preserved Mushrooms A–560–802	2/1/11–1/31/12
Italy: Stainless Steel Butt-Weld Pipe Fittings A–475–828	2/1/11–1/31/12
Japan:	
Carbon Steel Butt-Weld Pipe Fittings A–588–602	2/1/11–1/31/12
Stainless Steel Bar A–588–833	2/1/11–1/31/12
Malaysia: Stainless Steel Butt-Weld Pipe Fittings A–557–809	2/1/11–1/31/12
Philippines: Stainless Steel Butt-Weld Pipe Fittings A–565–801	2/1/11–1/31/12
Republic Of Korea: Certain Cut-To-Length Carbon-Quality Steel Plate A–580–836	2/1/11–1/31/12
Thailand: Frozen Warmwater Shrimp A–549–822	2/1/11–1/31/12
The People's Republic of China:	
Certain Preserved Mushrooms A–570–851	2/1/11–1/31/12
Drill Pipe A–570–965	8/18/10–1/31/12
Frozen Warmwater Shrimp A–570–893	2/1/11–1/31/12
Heavy Forged Hand Tools, With Or Without Handles A–570–803	2/1/11–1/31/12
Small Diameter Graphite Electrodes A–570–929	2/1/11–1/31/12
Uncovered Innerspring Units A–570–928	2/1/11–1/31/12
Socialist Republic of Vietnam: Frozen Warmwater Shrimp A–552–802	2/1/11–1/31/12
Countervailing Duty Proceedings	
India:	
Certain Cut-To-Length Carbon-Quality Steel Plate C–533–818	1/1/11–12/31/11
Prestessed Concrete Steel Wire Strand C–533–829	1/1/11–12/31/11
Indonesia:	
Certain Cut-To-Length Carbon-Quality Steel Plate C–560–806	1/1/11–12/31/11
Certain Hot-Rolled Carbon Steel Flat Products[2] C–560–813	1/1/11–12/31/11

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Republic of Korea: Certain Cut-To-Length Carbon-Quality Steel Plate C–580–837	1/11/11–12/31/11
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

[2] In the notice of opportunity to request administrative reviews that published on December 1, 2011 (76 FR 74773) the Department listed the period of review for case Certain Hot-Rolled Carbon Steel Flat Products from Indonesia (C–560–813) incorrectly. The correct period of review for this case is listed above.

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of February 2012. If the Department does not receive, by the last day of February 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 19, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2223 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Emily Halle or Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0176 or (202) 482–4261, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2011, the Department of Commerce (Department) initiated the administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC) covering the period of review, June 1, 2010, through May 31, 2011.[1] The current deadline for the preliminary results is March 1, 2012.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocations in Part and Deferral of Administrative Reviews,* 76 FR 45227 (July 28, 2011).

Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and to extend the 120-day period to 180 days.

The Department finds that it requires additional time to complete the preliminary results of the administrative review of chlorinated isos from the PRC. Specifically, the Department requires further time to select an appropriate surrogate country and analyze data sources for over forty factors of production. Therefore, because the Department finds that it is not practicable to complete the review within the original deadlines, the Department is extending the time period for completion of the preliminary results of this review from 245 days to 365 days. The revised deadline for the preliminary results of this administrative review is now no later than June 29, 2012.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2232 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation and Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request for a changed circumstances review (''CCR'') of C. P. Vietnam Corporation, the Department of Commerce (the ''Department'') is initiating a CCR of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam''). We have preliminarily concluded that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation, and, as a result, should be accorded the same treatment previously accorded to C. P. Vietnam Livestock Corporation with regard to the antidumping duty order on certain frozen warmwater shrimp from Vietnam. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Jerry Huang at (202) 482–4047, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on certain frozen warmwater shrimp from Vietnam on February 1, 2005.[1] C.P. Vietnam Livestock Co., Ltd. was granted separate rate status in the original investigation and the second administrative review.[2] In July 2008, during the fourth administrative review, the company converted from a limited liability company into a joint stock company, changing its name to C. P. Vietnam Livestock Corporation.[3] In September 2011, C. P. Vietnam Livestock Corporation changed its name to C. P. Vietnam Corporation, eliminating the word ''Livestock.'' On December 13, 2011, C. P. Vietnam Corporation requested that the Department conduct a CCR to confirm that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation, for purposes of determining antidumping duties due as a result of the *VN Shrimp Order*.

Scope of the Order[4]

The scope of the order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[5] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations (including dusted shrimp), which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005) (''*VN Shrimp Order*'').

[2] *See VN Shrimp Order; see also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Administrative Review,* 73 FR 52273 (September 9, 2008).

[3] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 47771 (August 9, 2010).

[4] *See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011).

[5] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; [6] (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10

The products covered by the order are currently classified under the following HTS subheadings: 0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the order is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act''), and

19 CFR 351.216, the Department will conduct a CCR upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by C. P. Vietnam Corporation supporting its claim that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation, demonstrates changed circumstances sufficient to warrant such a review.[7]

In accordance with the above-referenced regulation, the Department is initiating a CCR to determine whether C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation. In determining whether one company is the successor-in-interest to another, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base.[8] Although no single factor will necessarily provide a dispositive indication of succession, generally, the Department will consider one company to be a successor-in-interest to another company if its resulting operation is similar to that of its predecessor.[9] Thus, if the evidence demonstrates that with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor.[10]

In its December 13, 2011, submission, C. P. Vietnam Corporation provided information to demonstrate that it is the successor-in-interest to C. P. Vietnam Livestock Corporation. With respect to management prior to and following the name change, the submission indicates that there has been no change in management, and the management structure has been unaffected by the change in the company's name.[11] In addition, the submission indicates that the production facilities and equipment used by C. P. Vietnam Corporation and C. P. Vietnam Livestock Corporation are identical. Following the name change, C. P. Vietnam Corporation retained the same physical address and equipment as C. P. Vietnam Livestock Corporation.[12] Furthermore, C. P. Vietnam Corporation has continued to use all of the same raw shrimp and packing materials suppliers that C. P. Vietnam Livestock Corporation used prior to the name change.[13] Finally, C. P. Vietnam Corporation states that it has maintained the same U.S. customer base as C. P. Vietnam Livestock Corporation, listing the names of its U.S. customers.[14] Given the continuity noted above, we have preliminarily determined that no material change has occurred with respect to C. P. Vietnam Livestock Corporation's management, production facilities, suppliers, or customer base as a result of the name change to C. P. Vietnam Corporation.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a CCR concurrently.[15] We have determined that expedition of this CCR is warranted because we have the information necessary to make a preliminary finding already on the record.[16] In this case, we preliminarily find that C. P. Vietnam Corporation is the successor-in-interest to C. P. Vietnam Livestock Corporation and, as such, is entitled to C. P. Vietnam Livestock Corporation's cash-deposit rate with respect to entries of subject merchandise.

Should our final results remain the same as these preliminary results, effective the date of publication of the final results, we will instruct U.S. Customs and Border Protection to assign entries of merchandise produced or exported by C. P. Vietnam Corporation the antidumping duty cash-deposit rate applicable to C. P. Vietnam Livestock Corporation.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice, in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs and/or written comments no later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 5 days after the case briefs. Any hearing, if requested, will normally be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). Parties who submit case briefs or rebuttal briefs in this CCR are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent

[6] The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the People's Republic of China case.
product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

[7] *See* 19 CFR 351.216(d); *see also Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod From Mexico,* 75 FR 67685 (November 3, 2010).

[8] *See Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (February 14, 1994).

[9] *See Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992).

[10] *Id.; Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (January 2, 2002); *see also Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688 (June 18, 2010) (the Department found successorship where the company changed its ownership structure, but made only minor changes to its operations, management, supplier relationships, and customer base).

[11] *See* Attachment 4 of CPV's December 13, 2011, submission.

[12] *See* Attachments 1 and 5 of CPV's December 13, 2011, submission.

[13] *See* Attachment 6 of CPV's December 13, 2011, submission.

[14] *See* CPV's December 13, 2011, submission at 7.

[15] *See* 19 CFR 351.221(c)(3)(ii); *see also Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit From Thailand,* 69 FR 30878 (June 1, 2004).

[16] *See Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed Circumstances Review,* 71 FR 14679 (March 23, 2006).

with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this initiation and preliminary results notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: January 25, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–2233 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* (February 1, 2012).

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–864	731–TA–865	China	Pure Magnesium In Granular Form (2nd Review)	Jennifer Moats (202) 482–5047.
A–588–838	731–TA–739	Japan	Clad Steel Plate (3rd Review)	David Goldberger (202) 482–4136.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline,

the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: January 17, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2224 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) for the period January 1, 2010, through December 31, 2010, with respect to all companies. This rescission is based on the timely withdrawal requests by all the parties that requested a review.

DATES: Effective Date: February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1396.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2011, the Department published a notice of opportunity to request an administrative review of the countervailing duty order on OTR Tires from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 54735 (September 2, 2011). Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd. and Guizhou Tyre Import and Export Corporation (collectively, GTC), and Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC), timely requested an administrative review of the countervailing duty order on September 27 and 30, 2011, respectively. Also on September 30, 2011, Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC. (collectively, Bridgestone), a domestic producer of subject merchandise and interested party in the original investigation, timely requested a review of seventy-three OTR Tires producers/exporters from the PRC, including GTC and TUTRIC. In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), the Department initiated an administrative review of the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 67133 (October 31, 2011).

Due to the large number of OTR Tires producers/exporters for which we received a request for review, the Department selected, in accordance with section 777A(e)(2) of the Act, the two companies that exported the largest volume of subject merchandise during the POR, GTC and Xuzhou Xugong Tyres Co., Ltd. (Xugong), as mandatory respondents. *See* Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Administrative Review of the Countervailing Duty Order on Certain New Pneumatic Off-the-road Tires from the People's Republic of China: Respondent Selection,'' dated December 13, 2011. The Department issued a countervailing duty questionnaire to the government of the PRC and the two mandatory respondents on December 13, 2011.

Rescission of Countervailing Duty Administrative Review

On January 6, 2011, Bridgestone timely withdrew its review request with regard to all companies identified in its review request. Subsequently, on January 13, 2011, both GTC and TUTRIC timely withdrew their requests for review. The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. *See* 19 CFR 351.213(d)(1). Since all parties timely withdrew their requests for review within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1), the Department is fully rescinding this administrative review of the countervailing duty order.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For all companies identified in the requests for review, liquidation was suspended following the initiation of the administrative review. As appropriate, countervailing duties will be assessed at rates equal to the cash deposit or bonding rate of the estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), 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

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: January 25, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–2217 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Individual Fishing Quota Cost Recovery Program Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

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

DATES: Written comments must be submitted on or before April 2, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection. The Magnuson Stevens Fishery Conservation and Management Act requires the Secretary of Commerce conduct a Cost Recovery Program to cover the management and enforcement costs of the Alaska Individual Fishing Quota (IFQ) Program. This Cost Recovery Program requires IFQ permit holders to submit information about the value of landings of IFQ species and to calculate and submit fees. The Cost Recovery Program requires Registered Buyers to submit information about the value and volume of landings of IFQ species.

II. Method of Collection

Report and payment may be made online or with paper fee submission form (mailed with payment).

III. Data

OMB Control Number: 0648–0398.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 2 hours to complete IFQ Permit Holder Fee Submission Form; 2 hours to complete IFQ Registered Buyer Ex-vessel Value and Volume Report; and 2 hours to complete the appeal process.

Estimated Total Annual Burden Hours: 5,894.

Estimated Total Annual Cost to Public: $2,919 in recordkeeping/reporting costs.

IV. Request for Comments

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

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 26, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–2062 Filed 1–31–12; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, February 8, 2012, 10:30 a.m.–12 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: (888) 946–4716 conference call access code number 8509983. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 866–454–9172. The end replay date is March 7, 2012, 10:59 PM (CT). This meeting will also be broadcast live on the web. Members of the public may view proceedings by visiting *http://www.nationalservice.gov/about/newsroom/live.asp*

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Discussion, Deliberation and Official Actions
V. Public Comments

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *esamose@cns.gov* subject line: FEBRUARY 2012 CNCS BOARD MEETING by 12 noon on Monday February 6th. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green

at *igreen@cns.gov* or 202–606–6861 by 5 p.m., February 3, 2012.

CONTACT PERSON FOR MORE INFORMATION: Emily Samose, Strategic Advisor for Board Engagement, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. Phone: (202) 606–7564. Fax: (202) 606–3460. TTY: (800) 833–3722. Email: *esamose@cns.gov.*

Dated: January 30, 2012.

Valerie Green,

General Counsel.

[FR Doc. 2012–2365 Filed 1–30–12; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001, at 10:00 a.m. on Tuesday, March 6, 2012. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street Northwest, Washington, DC 20442–0001, telephone (202) 761–1448.

Dated: January 26, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–2054 Filed 1–31–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

List of Correspondence

AGENCY: Office of Special Education and Rehabilitative Services; Department of Education.

ACTION: List of Correspondence from July 1, 2011, through September 30, 2011.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA. This list and the letters or other Departmental documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *http://www2.ed.gov/policy/speced/guid/idea/index.html.*

FOR FURTHER INFORMATION CONTACT: Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7468.

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

Individuals with disabilities can obtain a copy of this list and the letters or other Departmental documents described in this list in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7468.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from July 1, 2011, through September 30, 2011. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, and may also include letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

Part B—Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Least Restrictive Environment

○ Letter dated September 30, 2011, to Conference of Educational Administrators of Schools and Programs for the Deaf, Inc., President Ronald Stern, clarifying that the data reporting requirements for State Performance Plan/Annual Performance Report (SPP/APR) indicators regarding least restrictive environment and natural environments do not mandate particular placements for infants and toddlers or children with disabilities.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

○ Letter dated September 26, 2011, to Commonwealth of Virginia Department of Education Special Education and Student Services, Assistant Superintendent, H. Douglas Cox, clarifying when it would be permissible for a student's individualized education program (IEP) to include a postsecondary goal or goals combining the areas of training and education.

Section 615—Procedural Safeguards

Topic Addressed: Surrogate Parents

○ Letter dated September 6, 2011, to Board of Childcare, Community Education Director, Ronald Caplan, clarifying when a public agency is required to appoint a surrogate parent for a child who is a ward of the State.

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: *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 the site.

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

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: January 26, 2012.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2012–2112 Filed 1–31–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CW–022]

Decision and Order Granting a Waiver to LG From the Department of Energy Clothes Washer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CW–022) that grants to LG Electronics U.S.A., Inc. (LG) a waiver from the DOE clothes washer test procedure for determining the energy consumption of clothes washers for the basic models set forth in its petition for waiver. Under today's decision and order, LG shall be required to test and rate these clothes washers using an alternate test procedure that takes their large capacities into account when measuring energy consumption.

DATES: This Decision and Order is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9611, Email: *mailto:Michael.Raymond@ee.doe.gov.* Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796, Email: *mailto:mailto:Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(l), 430.401(f)(4)), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants LG a waiver from the applicable clothes washer test procedure in 10 CFR part 430, subpart B, appendix J1 for certain basic models of clothes washers with capacities greater than 3.8 cubic feet, provided that LG tests and rates such products using the alternate test procedure described in this notice. Today's decision prohibits LG from making representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the decision and order below, and the representations fairly disclose the test results. Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. 42 U.S.C. 6293(c).

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics U.S.A., Inc. (Case No. CW–022)

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the clothes washers that are the focus of this notice. Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). Part C of Title III provides for a similar energy efficiency program titled ''Certain Industrial Equipment,'' which includes commercial clothes washers and other types of commercial equipment.[1] (42 U.S.C. 6311–6317) The test procedure for automatic and semi-automatic clothes washers (both residential and commercial) is contained in 10 CFR part 430, subpart B, appendix J1. (See 42 U.S.C. 6314(a)(8), requiring that the test procedure for commercial clothes washers be the same as the test procedure established for residential clothes washers.)

The regulations set forth in 10 CFR parts 430.27 and 431.401 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered products and equipment. The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) will grant a waiver if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(l)), 431.401(f)(4). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii), 430.401(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l), 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m) or 430.401(g), as appropriate.

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR 430.27(g), 430.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. DOE may extend an interim waiver for an additional 180 days. 10 CFR 430.27(h), 430.401(e)(4).

On December 23, 2010, DOE issued enforcement guidance for large-capacity clothes washers. This guidance can be found on DOE's Web site at *http://energy.gov/sites/prod/files/gcprod/documents/LargeCapacityRCW_guidance_122210.pdf.*

II. LG's Petition for Waiver: Assertions and Determinations

On October 31, 2011, LG submitted the instant petition for waiver and application for interim waiver (petition) from the test procedure applicable to automatic and semi-automatic clothes washers set forth in 10 CFR part 430, subpart B, appendix J1. LG requested a waiver to test specified basic models with basket volumes greater than 3.8 cubic feet on the basis of the test procedures contained in 10 CFR part 430, Subpart B, Appendix J1, with a revised Table 5.1 which extends the range of container volumes beyond 3.8 cubic feet. LG's October 31, 2011 petition and DOE's grant of interim waiver were published in the **Federal Register** on November 16, 2011. 76 FR 70999. DOE received no comments on the LG petition.

LG's petition seeks a waiver from the DOE test procedure because the mass of

[1] For editorial reasons, upon codification in the U.S. Code, Parts B and C were re-designated Parts A and A–1, respectively.

the test load used in the procedure, which is based on the basket volume of the test unit, is currently not defined for basket sizes greater than 3.8 cubic feet. The basic models specified in LG's February 2011 petition have capacities larger than 3.8 cubic feet. In addition, if the current maximum test load mass is used to test these products, the tested energy use would be less than the actual energy usage and could evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Table 5.1 of Appendix J1 defines the test load sizes used in the test procedure as linear functions of the basket volume. LG requests that DOE grant a waiver for testing and rating based on a revised Table 5.1, the same table as set forth in the waiver granted to LG on April 19, 2011 (76 FR 21879). The table is identical to the Table 5.1 found in DOE's clothes washer test procedure Notice of Proposed Rulemaking (NOPR). 75 FR 57556 (Sept. 21, 1010).

DOE has determined that it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Previously, DOE granted a test procedure waiver to Whirlpool for specified Whirlpool's clothes washer models with container capacities greater than 3.8 cubic feet. 75 FR 69653 (Nov. 15, 2010). This notice contained an alternate test procedure, which extended the linear relationship between maximum test load size and clothes washer container volume in Table 5.1 to include a maximum test load size of 15.4 pounds (lbs) for clothes washer container volumes of 3.8 to 3.9 cubic feet. This extended Table 5.1 was set forth in DOE's September 2010 NOPR. On December 10, 2010, DOE granted a similar waiver to General Electric Company (GE), which used the same alternate test procedure. 75 FR 76968. DOE has also granted waivers to Electrolux (76 FR 11440 (Mar. 2, 2011)), LG (76 FR 11233 (Mar. 1, 2011)); (76 FR 21879 (Apr. 19, 2011)); (76 FR 79666 (Dec. 22, 2011)) and Samsung (76 FR 13169 (Mar. 10, 2011)); 76 FR 50207 (Aug. 12, 2011)).

DOE notes that its supplemental proposed rule (*http://www.eere.energy.gov/buildings/appliance_standards/residential/pdfs/rcw_tp_snopr.pdf*) to amend the test procedures for clothes washers makes slight adjustments to Table 5.1 to correct for rounding errors. (76 FR 49238, Aug. 9, 2011). The alternate test procedure set forth in this decision and order adopts this updated table.

III. Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the LG petition for waiver. The FTC staff did not have any objections to granting a waiver to LG.

IV. Conclusion

After careful consideration of all the material that was submitted by LG, the waivers granted to Whirlpool, GE, Samsung and Electrolux, as well as previously to LG, the clothes washer test procedure rulemaking, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by the LG Electronics America, Inc. (Case No. CW–022) is hereby granted as set forth in the paragraphs in this section.

(2) LG shall be required to test and rate the following LG models according to the alternate test procedure set forth in paragraph IV(3).

Residential model groups:

Model	Brand
WM9000H**	LG
WM8500H**	LG
WM3470H***	LG

Commercial model groups:

Model	Brand
CW2079C***	LG
GCW1069**	LG

(3) LG shall be required to test the products listed in paragraph IV(2) according to the test procedures for clothes washers prescribed by DOE at 10 CFR part 430, appendix J1, except that the expanded Table 5.1 of this section shall be substituted for Table 5.1 of appendix J1.

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥	liter ≥	lb	kg	lb	kg	lb	kg
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
1.90–2.00	53.8–56.6	3.00	1.36	8.00	3.63	5.50	2.49
2.00–2.10	56.6–59.5	3.00	1.36	8.40	3.81	5.70	2.59
2.10–2.20	59.5–62.3	3.00	1.36	8.80	3.99	5.90	2.68
2.20–2.30	62.3–65.1	3.00	1.36	9.20	4.17	6.10	2.77
2.30–2.40	65.1–68.0	3.00	1.36	9.60	4.35	6.30	2.86
2.40–2.50	68.0–70.8	3.00	1.36	10.00	4.54	6.50	2.95
2.50–2.60	70.8–73.6	3.00	1.36	10.50	4.76	6.75	3.06
2.60–2.70	73.6–76.5	3.00	1.36	10.90	4.94	6.95	3.15
2.70–2.80	76.5–79.3	3.00	1.36	11.30	5.13	7.15	3.24
2.80–2.90	79.3–82.1	3.00	1.36	11.70	5.31	7.35	3.33
2.90–3.00	82.1–85.0	3.00	1.36	12.10	5.49	7.55	3.42
3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61

TABLE 5.1—TEST LOAD SIZES—Continued

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥	liter ≥	lb	kg	lb	kg	lb	kg
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17
3.80–3.90	107.6–110.4	3.00	1.36	15.80	7.16	9.40	4.26
3.90–4.00	110.4–113.3	3.00	1.36	16.20	7.34	9.60	4.35
4.00–4.10	113.3–116.1	3.00	1.36	16.60	7.53	9.80	4.45
4.10–4.20	116.1–118.9	3.00	1.36	17.00	7.72	10.00	4.54
4.20–4.30	118.9–121.8	3.00	1.36	17.40	7.90	10.20	4.63
4.30–4.40	121.8–124.6	3.00	1.36	17.80	8.09	10.40	4.72
4.40–4.50	124.6–127.4	3.00	1.36	18.20	8.27	10.60	4.82
4.50–4.60	127.4–130.3	3.00	1.36	18.70	8.46	10.85	4.91
4.60–4.70	130.3–133.1	3.00	1.36	19.10	8.65	11.05	5.00
4.70–4.80	133.1–135.9	3.00	1.36	19.50	8.83	11.25	5.10
4.80–4.90	135.9–138.8	3.00	1.36	19.90	9.02	11.45	5.19
4.90–5.00	138.8–141.6	3.00	1.36	20.30	9.20	11.65	5.28
5.00–5.10	141.6–144.4	3.00	1.36	20.70	9.39	11.85	5.38
5.10–5.20	144.4–147.2	3.00	1.36	21.10	9.58	12.05	5.47
5.20–5.30	147.2–150.1	3.00	1.36	21.50	9.76	12.25	5.56
5.30–5.40	150.1–152.9	3.00	1.36	21.90	9.95	12.45	5.65
5.40–5.50	152.9–155.7	3.00	1.36	22.30	10.13	12.65	5.75
5.50–5.60	155.7–158.6	3.00	1.36	22.80	10.32	12.90	5.84
5.60–5.70	158.6–161.4	3.00	1.36	23.20	10.51	13.10	5.93
5.70–5.80	161.4–164.2	3.00	1.36	23.60	10.69	13.30	6.03
5.80–5.90	164.2–167.1	3.00	1.36	24.00	10.88	13.50	6.12
5.90–6.00	167.1–169.9	3.00	1.36	24.40	11.06	13.70	6.21

Notes: (1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are ±0.10 lbs (0.05 kg).

(4) Representations. LG may make representations about the energy use of its clothes washer products for compliance, marketing, or other purposes only to the extent that such products have been tested in accordance with the provisions outlined in this section and such representations fairly disclose the results of such testing.

(5) This waiver shall remain in effect consistent with the provisions of 10 CFR 430.27(m) and 430.401(g).

(6) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(7) This waiver applies only to those basic models set out in LG's October 31, 2011 petition for waiver and listed in section IV(2) of this section. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–2177 Filed 1–31–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. VHE–001]

Publication of the Petition for Waiver From Empire Comfort Systems From the Department of Energy Vented Home Heating Equipment Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of re-opening of public comment period.

SUMMARY: On November 3, 2011, DOE published the Empire Comfort Systems Inc. (Empire) petition for waiver from the vented home heating equipment test procedure. This document announces that the period for submitting comments on the Empire petition for waiver is re-opened until March 2, 2012.

DATES: The comment period for the Empire petition for waiver, published on November 3, 2011 (76 FR 68180), is reopened. DOE will accept comments, data, and information regarding the petition for waiver received no later than March 2, 2012.

ADDRESSES: Any comments submitted must identify the Empire Comfort Systems Inc. petition for waiver, and provide case number VHE–001. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. VHE–001] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy,

Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. Email: *Michael.Raymond@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: On November 3, 2011, DOE published the Empire petition for waiver from the vented home heating equipment test procedure in the **Federal Register** (76 FR 68180). The notice provided for the submission of comments by December 5, 2011. To provide all manufacturers of domestically marketed units of the same product type additional time to submit comments subsequent to notification that the Petition for Waiver was published in the **Federal Register**, DOE has determined that re-opening of the public comment period is appropriate and is hereby re-opening the comment period. DOE will consider any comments received by March 2, 2012 and deems any comments received between February 1, 2012 and March 2, 2012 to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on January 25, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–2181 Filed 1–31–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of pre-solicitation public meeting, request for comment.

SUMMARY: The Wind and Water Power Program (WWPP) within the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy intends to release a Funding Opportunity Announcement, tentatively entitled ''U.S. Offshore Wind: Advanced Technology Demonstration Projects''. WWPP is planning a pre-solicitation public meeting in order to provide notice in advance of release of the FOA and to afford prospective applicants an opportunity to comment on the planned FOA, which is summarized in this notice.

DATES: DOE will hold a public meeting on Tuesday, February 7, 2012 from 9:30 a.m. to 12:30 p.m. EST. Written comments will be accepted through February 14, 2012.

ADDRESSES: The public meeting will be held at the L'Enfant Plaza Hotel, 480 L'Enfant Plaza Southwest, Washington, DC.

You may submit comments, identified by any of the following methods:

- *Email: oswdemo@go.doe.gov.* Include ''U.S. Offshore Wind: Advanced Technology Demonstration Projects'' in the subject line of the message.
- *Postal Mail:* Michael Hahn, Wind and Water Power Program, 1617 Cole Blvd. Golden, CO 80401. Please submit one signed paper original. Due to the potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages respondents to submit comments electronically to ensure timely receipt.
- *Hand Delivery/Courier:* Michael Hahn, Wind and Water Power Program, 1617 Cole Blvd. Golden, CO 80401.

Minutes and video recorded proceedings of the public meeting will be made available for public review on the DOE Office of Energy Efficiency and Renewable Energy (EERE) Wind Program Web site at: *wind.energy.gov.*

FOR FURTHER INFORMATION CONTACT: Chris Hart, Offshore Wind Manager, EERE, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 374—3164. Email: *chris.hart@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

One year ago, DOE, in partnership with the Department of Interior (DOI), released the National Offshore Wind Strategy. The Strategy addresses two critical objectives:

- Reduce the cost of energy through technology development to ensure competitiveness with other electrical generation sources, and
- Reduce the deployment timelines and uncertainties limiting U.S. offshore wind project development.

To realize these objectives, the DOE Wind and Water Power Program has developed a comprehensive approach and investment strategy to mobilize the offshore wind industry in the categories below:

- Technology Research and Development that will reduce cost of offshore wind energy through innovation and testing (19 offshore wind technology development projects to receive $26.5 million, announced September 2011);
- Research Addressing Market Barriers in order to facilitate deployment and reduce technical challenges facing the entire industry (22 market barrier removal projects to receive $16.5 million, announced September 2011);
- Advanced Technology Demonstration Projects that further the industry knowledge base for the benefit of all stakeholders (the subject of this meeting).

These initiatives support the demonstration and development of advanced offshore wind energy technologies in various water depths (freshwater, deepwater, shallow water, and transitional depth installations) and

geographic locations (Atlantic, Pacific, Great Lakes, and Gulf of Mexico).

Pre-Solicitation Public Meeting

During the pre-solicitation public meeting, DOE will provide information on and accept comments regarding the planned Funding Opportunity Announcement (FOA), DE–FOA–0000410 including specifically the topical areas identified here:

- Types of demonstrations;
- Proposed timeframe and funding considerations;
- Proposed scope of efforts potentially covered by DOE funding;
- Anticipated types of data collection and use;
- Technology innovation and the ability to scale project solutions in order to achieve cost competitiveness.

The public meeting will include an introductory session that provides contextual background to the proposed FOA, including the National Offshore Wind Strategy, followed by an open question and answer forum. A complete agenda will be available at the meeting and in advance to pre-registrants.

Public Participation

The event is open to the public based upon space availability. DOE will also accept public comments as described above for purposes of developing the FOA, but will not respond individually to comments received.

Registration

Registration prior to the public meeting is not mandatory but is preferred to facilitate event planning. There is no cost to register. To register, please contact Stacey Young via email at *Stacey_Young@sra.com* or by telephone at 703–284–1397.

Information on Services for Individuals with Disabilities

Individuals requiring special accommodations at the meeting, please contact Stacey Young no later than the close of business on February 3, 2012.

Scope of Proposed FOA

DOE seeks to provide support for offshore wind advanced technology demonstration projects through collaborative partnerships. The primary goal of the demonstration projects is to expedite the development and deployment of innovative offshore wind energy systems with a strong potential for lowering the levelized cost of energy (LCOE) towards DOE's 2020 goal of 10 ¢/kWh.

Secondary goals are numerous and include but are not limited to:

1. Establishing world-class demonstration and test capabilities in conjunction with commercial developments to support validation of innovative technology, installation methods, and operation and maintenance strategies,
2. Establishing and validating the infrastructure required for offshore wind plant installation and operation,
3. Evaluating current siting and permitting processes and identifying opportunities for improvement,
4. Supporting development of a world-leading domestic offshore wind industry utilizing innovative technologies adapted to the North American environment and operating parameters, and
5. Familiarizing the public with the concept of offshore wind.

Given these goals, DOE seeks technology demonstration projects that combine innovation with developing pathways for substantial cost reduction opportunities. DOE will review all compliant applications, including ones with high risk concepts.

The final FOA will be focused solely on offshore wind energy projects. Applications for marine and hydrokinetic (MHK) energy sources, whether stand-alone or combined with offshore wind turbine support structures, will not be accepted.

DOE may fund specific technical research, engineering, and planning activities that demonstrably enhance the timely execution of innovative offshore wind energy projects and ultimately lead to project installation within the desired timeline. DOE funds may also support capital expenditures within these projects for materials or equipment that are clearly necessary to achieve the technology demonstration benefits of the project. Projects will be considered from all geographical regions, water depths, and technology areas including innovative technologies. The major goal is to make the levelized cost of energy of offshore wind competitive with conventional electricity. Applicants are encouraged to convey how project success will advance industry expertise in engineering, facility design, installation, and performance evaluation, and will help improve efficiencies in key Federal, State, or local siting, permitting, and environmental compliance processes such as the National Environmental Policy Act.

This FOA is covered by a special protected data statute. The provisions of the statute provide for the protection from public disclosure, for a period of up to 5 years from the development of the information, of data that would be trade secret, or commercial or financial information that is privileged or confidential, if the information had been obtained from a non-Federal party. Generally, the provision entitled, Rights in Data—Programs Covered Under Special Protected Data Statutes, (10 CFR 600 Appendix A to Subpart D) would apply to an award made under this announcement. This provision will identify data or categories of data first produced in the performance of the award that will be made available to the public, notwithstanding the statutory authority to withhold data from public dissemination, and will also identify data that will be recognized by the parties as protected data. It should be understood that all performance, engineering, operations and cost data first produced under this funding opportunity must be delivered to DOE and will be made available to the public to further the existing knowledge base for the benefit of the wind industry.

DOE and other Federal Agencies may be available to provide non-monetary assistance in supporting the project, such as utilization of Research Leases in Federal Waters. Applicants are encouraged to indicate how DOE can assist in this effort.

NO APPLICATIONS WILL BE ACCEPTED IN RESPONSE TO THIS NOTICE. Relevant portions of the draft FOA will be available on February 3, 2012 on the DOE Office of Energy Efficiency and Renewable Energy (EERE) Wind Program Web site at: *wind.energy.gov/financial_opportunities.html.* The final FOA will be available on or about February 29, 2012 through the EERE eXCHANGE Web site at *https://eere-exchange.energy.gov.* WWPP intends to conduct an informational Webinar after the final FOA is released.

Disclaimer

This Notice is issued so that interested parties are aware of and can comment on DOE's intention to issue this FOA. DOE reserves the right to change the requirements of any proposed FOA, issue a FOA involving only a portion of the elements listed, or not issue a FOA at all. Any of the information contained in this Notice is subject to change. Any amounts proposed for funding are subject to the availability of Congressional appropriations.

Issued in Washington, DC on January 27, 2012.

Jose Zayas,

Program Manager, Wind and Water Power Program, Energy Efficiency and Renewable Energy, Department of Energy.

[FR Doc. 2012–2264 Filed 1–30–12; 11:15 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3260–002.
Applicants: Granite Ridge Energy, LLC.
Description: Additional Supplement to Updated Market Power Analysis of Granite Ridge Energy, LLC.
Filed Date: 1/23/12.
Accession Number: 20120123–5303.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER11–3414–002.
Applicants: Blue Canyon Windpower VI LLC.
Description: Notice of Non-Material Change in Status of Blue Canyon Windpower VI LLC.
Filed Date: 1/23/12.
Accession Number: 20120123–5306.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–275–002.
Applicants: Dynegy Oakland, LLC.
Description: Request for Deferral of Commission Action to be effective 12/31/9998.
Filed Date: 1/23/12.
Accession Number: 20120123–5268.
Comments Due: 5 p.m. ET 2/13/12.
Docket Numbers: ER12–539–001.
Applicants: Atlantic Power Energy Services (US) LLC.
Description: Notice of Succession to be effective 1/17/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5099.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–540–001.
Applicants: APDC, Inc.
Description: Notice of Succession to be effective 1/17/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5100.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–664–001.
Applicants: PacifiCorp.
Description: UMPA ARTSOA Rev 2 Errata Filing to be effective 2/21/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5153.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–795–001.
Applicants: High Liner Foods Incorporated.
Description: Amended MBR Filing to be effective 2/1/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5097.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–857–001.
Applicants: Pacific Gas and Electric Company.
Description: Errata to the 3rd Amendment to the PWRPA IA and WDT SA to be effective 1/23/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5000.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–859–000.
Applicants: ISO New England Inc.
Description: Notice of Effective Date for ER09–1051–003 to be effective 2/6/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5044.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–860–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Transmission De-Rate Changes to be effective 3/12/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5074.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–861–000.
Applicants: Solios Power Mid-Atlantic Virtual LLC.
Description: Solios Power Mid-Atlantic Virtual LLC MBR ETariff and Transmittal to be effective 1/23/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5081.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–862–000.
Applicants: Power Supply Services LLC.
Description: Application for Market Based Rate Authority to be effective 3/23/2012.
Filed Date: 1/23/12.
Accession Number: 20120123–5094.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–863–000.
Applicants: PJM Interconnection, L.L.C.
Description: 4th Quarter Updates to PJM Operating Agreement and RAA Membership List to be effective 12/31/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5147.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–864–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue No. X2–076; First Revised Service Agreements Nos. 3154 and 3155 to be effective 12/22/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5176.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–865–000.
Applicants: Northern Indiana Public Service Company.
Description: Supplement to Wabash Valley Power Association Interconnection Agreement to be effective 12/28/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5190.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–866–000.
Applicants: Southwest Power Pool, Inc.
Description: 1863R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5192.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–867–000.
Applicants: Southwest Power Pool, Inc.
Description: 1885R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5193.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–868–000.
Applicants: Southwest Power Pool, Inc.
Description: 1891R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5195.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–869–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Queue # X1–038 ? Original Service Agreement No. 3179 to be effective 12/22/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5197.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–870–000.
Applicants: Southwest Power Pool, Inc.
Description: 1892R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5198.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–871–000.
Applicants: Southwest Power Pool, Inc.
Description: 1893R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5202.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–872–000.
Applicants: Southwest Power Pool, Inc.
Description: 1895R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/23/12.
Accession Number: 20120123–5207.
Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–873–000.

Applicants: Southwest Power Pool, Inc.

Description: 1978R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/23/12.

Accession Number: 20120123–5213.

Comments Due: 5 p.m. ET 2/13/12.

Docket Numbers: ER12–874–000.

Applicants: Southwest Power Pool, Inc.

Description: 1894R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/23/12.

Accession Number: 20120123–5216.

Comments Due: 5 p.m. ET 2/13/12.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA11–4–000.

Applicants: Pacific Gas and Electric Company.

Description: Quarterly Land Acquisition Report of Pacific Gas and Electric Company.

Filed Date: 1/23/12.

Accession Number: 20120123–5304.

Comments Due: 5 p.m. ET 2/13/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF06–104–001.

Applicants: Packaging Corporation of America.

Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of Packaging Corporation of America.

Filed Date: 1/17/12.

Accession Number: 20120117–5089.

Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2117 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–317–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Volume No. 2—Point Changes CT Natural & Berkshire Gas to be effective 12/14/2011.

Filed Date: 1/17/12.

Accession Number: 20120117–5211.

Comments Due: 5 p.m. ET 1/30/12.

Docket Numbers: RP12–318–000.

Applicants: Texas Eastern Transmission, LP.

Description: Modification to FTS–5 Service Agreement to be effective 2/19/2012 under RP12–318 Filing Type: 570.

Filed Date: 1/19/12.

Accession Number: 20120119–5105.

Comments Due: 5 p.m. ET 1/31/12.

Docket Numbers: RP12–319–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Request for Limited Waiver for Capacity Release Program—Execution of Agreements or Amendments of Wyoming Interstate Company, L.L.C.

Filed Date: 1/19/12.

Accession Number: 20120119–5152.

Comments Due: 5 p.m. ET 1/31/12.

Docket Numbers: RP12–320–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: 2012 TW Change to Form of Service Agreement Filing, to be effective 2/21/2012.

Filed Date: 1/19/12.

Accession Number: 20120119–5188.

Comments Due: 5 p.m. ET 1/31/12.

Docket Numbers: RP12–321–000.

Applicants: Colorado Interstate Gas Company LLC.

Description: Totem ADIQ Curve Update to be effective 2/20/2012.

Filed Date: 1/19/12.

Accession Number: 20120119–5236.

Comments Due: 5 p.m. ET 1/31/12.

Docket Numbers: RP12–322–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Cost and Revenue Study in compliance with CP07–398–000 *et al.* to be effective N/A.

Filed Date: 1/20/12.

Accession Number: 20120120–5025.

Comments Due: 5 p.m. ET 2/1/12.

Docket Numbers: RP12–323–000.

Applicants: TWP Pipeline LLC.

Description: Negotiated Rate Compliance Filing to be effective 5/24/2011.

Filed Date: 1/23/12.

Accession Number: 20120123–5096.

Comments Due: 5 p.m. ET 2/6/12.

Docket Numbers: RP12–324–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: EDF Trading—Negotiated Rate to be effective 1/23/2012.

Filed Date: 1/23/12.

Accession Number: 20120123–5265.

Comments Due: 5 p.m. ET 2/6/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2361–001.

Applicants: Black Marlin Pipeline Company.

Description: NAESB v 1.9-Fourth Compliance Filing to be effective 11/1/2010.

Filed Date: 1/20/12.

Accession Number: 20120120–5035.

Comments Due: 5 p.m. ET 2/1/12.

Docket Numbers: RP11–2449–002.

Applicants: Portland Natural Gas Transmission System.

Description: Compliance to RP11–2449–001 to be effective N/A.

Filed Date: 1/20/12.

Accession Number: 20120120–5043.

Comments Due: 5 p.m. ET 2/1/12.

Docket Numbers: RP12–318–001.

Applicants: Texas Eastern Transmission, LP.

Description: Amendment to FTS–5 Service Agreement Modification Filing to be effective 2/19/2012.

Filed Date: 1/20/12.

Accession Number: 20120120–5017.

Comments Due: 5 p.m. ET 2/1/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2154 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–325–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Auction Procedures Filing to be effective 2/25/2012.

Filed Date: 1/25/12.

Accession Number: 20120125–5014.

Comments Due: 5 p.m. ET 2/6/12.

Docket Numbers: RP12–326–000.

Applicants: Societe Generale Energy Corporation.

Description: Request of Societe Generale Energy Corp. for Temporary Waivers, Expedited Consideration and Shortened Notice Period.

Filed Date: 1/24/12.

Accession Number: 20120124–5206.

Comments Due: 5 p.m. ET 2/6/12.

Docket Numbers: CP10–194–000.

Applicants: Central New York Oil and Gas Company.

Description: Updated Market Power Study.

Filed Date: 3/1/11.

Accession Number: 20110301–5233.

Comment Date: 5p.m. ET 1/31/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–2155 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2881–003; ER10–2882–003; ER10–2883–003; ER10–2884–003; ER10–2885–003; ER10–2641–003; ER10–2663–003; ER10–2886–003.

Applicants: Alabama Power Company, Southern Power Company, Mississippi Power Company, Georgia Power Company, Gulf Power Company, Oleander Power Project, Limited Partnership, Southern Company—Florida LLC, Southern Turner Cimarron I, LLC.

Description: Southern Company Services, Inc. Change in Status Report.

Filed Date: 1/25/12.

Accession Number: 20120125–5155.

Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–232–001.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.19a(b): 2012–1–25_NSPW-DPC_Refund Report_314 to be effective N/A.

Filed Date: 1/25/12.

Accession Number: 20120125–5074.

Comments Due: 5 p.m. ET 2/15/12.

Docket Numbers: ER12–875–000.

Applicants: Employers' Energy Alliance of Pennsylvania, Inc.

Description: Baseline Tariff Filing to be effective 1/24/2012.

Filed Date: 1/24/12.

Accession Number: 20120124–5001.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–877–000.

Applicants: Southwest Power Pool, Inc.

Description: Amendment to Attachment P—Transmission Service Timing Requirements to be effective 3/25/2012.

Filed Date: 1/24/12.

Accession Number: 20120124–5130.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–878–000.

Applicants: Southwest Power Pool, Inc.

Description: 1896R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/24/12.

Accession Number: 20120124–5135.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–879–000.

Applicants: Southwest Power Pool, Inc.

Description: 1975R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/24/12.

Accession Number: 20120124–5139.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–880–000.

Applicants: Southwest Power Pool, Inc.

Description: 2045R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/24/12.

Accession Number: 20120124–5142.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–881–000.

Applicants: Southwest Power Pool, Inc.

Description: 2066R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.

Filed Date: 1/24/12.

Accession Number: 20120124–5146.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–882–000.

Applicants: Dominion Energy New England, LLC.

Description: Compliance Filing—Name Change and Designation of Filer to be effective 1/19/2012.

Filed Date: 1/24/12.

Accession Number: 20120124–5174.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–883–000.

Applicants: Fairless Energy, LLC.

Description: Compliance Filing—Fairless as Designated Filer for 11 Cos. to be effective 1/24/2012.

Filed Date: 1/24/12.

Accession Number: 20120124–5189.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–884–000.

Applicants: Dominion Energy Marketing, Inc.

Description: Compliance Filing—Designation of Filer to be effective 1/24/2012.

Filed Date: 1/24/12.

Accession Number: 20120124–5192.

Comments Due: 5 p.m. ET 2/14/12.

Docket Numbers: ER12–885–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
Description: NiMo Albany Landfill Cost Reimbursement Agreement to be effective 1/9/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5042.
Comments Due: 5 p.m. ET 2/15/12.
Docket Numbers: ER12–886–000.
Applicants: Northern Iowa Windpower, LLC.
Description: Northern Iowa Windpower, LLC submits tariff filing per 35.13(a)(2)(iii): Northern Iowa MBRT to be effective 4/20/2011.
Filed Date: 1/24/12.
Accession Number: 20120124–5207.
Comments Due: 5 p.m. ET 2/14/12.
Docket Numbers: ER12–887–000.
Applicants: Dominion Energy Brayton Point, LLC.
Description: Dominion Energy Brayton Point, LLC submits tariff filing per 35: Compliance Filing—Designation of Filer to be effective 1/24/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5139.
Comments Due: 5 p.m. ET 2/15/12.
Docket Numbers: ER12–888–000.
Applicants: Dominion Energy Kewaunee, Inc.
Description: Dominion Energy Kewaunee, Inc. submits tariff filing per 35: Compliance Filing—Designation of Filer to be effective 1/25/2012.
Filed Date: 1/25/12.
Accession Number: 20120125–5141.
Comments Due: 5 p.m. ET 2/15/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA12–2–000.
Applicants: Idaho Power Company.
Description: Report of Idaho Power Company, Unreserved Use Compliance Filing letter.
Filed Date: 1/25/12.
Accession Number: 20120125–5137.
Comments Due: 5 p.m. ET 2/15/12.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM12–3–000.
Applicants: Consumers Energy Company.
Description: Application of Consumers Energy Company APPLICATION for relief from the PURPA mandatory purchase requirement with regard to qualified facilities with capacity over twenty megawatts.
Filed Date: 1/25/12.
Accession Number: 20120125–5134.
Comments Due: 5 p.m. ET 2/22/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2153 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2822–003; *ER10–2823–002; ER11–2462–002; ER11–2463–002; ER11–2112–003; ER10–2826–002; ER10–2827–002; ER11–2482–003; ER11–2464–002; ER10–3158–002; ER10–3159–001; ER10–1720–002; ER10–2942–002; ER10–2944–002; ER10–2945–002; ER10–2949–002; ER10–2423–001; ER10–2404–001; ER10–2956–002; ER11–2483–002; ER11–2465–002; ER10–2994–004; ER11–2466–002; ER11–2467–002; ER11–2468–002; ER11–2469–002; ER11–2470–002; ER11–2471–002; ER11–2472–002; ER11–2484–002; ER11–2485–003; ER11–2564–003; ER11–2514–002; ER11–2516–002; ER11–2563–003; ER11–2512–002; ER11–2509–003; ER10–2285–002; ER11–2507–002; ER11–2486–002; ER12–308–002; ER10–3005–002; ER10–3006–002; ER10–3007–003; ER10–3161–002; ER12–422–001; ER11–2032–002; ER10–3008–002; ER11–2473–002; ER11–2487–003; ER10–3011–002; ER11–2196–003; ER10–3162–002; ER12–12–001; ER11–2474–002; ER11–2488–002; ER10–3032–002; ER11–2475–002.*
Applicants: Klondike Wind Power III LLC, Northern Iowa Windpower II LLC, Big Horn Wind Project LLC, Colorado Green Holdings LLC, Dillon Wind LLC, Flat Rock Windpower LLC, Flying Cloud Power Partners, LLC, Klamath Energy LLC, Klamath Generation LLC, Moraine Wind LLC, Mountain View Power Partners III, LLC, Shiloh I Wind Project, LLC, Trimont Wind I LLC, Locust Ridge Wind Farm, LLC, Barton Windpower LLC, Iberdrola Renewables, Inc., Atlantic Renewables Projects II LLC, Carthage Energy, LLC, Elm Creek Wind, LLC, Farmers City Wind, LLC, Pebble Springs Wind LLC, PEI Power II, LLC, Dry Lake Wind Power, LLC, Star Point Wind Project LLC, Buffalo Ridge II LLC, Energetix, Inc., Big Horn II Wind Project LLC, Casselman Windpower LLC, Klondike Wind Power II LLC, Locust Ridge Wind Farm II, LLC, MinnDakota Wind, LLC, Streator-Cayuga Ridge Wind Power LLC, Dry Lake Wind Power II LLC, Hardscrabble Wind Power LLC, Leaning Juniper Wind Power II LLC, Hartford Steam Company, NYSEG Solutions, Inc., New Harvest Wind Project LLC, Buffalo Ridge I LLC, Elm Creek Wind II LLC, Flat Rock Windpower II LLC, Hay Canyon Wind LLC, Juniper Canyon Wind Power LLC, Klondike Wind Power LLC, Lempster Wind, LLC, Moraine Wind II LLC, Providence Heights Wind, LLC, Rugby Wind LLC, Twin Buttes Wind LLC, Manzana Wind LLC, Blue Creek Wind Farm LLC, San Luis Solar LLC, Elk River Windfarm LLC, New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, South Chestnut LLC, New England Wind, LLC, Central Maine Power Company
Description: Notice of Change in Status of the Iberdrola MBR Sellers.
Filed Date: 1/23/12.
Accession Number: 20120123–5310.
Comments Due: 5 p.m. ET 2/13/12.
Docket Numbers: ER10–3286–003.
Applicants: Millennium Power Partners, L.P., New Athens Generating Company, LLC.
Description: Supplemental Information of Millennium Power Partners, L.P.
Filed Date: 11/23/11.
Accession Number: 20111123–5095.
Comments Due: 5 p.m. ET 2/3/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2118 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–791–001]

Palmco Power IL, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Palmco Power IL, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2114 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–861–000]

Solios Power Mid-Atlantic Virtual LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Solios Power Mid-Atlantic Virtual LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2115 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–895–000]

Minco Wind Interconnection Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Minco Wind Interconnection Services, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 15, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 26, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2152 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–862–000]

Power Supply Services LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Power Supply Services LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 25, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–2116 Filed 1–31–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9625–2]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Duke Energy Indiana—Edwardsport Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has denied a petition from the Sierra Club, Valley Watch, and Citizen Action Coalition of Indiana (Petitioners) asking EPA to object to a Clean Air Act (Act) Title V operating permit for Duke Energy Indiana—Edwardsport Generating Station (Duke) issued by the Indiana Department of Environmental Management (IDEM).

Sections 307(b) and 505(b)(2) of the Act provide that a petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit of denials of any portion of the petition. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final Order, the petition, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting the Regional office. Additionally, the final Order for the Duke petition is available electronically at: *http://www.epa.gov/region7/air/title5/petitiondb/petitiondb.htm.*

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Chief, Air Permits Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard Chicago, Illinois 60604, telephone (312) 353–4761, *damico.genevieve@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object, as appropriate, to Title V operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to a Title V operating permit if EPA has not done so. A petition must be based only on objections to the permit that were raised with reasonable specificity during the

public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise issues during the comment period, or the grounds for the issues arose after this period.

On September 20, 2010, EPA received a petition from the Petitioners requesting that EPA object to the Title V operating permit that IDEM proposed to issue to Duke. The Petitioners alleged that the permit is not in compliance with the requirements of the Act. Specifically, the Petitioners alleged that: (1) The permit fails to include a Best Available Control Technology limit for particulate matter with a diameter of 2.5 microns or less ($PM_{2.5}$) because of the improper use of coarse particulate matter as a surrogate for $PM_{2.5}$; and (2) emissions of $PM_{2.5}$ from the plant would cause a violation of the $PM_{2.5}$ National Ambient Air Quality Standard.

On December 13, 2011, the Administrator issued an Order denying the Petitioners' petition. The Order explains the reasons behind EPA's conclusion.

Dated: January 23, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–2214 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0057; FRL–9337–1]

Notice of Availability of Memorandum of Understanding Between U.S. Environmental Protection Agency and Department of the Interior, Bureau of Land Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of a Memorandum of Understanding (MOU) between the Environmental Protection Agency and the Department of Interior, Bureau of Land Management. The two agencies will work together to support and facilitate reviewing pesticide regulatory activities under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) relevant to risk assessments for the active ingredient formulations—aminopyralid, fluroxpyr, and rimsulfuron, proposed by the Bureau of Land Management, as well as to update risk assessment of two other ingredients.

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–8338: email address: *steadman,mario@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0057. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

The complete text of the MOU can also be viewed in the electronic docket at regulations.gov.

II. Brief Summary of Memorandum of Understanding

Under the MOU the EPA and the BLM will work together to support and facilitate reviewing pesticide regulatory activities under the FIFRA relevant to work on some risk assessments for active ingredient formulations proposed by the BLM. Currently, the BLM is proposing to use three new active ingredients: aminopyralid, fluroxpyr, and rimsulfuron. The BLM is conducting human health and ecological risk assessments to evaluate the risks to humans, and fish and wildlife, from the use of these new active ingredients. In addition, the BLM is proposing to update risk assessments for 2, 4-D and clopyralid.

List of Subjects

Environmental protection, Confidential Business Information, Interagency Agreements, Pesticides and pests, Memorandum of Understanding.

Dated: January 25, 2012.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012–2212 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9624–8]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to settle a lawsuit filed by Zen Noh Grain Corporation in the United States District Court for the Eastern District of Louisiana: *Zen-Noh Grain Corporation* v. *Jackson,* Case No. 10–4367 (E.D. La.). Plaintiff filed this suit to compel the Administrator to respond to an administrative petition requesting, among other things, that EPA object to a CAA Title V operating permit issued by the Louisiana Department of Environmental Quality to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana for a pig iron manufacturing process in St. James Parish, Louisiana. After subsequent permitting actions, Plaintiff submitted a second administrative petition requesting, among other things, that EPA object to two CAA Title V permits issued by Louisiana Department of Environmental Quality to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana: a modified Title V permit for the aforementioned pig iron manufacturing process and a Title V permit for a direct reduced iron manufacturing process in St. James Parish, Louisiana. Under the terms of the proposed settlement agreement, EPA has agreed to respond to both petitions by March 16, 2012 to the extent that such response is required under 42 U.S.C. 7661d(b)(2).

DATES: Written comments on the proposed settlement agreement must be received by March 2, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2012–0074, online at *www.regulations.gov* (EPA's preferred method); by email to

oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Melina Williams, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–3406; fax number (202) 564–5603; email address: *williams.melina@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would resolve a lawsuit alleging, among other things, that the Administrator failed to perform a nondiscretionary duty to grant or deny, within 60 days of submission, an administrative petition to object to a CAA Title V permit issued by the Louisiana Department of Environmental Quality to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana for a pig iron manufacturing process in St. James Parish, Louisiana. After subsequent permitting actions, Plaintiff submitted a second administrative petition requesting, among other things, that EPA object to two CAA title V permits issued by the Louisiana Department of Environmental Quality to Consolidated Environmental Management, Inc.—Nucor Steel Louisiana: a modified Title V permit for the aforementioned pig iron manufacturing process and a Title V permit issued for a direct reduced iron manufacturing process in St. James Parish, Louisiana. Under the terms of the proposed settlement agreement, EPA has agreed to respond to both petitions by March 16, 2012 to the extent that such response is required under 42 U.S.C. 7661d(b)(2). In addition, the proposed settlement agreement provides that such response would resolve all claims that were or could have been asserted against the United States in the lawsuit, as well as the claims that could be asserted in connection with the second administrative petition. The proposed settlement agreement also provides that if it becomes final, the parties shall jointly file a stipulation of dismissal with prejudice with the court, within 10 days of the date when EPA provides written notice that the proposed settlement agreement has become final. In addition, the proposed settlement agreement provides that Plaintiff shall have until 120 days after the Court enters an Order of Dismissal as provided in the proposed settlement agreement to file a motion for costs of litigation (including attorney fees), that the parties shall seek to informally resolve any claim for costs of litigation, and that EPA reserves the right to object to the award of any such costs.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2012–0074) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address,

or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 25, 2012.

Patricia Embrey,

Acting Associate General Counsel.

[FR Doc. 2012–2040 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9335–1]

Rescission of Certain Product Cancellations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued notices in the **Federal Register** of August 31, 2011 and December 28, 2011, concerning the voluntary cancellation of multiple pesticide products. This document is being issued to rescind the cancellation of Baker Petrolite Corporation's (BPC) product, EPA Reg. No. 010707–00055; BioSafe Systems' products, EPA Reg. Nos. 070299–00001, 070299–00002, and 070299–00003; and Oregon's special local needs (SLN) registration, OR060026.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; email address: *tatinclaux.maia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0014. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What does this rescission do?

This Notice rescinds the cancellation of BPC's product, EPA registration number 010707–00055, which appeared in FR Doc. 2011–22135, published in the **Federal Register** of August 31, 2011 (76 FR 54230) (FRL–8885–6). The Cancellation Order was issued following a Notice announcing the request to voluntarily cancel product 010707–00055 published in the **Federal Register** of January 19, 2011 (76 FR 31380(FRL–8857–1) . However, the request to voluntarily cancel this pesticide product had been rescinded on December 16, 2010 in a letter from BPC, and this product should not have been cancelled.

Additionally, this Notice rescinds the cancellations of BioSafe Systems' products, EPA Reg. Nos. 070299–00001, 070299–00002, 070299–00003 and Oregon's SLN, OR060026, which appeared in FR Doc. 2011–33252, published in the **Federal Register** of December 28, 2011 (76 FR 81496) (FRL–9326–6). The Cancellation Order was issued following a Notice announcing the request to voluntarily cancel these products published in the **Federal Register** of April 27, 2011 (76 FR 23588)(FRL–8870–6). However, BioSafe Systems, LLC never requested the cancellation of its products, and therefore EPA did not have the authority to cancel them. Additionally, the State of Oregon retracted their request to voluntarily cancel OR060026 on December 3, 2010 and this product should not have been cancelled.

Therefore, based on the discussion above, with this notice, cancellation of BPC's product, EPA Reg. No 010707–00055, X-cide 305, contained in the cancellation order published in the **Federal Register** on August 31, 2011, is hereby rescinded.

Cancellation of the following BioSafe Systems' products contained in the cancellation order published in the **Federal Register** on December 28, 2011 is hereby rescinded:

070299–00001, Zerotol Algaecide Fungicide, 070299–00002, Oxidate Broad Spectrum Bactericide/fungicide, and 070299–00003, Terracite.

In addition, the cancellation of Oregon's SLN, OR060026, also contained in the cancellation order published in the **Federal Register** on December 28, 2011 is rescinded.

In addition to the rescission of these cancellations, the existing stocks provisions contained in the August 31, 2011 cancellation order and the December 28, 2011 cancellation order are rescinded as those provisions apply to the products and registrations contained in this notice.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 20, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–2209 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0038; FRL–9328–7]

Environmental Protection Agency, Department of Health and Human Services and Department of Agriculture; Memorandum of Understanding Regarding Genetically Engineered Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide-related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by submitters in accordance with 40 CFR 2.309(c) and 2.308(h)(2) will be shared with the Department of Human Services (HHS) and the U.S. Department of Agriculture (USDA). HHS's Centers for Disease Control and Prevention and the Food and Drug Administration (FDA) will perform work for OPP under a Memorandum of Understanding (MOU). The MOU will support and encourage cooperation and communication between USDA, FDA, and EPA in the regulatory oversight over

genetically engineered plants and the foods derived from such plants. Under the MOU, USDA's office of Animal and Plant Health Inspection Service/ Biotechnology Regulatory Services (APHIS/BRS) and EPA agree to share with each other information about genetically engineered plants and the foods derived from such plants, including non-public information exempt from public disclosure usually referred to as ''confidential business information'' and/or ''trade secrets.''

FOR FURTHER INFORMATION CONTACT: Mario Steadman, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–8338: email address: *steadman,mario@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805. A copy of the MOU has been placed in the docket.

II. Brief Summary of the Memorandum of Understanding (MOU)

EPA regulates pesticides in particular plant-incorporated protectants (PIPs). PIPs are pesticidal substances (such as *Bacillus thuringiensis* protein) produced in plants and the genetic material necessary for their production in plants (such as *cry* genes). EPA grants experimental use permits for field testing and registrations that permit the sale and use of pesticides, including PIPs, in commerce under FIFRA, 7 U.S.C. 136 *et seq*. EPA also issues tolerances or tolerance exemptions that permit pesticide chemical residues in food under section 408 of FFDCA.

The MOU will support and encourage cooperation and communication between USDA, FDA, and EPA in the regulatory oversight over genetically engineered plants and the foods derived from such plants. Under the MOU, USDA/APHIS/BRS, FDA, and EPA agree to share with each other information about genetically engineered plants and the foods derived from such plants, including non-public information exempt from public disclosure usually referred to as ''confidential business information'' and/or ''trade secrets'' (also referred to as ''non-public information'' in the MOU).

Subject to Units A, B, and C defined in the MOU, an agency shall not further disclose non-public information received under the MOU except with the written permission of the agency from which the non-public information originated.

Under the MOU, USDA/APHIS/BRS would share non-public information including CBI that it receives from private entities pursuant to its biotechnology regulations under 7 CFR part 340 only as described below.

Confidential information provided by USDA/APHIS/BRS may only be shared with FDA and EPA personnel who have been granted access to non-public information by the Director of USDA/ APHIS/BRS' Regulatory Operations Division or his/her designate via the APHIS Access Authorization Agreement for Trade Secrets and Confidential Business Information form.

List of Subjects

Environmental protection, Business and industry, Genetically engineered plants, Government contracts, Government property, Memorandum of Understanding, Security measures.

Dated: January 19, 2012.

Michael Hardy,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2012–2198 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012153.

Title: NYK/HLAG Vessel Sharing Agreement.

Parties: Nippon Yusen Kaisha and Hapag-Lloyd AG.

Filing Party: Patricia M. O'Neill, Esq.; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between U.S. West Coast ports and ports on the West Coast of Mexico and Central America. The parties requested expedited review.

Agreement No.: 012154.

Title: APL/Hamburg Sud Space Charter Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., and Hamburg Sud KG.

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Proctor LLP; 901 New York Ave. NW; Washington, DC 20001.

Synopsis: The agreement authorizes APL to charter space to Hamburg Sud in the trade from Asia to the U.S. Pacific Northwest.

By Order of the Federal Maritime Commission.

Dated: January 27, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–2178 Filed 1–31–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at

(202) 523–5843 or by email at *OTI@fmc.gov.*

AGLI Maritime, Ltd. (OFF), 754 Foster Avenue, Bensenville, IL 60106, Officers: Melissa Smith, Vice President/Secretary, (Qualifying Individual), Thomas Smith, Shareholder/Director/President, Application Type: New OFF License.

Ashimiyu Alowonle dba Classique Companies (NVO & OFF), 6001 Loneoak Road, #2, Rockford, MN 55373, Officer: Ashimiyu Alowonle, Sole Proprietor, (Qualifying Individual), Application Type: New NVO & OFF License.

Direct Express Intermodal, LLC (NVO & OFF), 3399 Peachtree Road, #1130, Atlanta, GA 30326, Officer: James J. Briles III, President/CEO, (Qualifying Individual), Application Type: New NVO & OFF License.

Grupo Delpa Corp (NVO & OFF), 3403 NW 82nd Avenue, Suite 330, Doral, FL 33122, Officers: Alfred J. Silva, Vice President Operations, (Qualifying Individual), Daniel A. Urra, President, Application Type: New NVO & OFF License.

Iris International USA LLC (NVO), 94 Franklin Street, Haworth, NJ 07641, Officer: Chang Gil Kim, Member, (Qualifying Individual), Application Type: New NVO License

Dated: January 27, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–2226 Filed 1–31–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
004437N	Superior Freight Services, Inc., 1230 Trapp Road, Eagan, MN 55121	December 8, 2011.
021837F	Cargo America, Inc., 332 S. Wayside Drive, Houston, TX 77011	November 10, 2010.
023375N	SDS Trans Inc., 145–38 157th Street, 1st Floor, Jamaica, NY 11434	December 2, 2011.

Sandra Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–2225 Filed 1–31–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 001890N.
Name: JIB International, Incorporated dba JIB International Transport dba JIB Worldwide Forwarding.
Address: 1822 West Kettleman Lane, #2, Lodi, CA 95242.
Date Revoked: December 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 1923F.
Name: Suddath Transportation Services, Inc. dba STS.
Address: 815 S. Main Street, Jacksonville, FL 32207.
Date Revoked: December 15, 2011.
Reason: Voluntarily surrendered license.

License Number: 001979F.
Name: Gulf States Forwarding, LLC.
Address: 1109 Aurora Avenue Metairie, LA 70005.
Date Revoked: December 28, 2011.
Reason: Voluntarily surrendered license.

License Number: 3433F.
Name: Chun, Song Nam dba Delta Express.
Address: 765 Route 83, Suite 122, Bensenville, IL 60106.
Date Revoked: December 10, 2011.
Reason: Failed to maintain a valid bond.

License Number: 4437F.
Name: Superior Freight Services, Inc.
Address: 1230 Trapp Road, Eagan, MN 55121.
Date Revoked: December 8, 2011.
Reason: Failed to maintain a valid bond.

License Number: 012035N.
Name: Abba Shipping Lines, Inc.
Address: 6918 NW., 51st Street, Miami, FL 33166.
Date Revoked: December 13, 2011.
Reason: Failed to maintain a valid bond.

License Number: 016901F.
Name: Ohlson International Logistics Incorporated.
Address: 960 Lunt Avenue, Elk Grove Village, IL 60007.
Date Revoked: December 2, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018027N.
Name: Dimex Consulting, Inc.
Address: 12966 Euclid Street, Suite 250–D, Garden Grove, CA 92840.
Date Revoked: December 16, 2011.
Reason: Failed to maintain a valid bond.

License Number: 018457N.
Name: Seatrans Logistics Inc.
Address: 10740 Meridian North, Suite 205, Seattle, WA 98133.
Date Revoked: December 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 019042F.
Name: R.G. Associates, Inc. dba Interfreight SE.
Address: 21 Eastbrook Bend, Suite 220, Peachtree City, GA 30269.
Date Revoked: December 1, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020576NF.
Name: AAC Transport, Inc.
Address: 147–35 183rd Street, Room 204, Springfield Gardens, NY 11413.
Date Revoked: December 27, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020302N.
Name: Frank Noah dba Comis International.
Address: 18005 Savarona Way, Carson, CA 90746.
Date Revoked: December 30, 2011.
Reason: Failed to maintain a valid bond.

License Number: 020826NF.
Name: New World Forwarding LLC.
Address: 8524 Highway 6 North, Suite 276, Houston, TX 77095.
Date Revoked: December 14, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021059NF.
Name: Trade Logistics Corp.
Address: 12999 SW., 135th Street, Miami, FL 33186.
Date Revoked: December 2, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021523F.
Name: Allcargo International Shipping, Inc.
Address: 12808 Panhandle Road, Hampton, GA 30228.
Date Revoked: December 31, 2011.
Reason: Failed to maintain a valid bond.

License Number: 021734NF.
Name: HBI America LLC.
Address: 8300 NW., 53rd Street, Suite 350, Doral, FL 33166.
Date Revoked: December 16, 2011.
Reason: Failed to maintain valid bonds.

License Number: 021837N.
Name: Cargo America, Inc.
Address: 332 S. Wayside Drive, Houston, TX 77011.
Date Revoked: November 10, 2010.
Reason: Failed to maintain a valid bond.

License Number: 022865N.
Name: Flier International Cargo, Inc.
Address: 7164 NW., 50th Street, Miami, FL 33166.
Date Revoked: December 17, 2011.
Reason: Failed to maintain a valid bond.

License Number: 023375F.
Name: SDS Trans Inc.
Address: 145–38 157th Street, 1st Floor, Jamaica, NY 11434.
Date Revoked: December 2, 2011.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–2228 Filed 1–31–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 2, 2012.

ADDRESSES: You may submit comments, identified by FR 3051, FR 3059, FR H–4, or RFP/RFPQ by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829 Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, the Following Reports

1. *Report title:* Microeconomic Survey.
Agency form number: FR 3051.
OMB control number: 7100–0321.

Frequency: Annually and monthly, as needed.

Reporters: Individuals, households, and financial and non-financial businesses.

Estimated annual reporting hours: Annual, 6,000 hours; Monthly, 18,000 hours.

Estimated average hours per response: Annual, 60 minutes; Monthly, 30 minutes.

Estimated number of respondents: Annual, 6,000; Monthly, 3,000.

General description of report: This information collection is voluntary (12 U.S.C. 225A and 263). If needed, the Federal Reserve can make this survey mandatory for Federal Reserve regulated institutions under section 9 of the Federal Reserve Act (12 U.S.C. 324) for state member banks; section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) for bank holding companies and their subsidiaries; sections 25 and 25(A) of the Federal Reserve Act (12 U.S.C. 602 and 625) for Edge and agreement corporations; and section 7(c)(2) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(2)) for U.S. branches and agencies of foreign banks. Generally, when the survey or study is conducted by an outside firm, names or other such directly identifying characteristics would not be reported to the Federal Reserve. In circumstances where identifying information is provided to the Federal Reserve, such information could possibly be protected from Freedom of Information Act (FOIA) disclosure by exemptions 4 and 6 (5 U.S.C. 552(b)(4) and (6)).

Abstract: The Federal Reserve uses this event-driven survey to obtain information specifically tailored to the Federal Reserve's supervisory, regulatory, operational, and other responsibilities. The Federal Reserve can conduct the FR 3051 up to 13 times per year (one survey on an annual basis and another on a monthly basis). The frequency and content of the questions depend on changing economic, regulatory, or legislative developments.

2. *Report title:* Recordkeeping Requirements Associated with Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

Agency form number: FR H–4.

OMB control number: 7100–0250.

Frequency: Event-generated.

Reporters: State Member Banks (SMBs) and nonbank subsidiaries of Bank Holding Companies (BHCs).

Estimated annual reporting hours: SMBs, 30,488 hours; nonbank subsidiaries of BHCs, 11,494 hours.

Estimated average hours per response: SMBs, 0.25; nonbank subsidiaries of BHCs, 0.25.

Number of respondents: SMBs, 824; nonbank subsidiaries of BHCs, 613.

General description of report: The recordkeeping requirements of this information collection are mandatory (12 U.S.C. 3339). Since the Federal Reserve does not collect this information, confidentiality will not generally be an issue. However, if the Federal Reserve were to collect a copy of the appraisal report during an examination, the documents could be exempt from disclosure under FOIA (5 U.S.C 552(b)(4) and (b)(8)).

Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires SMBs and BHCs with credit extending nonbank subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. SMBs and BHCs with credit-extending nonbank subsidiaries are expected to maintain records that demonstrate that appraisals used in their real estate-related lending activities comply with these regulatory requirements. There is no formal reporting form.

3. *Report title:* Request for Proposal (RFP) and Request for Price Quotations (RFPQ).

Agency form number: RFP/RFPQ.

OMB control number: 7100–0180.

Frequency: On-occasion.

Reporters: Vendors and suppliers.

Estimated annual reporting hours: RFP, 7,000 hours; RFPQ, 1,700 hours.

Estimated average hours per response: RFP, 50 hours; RFPQ, 2 hours.

Number of respondents: RFP, 140; RFPQ, 850.

General description of report: This information collection is required to obtain a benefit and is authorized by Sections 10(3), 10(4), and 11(1) of the Federal Reserve Act (12 U.S.C. 243, 244, and 248(l)). Proposals from vendors that are not accepted and incorporated into contracts with the Federal Reserve would be protected from FOIA disclosure by (41 U.S.C. 4702), which expressly prohibits FOIA disclosure of these proposals. Moreover, during the solicitation process vendors are permitted to mark information contained in their proposals that is proprietary or confidential with the label RESTRICTED DATA. For information so marked, the Federal Reserve also may determine on a case-by-case basis whether FOIA exemption 4, which applies to ''trade secrets and commercial or financial information,'' would protect information from disclosure pursuant to a FOIA request (5 U.S.C. 552(b)(4)).

Abstract: The Federal Reserve Board uses the RFP and the RFPQ as appropriate to obtain competitive proposals and contracts from approved vendors of goods and services. This information collection is required to collect data on prices, specifications of goods and services, and qualifications of prospective vendors.

Proposal To Conduct Under OMB Delegated Authority the Following Survey

Report title: 2013 Survey of Consumer Finances (SCF).

Agency form number: FR 3059.

OMB control number: 7100–0287.

Frequency: One-time survey.

Reporters: U.S. families.

Estimated annual reporting hours: 8,938 hours.

Estimated average hours per response: Pretest, 75 minutes; and Main survey, 75 minutes.

Number of respondents: Pretest, 150; and Main survey, 7,000.

General description of report: This information collection is voluntary (12 U.S.C. 225a and 263). The names and other characteristics that would directly identify respondents would be retained by the Federal Reserve's contractor and are exempt from disclosure pursuant to the Confidential Information Protection and Statistical Efficiency Act and section (b)(3) of the FOIA (5 U.S.C. 552 (b)(3)).

Abstract: This would be the eleventh triennial SCF since 1983, the beginning of the current series. This survey is the only source of representative information on the structure of U.S. families' finances. The survey would collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. families. Because the ownership of some assets is relatively concentrated in a small number of families, the survey would make a special effort to ensure proper representation of such assets by systematically oversampling wealthier families.

Board of Governors of the Federal Reserve System, January 26, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–2104 Filed 1–31–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *Cape Cod Five Mutual Company,* Harwich Port, Massachusetts; to become a mutual bank holding company by acquiring 100 percent of the voting shares of The Cape Cod Five Cents Savings Bank, Harwich Port, Massachusetts.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *JCK, Inc.,* Junction City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank and Trust Company of Junction City, Kansas, Junction City, Kansas.

Board of Governors of the Federal Reserve System, January 27, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–2164 Filed 1–31–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on its proposal to extend through May 31, 2015, the current PRA clearance for information collection requirements contained in the Pay-Per-Call Rule (Rule). That clearance expires on May 31, 2012 (OMB Control No. 3084–0102).

DATES: Comments must be submitted on or before April 2, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Pay-Per-Call Rule: FTC File No. R611016'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/ppcrulepra,* by following the instructions on the Web-based form. If you want to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Ivens, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2330.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). Because more than nine entities will be affected by the Commission's requests, the Commission plans to seek OMB clearance under the PRA. As required, the Commission is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements pertaining to the Commission's Pay-Per-Call Rule, 16 CFR part 308 (OMB Control Number 3084–0102). 44 U.S.C. 3506(c)(2)(A).

The FTC is again seeking a 3-year clearance for the Rule as was done in 2009.[1]

Request for Comments

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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. All comments should be filed as prescribed

[1] On October 30, 1998, the Commission published a Notice of Proposed Rulemaking (''NPRM''), 63 FR 58524, to amend its Pay-Per-Call Rule, 16 CFR part 308. The Rule, which implements Titles II and III of the Telephone Disclosure and Dispute Resolution Act (''TDDRA''), 15 U.S.C. 5711–14, 5721–24, requires the disclosure of cost and other information regarding pay-per-call services and establishes dispute resolution procedures for telephone-billed purchases (*i.e.,* charges for pay-per-call services or other charges appearing on a telephone bill other than telecommunications charges). As was explained in the NPRM, the Rule contains certain reporting and disclosure requirements that are subject to OMB review under the PRA, 44 U.S.C. 3501–3521. Accordingly, the FTC submitted the Rule, with proposed amendments, to OMB (*see* 64 FR 70031, Dec. 15, 1999) for its approval, which was granted until December 31, 2002 (OMB control number 3084–0102). Thereafter, the FTC obtained renewed clearance from OMB covering both the existing Rule and the proposed changes up through April 30, 2009.

The clearance that expires on May 31, 2012, did not include PRA approval relating to the proposed changes to the Rule. The proposed changes have not been adopted, and any final decision about them is too uncertain to merit inclusion in this request for clearance renewal. The Commission will seek PRA clearance separately for any proposed rule amendments if that becomes necessary at a future date.

in the **ADDRESSES** section above, and must be received on or before April 2, 2012.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 2, 2012. Write ''Pay-Per-Call Rule: FTC File No. R611016'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/ppcrulepra,* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Pay-Per-Call Rule: FTC File No. R611016'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 2, 2012 . You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Brief Description of the Need for and Proposed Use of the Information

The existing reporting and disclosure requirements are mandated by the TDDRA to help prevent unfair and deceptive acts and practices in the advertising and operation of pay-per-call services and in the collection of charges for telephone-billed purchases. The information obtained by the Commission pursuant to the reporting requirement is used for law enforcement purposes. The disclosure requirements ensure that consumers are told about the costs of using a pay-per-call service, that they will not be liable for unauthorized non-toll charges on their telephone bills, and how to deal with disputes about telephone-billed purchases.

Likely Respondents and Their Estimated Number

Respondents are telecommunications common carriers (subject to the reporting requirement only, unless acting as a billing entity), information providers (vendors) offering one or more pay-per-call services or programs, and billing entities. Staff estimates that there are 7 common carriers,[2] approximately 13,800 vendors,[3] and approximately 1,560 possible billing entities.[4] The FTC seeks public comment or data on these estimates and those stated below.

Estimated annual reporting and disclosure burden: 2,379,796 hours; $130,263,530 in associated labor costs.[5]

The burden hour estimate for each reporting and disclosure requirement has been multiplied by a ''blended'' wage rate (expressed in dollars per hour), based on the particular skill mix needed to carry out that requirement, to determine its total annual cost. The blended rate calculations are based on the following skill categories and average wage rates and/or labor costs: $250/hour for professional (attorney) services; $17/hour for skilled clerical workers; $35/hour for computer programmers; and $50/hour for management time. These figures are averages, based on the most currently available Bureau of Labor Statistics (''BLS'') cost figures posted online.[6] FTC

[2] This estimate is based on the North American Numbering Plan Association Report, ''900–NXX Codes,'' *http://www.nanpa.com/nas/public/form900Master Report.do?method=display900MasterReport* (updated as of 2011), and excluding Canadian entities and one carrier that withdrew from carrying 900 number service. See Federal Communications Commission, ''Section 63.71 Application of Sprint Communications Company L.P. for Authority to Discontinue Domestic Telecommunications Services,'' Order, WC Docket No. 08–116, DA 08–2557 (Wireline Competition Bureau Nov. 24, 2008) (''FCC Sprint Order'').

[3] The number of vendors is difficult to estimate as there is no ready source of such statistics. FTC staff has reduced a 2006 estimate of the number of vendors (approximately 15,000) by 8 percent, reflecting a corresponding decrease in the allocation of 900 numbers. One carrier which withdrew from carrying 900-number services stated that between 2004 and 2007 it saw a 41.5 percent decrease in vendor use of such numbers. See FCC Sprint Order. However, erring conservatively, FTC staff instead is applying an 8 percent reduction in the number of vendors, tied to a comparison of the number of 900–NXX codes allocated per vendor, as reported annually by the North American Numbering Plan Administration (NANPA). In 2004, it was 133; in 2010, it fell to 123.

[4] The Federal Communications Commission report on telephone statistics indicated that at the end of 2010 there were approximately 1,560 local telephone companies (local exchange carriers). See Local Telephone Competition: Status as of December 31, 2010 (released 10/11) (tables 3 and 4), available at *http://www.fcc.gov/wcb/iatd/comp.html.*

[5] Non-labor (e.g., capital/other start-up) costs are generally subsumed in activities otherwise undertaken in the ordinary course of business (e.g., business records from which only existing information must be reported to the Commission, pay-per-call advertisements or audiotext to which cost or other disclosures are added, etc.). To the extent that entities incur operating or maintenance expenses, or purchase outside services to satisfy the Rule's requirements, staff believe those expenses are also included in (or, if contracted out, would be comparable to) the annual burden hour and cost estimates provided below (where such costs are labor-related), or are otherwise included in the ordinary cost of doing business (regarding non-labor costs).

[6] *http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf* (National Compensation Survey: Occupational Earnings in the United States, U.S. Department of Labor, BLS, released May 2011, Bulletin 2753, Table 3 (''Full-time civilian workers,'' mean and median hourly wages). Notwithstanding the referenced BLS data, estimated attorney costs are based on what staff believes may more closely reflect hourly attorney costs associated with

staff calculated labor costs by applying appropriate hourly cost figures to the burden hours discussed further below.

(1) *Reporting burden* (applies to common carriers):

The Rule provides that common carriers must make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements between the carrier and any vendor or service bureau (other than for the provision of local exchange service). *See* 16 CFR 308.6. Staff believes that the resulting burden on this segment of the industry will be minimal, since OMB's definition of ''burden'' for PRA purposes excludes any business effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(b)(2). Because this reporting requirement permits staff to seek information limited to that which is already maintained by the carriers, the only burden would be the time an entity expends to compile and provide the information to the Commission. Because the Commission has seldom needed to rely on this requirement, staff estimates the annual time for reporting at 3 hours per entity.

In obtaining OMB clearance for this reporting requirement in 2009, staff estimated a total reporting burden of 39 hours, with an annual cost of $2,925. Staff is now decreasing the total burden estimate to 21 hours, based on an average estimate of 3 hours expended by 7 common carriers. Using a $76/hour blended wage rate (assuming for all labor calculations herein, $35/hour for computer programmers, $250/hour for attorneys, $17/hour for skilled clerical workers, and $50/hour for managers),[7] the FTC now estimates an annual cost of $1600.

(2) *Disclosure burden:*

(a) *Advertising* (applies to vendors). FTC staff estimates that the annual burden on the industry for the Rule's advertising disclosure requirements is 49,680 hours. The estimate reflects the burden on approximately 13,800 vendors who must make cost disclosures for all pay-per-call services and additional disclosures if the advertisement is (a) directed to individuals under 18 or (b) for certain pay-per-call services.[8] Because of continued industry changes and the fact that the Commission has seldom needed to rely on this requirement, staff is retaining the estimated percentage of advertising both directed to individuals under 18 and relating to certain other pay-per-call services to 20 percent of overall pay-per-call services. FTC staff estimates that each disclosure mandated by the Rule requires approximately one hour of compliance time.

The total estimated annual cost of these burden hours is $3,477,600 applying a blended wage rate of $70/hour.[9]

(b) *The Rule's preamble disclosure* (applies to every pay-per-call service). To comply with the Act, the Pay-Per-Call Rule also requires that every pay-per-call service be preceded by a free preamble and that four different disclosures be made in each preamble. Additionally, preambles to sweepstakes pay-per-call services and services that offer information on Federal programs must provide additional disclosures. Each preamble need only be prepared one time, unless the cost or other information is changed. There is no additional burden on the vendor to make the disclosures for each telephone call, because the preambles are taped and play automatically when a caller dials the pay-per-call number.

As noted above (see footnote 4), staff now believes that the industry has had at least an 8 percent reduction in size since 2004 (when there were an estimated 45,864 pay-per-call services). Accordingly, staff now estimates that there are no more than 42,195 advertised pay-per-call services.

As with advertising disclosures, preambles for certain pay-per-call services require additional preamble disclosures. Consistent with the estimates of advertised pay-per-call services discussed above, staff estimates that an additional 20 percent of all such pay-per-call services (8,440) relating to certain types of pay-per-call services would require such additional disclosures.[10] Staff now estimates that it would require no more than one hour to draft each type of disclosure because the disclosures applicable to the preamble closely approximate in content and volume the advertising disclosures discussed above. Accordingly, staff estimates a total of 50,635 burden hours (42,195 + 8,440) to comply with these requirements. At one hour each, cumulative labor cost associated with these disclosures is $3,544,450, using a blended wage rate of $70/hour (*i.e.,* similar to the blended rate used for advertising disclosures).

(c) *Telephone-billed charges in billing statements* (applies to vendors; applies to common carriers if acting as billing entity). Section 308.5(j) of the Rule, 16 CFR 308.5(j), requires that vendors ensure that certain disclosures appear on each billing statement that contains a charge for a call to a pay-per-call service. Because these disclosures appear on telephone bills already generated by the local telephone companies, and because the carriers are already subject to nearly identical requirements pursuant to the FCC's rules, FTC staff estimated that the burden to comply would be minimal. At most, the burden on the vendor would be limited to spot checking telephone bills to ensure that the charges are displayed in the manner required by the Rule.

As it had in the 2009 PRA submission, FTC staff estimates that only 10 percent of vendors would monitor billing statements in this manner and that it would take 12 hours per year to conduct such checks. Using the total estimated number of vendors (1,380), this results in a total of 16,560 burden hours. The total annual cost would be at most $1,043,280, using a blended rate of $63/hour.[11]

(d) *Dispute resolution procedures in billing statements* (applies to billing entities). This disclosure requirement is set forth in 16 CFR 308.7(c). The blended rate being used for these disclosures is $53.50/hour.[12] FTC staff previously estimated that the billing entities would spend approximately 5 hours each to review, revise, and provide the disclosures on an annual basis. The estimated hour burden for the annual notice component of this requirement is 7,800 burden hours (based on 1,560 possible billing entities each requiring 5 hours), or a total cost of $421,200.

(e) *Further disclosures related to consumers reporting a billing error* (applies to billing entities).

As in the 2009 PRA submission for this Rule, FTC staff estimates that the

Commission information collection activities under the Rule.

[7] This blended wage rate is based upon an estimate of 30 percent for computer programming, 20 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for managerial time.

[8] Based on an assumed three advertisements per vendor, or a total of 41,400 ads (for 13,800 vendors, as explained in note 4), plus an estimated total 20 percent of which would require such additional disclosures, or 8,280 advertisements. Staff estimates that it would require no more than one hour to draft each type of disclosure. Accordingly, at an estimated one hour each, vendors would require cumulatively 49,680 burden hours to comply with these requirements.

[9] The blended rate is based upon 20 percent for attorney services, 60 percent for skilled clerical workers, and 20 percent for management time.

[10] See note 10.

[11] The blended rate is 15 percent for attorney services, 40 percent for skilled clerical workers, 25 percent for computer programming, and 20 percent for management time.

[12] The blended rate is 40 percent for computer programming, 10 percent for attorney services, 30 percent for skilled clerical workers, and 20 percent for management time.

incremental disclosure obligations related to consumers reporting a billing error under section 308.7(d) requires, on average, about one hour per each billing error. Previously, staff projected that approximately 5 percent of an estimated 46,981,200 calls made to pay-per-call services each year involves such a billing error. The staff is now reducing its prior estimate of the number of those calls by 4 percent [13] (to 45,101,950 calls) to reflect recent changes in the amount of pay-per-call services and their billing. Assuming the same apportionment (5 percent) of overall calls to pay-per-call services, this amounts to 2,255,100 hours, cumulatively. Applying the $54/hour blended wage rate, the estimated annual cost is $121,775,400 annually.

Willard K. Tom,

General Counsel.

[FR Doc. 2012–2111 Filed 1–31–12; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0007; Docket 2011–0001; Sequence 12]

General Services Administration Acquisition Regulation; Information Collection; GSA Form 527, Contractor's Qualifications and Financial Information

AGENCY: Office of the Chief Finance Officer, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding GSA Form 527, Contractor's Qualifications and Financial Information.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

[13] Four percent is determined by an approximate halving of the above-noted 8 percent reduction staff has applied to its prior estimate of the number of vendors (see note 4). As in past clearance requests for this Rule, it is halved on the assumption that pay-per-call services do not account for any more than half of all telephone-billed purchases.

DATES: Submit comments on or before: April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Erik Dorman, Office of Financial Policy and Operations, at (202) 501–4568 or via email at *lynn.dorman@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0007, Contractor's Qualifications and Financial Information, by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0007, Contractor's Qualifications and Financial Information'' on your attached document.
- *Fax*: (202) 501–4067.
- *Mail*: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0007, Contractor's Qualifications and Financial Information.

Instructions: Please submit comments only and cite Information Collection 3090–0007, Contractor's Qualifications and Financial Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration will be requesting the Office of Management and Budget to extend information collection 3090–0007, concerning GSA Form 527, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) 9.103(a) and 9.104–1 and also the General Services Administration Acquisition Manual (GSAM) 509.105–1.

B. Annual Reporting Burden

Respondents: 2,940.
Responses per Respondent: 1.2.
Total Responses: 3,528.
Hours per Response: 2.5.
Total Burden Hours: 8,820.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0007, GSA Form 527, Contractor's Qualifications and Financial Information, in all correspondence.

Dated: January 24, 2012.

Casey Coleman,

Chief Information Officer, Office of the Chief Information Officer.

[FR Doc. 2012–2094 Filed 1–31–12; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221; Docket 2011–0016; Sequence 11]

Civilian Board of Contract Appeals; Information Collection; Civilian Board of Contract Appeals Rules of Procedure

AGENCY: Civilian Board of Contract Appeals, GSA.

ACTION: Notice of request for comments regarding a reinstatement to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Civilian Board of Contract Appeals (CBCA) Rules of Procedure.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: April 2, 2012. Submit comments identified by Information Collection IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection IC

3090–0221, Civilian Board of Contract Appeals Rules of Procedure'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0221, Civilian Board of Contract Appeals Rules of Procedure'' on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure.

Instructions: Please submit comments only and cite Information Collection 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: J. Gregory Parks, Chief Counsel, Civilian Board of Contract Appeals, 1800 F Street, NW., Washington, DC 20405, telephone (202) 606–8800 or via email to *Greg.Parks@cbca.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The CBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 85.

Responses per Respondent: 1.

Hours per Response: .108.

Total Burden Hours: 9.2.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, in all correspondence.

Dated: January 24, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–2097 Filed 1–31–12; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Consumer Assessment of Healthcare Providers and Systems (CAHPS) Clinician and Group Survey Comparative Database.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 28th, 2011 and allowed 60 days for public comment. No substantive comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 2, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Consumer Assessment of Healthcare Providers and Systems (CAHPS) Clinician and Group Survey Comparative Database

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Consumer Assessment of Healthcare Providers and Systems (CAHPS) Database for Clinicians and Groups. The CAHPS Clinician and Group Database (CAHPS CG Database) consists of data from the AHRQ CAHPS Clinician and Group Survey (CAHPS CG Survey). Health systems administrators, medical groups and medical practitioners in the U.S. are asked to voluntarily submit data from the CAHPS CG Survey to AHRQ through its contractor.

Dating back to the first phase of the CAHPS program (1996–2000), the CAHPS Consortium recognized the need for a standardized, evidence-based instrument that would gather data on patients' experiences with physicians and staff in outpatient medical practices, enabling clinicians and administrators to assess and improve patients' experiences with medical care. In 1999, the Consortium began work on a survey that would assess patients' experiences with medical groups and clinicians. Working in collaboration with the Pacific Business Group on Health, whose Consumer Assessment Survey established a precedent for this type of instrument; the CAHPS Consortium developed a preliminary instrument known as the CAHPS Group Practices Survey (G–CAHPS).

In August 2004, AHRQ issued a notice in the **Federal Register** inviting organizations to test this instrument. These field test organizations were crucial partners in the evolution and development of the instrument, and provided critical data illuminating key aspects of survey design and administration. In July 2007 the CAHPS CG Survey was endorsed by the National Quality Forum (NQF), an organization established to standardize health care quality measurement and reporting. The endorsement represents the consensus of many health care providers, consumer groups, professional associations, purchasers, federal agencies, and research and quality organizations. The CAHPS CG Survey and related toolkit materials are available on the CAHPS web site at *http://www.cahps.AHRO.gov/cahpskit/CG/CGChooseQX.asp.* Since its release, the survey has been used by thousands

of physicians and medical practices across the U.S.

The current CAHPS Consortium includes AHRQ, the Centers for Medicare & Medicaid Services (CMS), RAND, Yale School of Public Health, and Westat.

AHRQ has developed the database for CAHPS CG Survey data following the CAHPS Health Plan Database as a model. The CAHPS Health Plan Database was developed in 1998 in response to requests from health plans, purchasers, and CMS for comparative data to support public reporting of health plan ratings, health plan accreditation and quality improvement (OMB Control Number 0935–0165, Expiration Date 7/31/2013). Demand for comparative results from the CG Survey has grown as well, and therefore AHRQ has developed a dedicated CG Database to support benchmarking, quality improvement, and research.

The CAHPS CG Database contains data from AHRQ's standardized CAHPS CG Survey, which provides comparative measures of quality to health care purchasers, consumers, regulators, and policy makers. The Database also provides data for AHRQ's annual National Healthcare Quality and National Healthcare Disparities Reports.

Health systems, medical groups and practices that administer the CAHPS CG Survey according to CAHPS specifications can participate in this project. A health system is a complex of facilities, organizations, and providers of health care in a specified geographic area. A medical group is defined as a medical group, Accountable Care Organization (ACO), state organization or some other grouping of practices. A practice is an outpatient facility in a specific location whose physicians and other providers share administrative and clinical support staff. Each practice located in a building containing multiple medical offices is considered a separate practice.

The goal of this project is to continue to update the CAHPS CG Database, with the latest results of the CAHPS CG Survey. These results consist of 37 items that measure 5 areas or composites of patients' experiences with physicians and staff in outpatient medical practices. This database will (1) allow participating organizations to compare their survey results with those of other outpatient medical groups; (2) facilitate internal assessment and learning in the quality improvement process; and (3) provide information to help identify strengths and areas with potential for improvement in patient care. The five composite measures are:

Getting Timely Appointments, Care, and Information
How Well Doctors Communicate With Patients
Helpful, Courteous, and Respectful Office Staff Follow-up on Test Results
Patients' Rating of the Doctor

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to: The quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and health surveys and database development. 42 U.S.C. 299a(a)(1), (2), and (8).

Method of Collection

To achieve the goal of this project, the following activities and data collections will be implemented:

(1) Registration Form—The purpose of this form is to determine the eligibility status and initiate the registration process for participating organizations seeking to voluntarily submit their CAHPS CG Survey data to the CAHPS CG Comparative Database. The point of contact (POC) at the participating organization (or parent organization) will complete the form. The POC is either a corporate-level health care manager or a survey vendor who contracts with a participating organization to collect the CAHPS CG Survey data.

(2) Data Use Agreement—The purpose of this form is to obtain authorization from participating organizations to use their voluntarily submitted CAHPS CG Survey data for analysis and reporting according to the terms specified in the Data Use Agreement (DUA). The POC will complete the form.

(3) Data Submission—After the POC has completed the Registration Form and the Data Use Agreement, they will submit their patient-level data from the CAHPS CG Survey to the CAHPS CG Comparative Database. Data on the organizational characteristics such as ownership, number of patient visits per year and medical specialty, and information related to survey administration such as mode and dates of survey administration, sample size, and response rate, which are collected as part of CAHPS CG Survey operations, are also submitted. Each submission will consist of 3 data files: (1) A Group File that contains 5 information about the group ownership and size of group, (2) a Practice File containing type of practice, the practice ownership and affiliation (i.e., commercial, hospital or integrated delivery system, insurance company, university or medical school, community health center, VA or military) and number of patient visits per year, and, (3) a Sample File that contains one record for each patient surveyed, the date of visit, survey disposition code and information about survey completion.

Survey data from the CAHPS CG Database is used to produce three types of products: (1) An online reporting of results available to the public on the CAHPS User Network web site; (2) comparative reports that are confidential and customized for each participating organization (e.g., health system, medical group or practice) that submits data; and, (3) a database available to researchers for additional analyses.

Information for the CAHPS CG Database is collected by AHRQ through its contractor Westat. Participating organizations are asked to voluntarily submit their data to the CAHPS Database. The data is cleaned with standardized programs, then aggregated and used to produce comparative results. In addition, reports are produced that compare the participating organizations' results to the database in a password-protected section of the CAHPS Database online reporting system. Trend data will be available to participants when enough data is collected across consecutive years.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for participating organizations. The burden hours and costs below are based on an estimated number of participants. It is estimated that about 30 health systems, medical groups and practices will participate in the CAHPS CG Database. The number of data submissions per participating organization will vary because some participants may submit data for multiple practices, while others may only submit data for one.

The total burden for completing the registration, DUA and data submission process is estimated to be 246 hours. The 30 participating organizations that complete the registration form and submit information to the CAHPS CG Database are a combination of an estimated 20 health systems, medical groups and practices and 10 estimated vendors. Information about survey administration and the survey data files are submitted together for each participating organization.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents POCs	Number of responses per POC	Hours per response	Total burden hours
Registration Form	30	1	6/60	3
Data Submission	30	1	7 and 6/60	213
Data Use Agreement	30	1	1	30
Total	30	NA	8 and 12/60	246

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to complete the submission process. The cost burden is estimated to be $10,485 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Registration Form	30	3	42.62	128
Data Submission	30	213	42.62	9,078
Data Use Agreement	30	30	42.62	1,279
Total	30	246	NA	10,485

*Mean hourly wage rate of $42.62 for Medical and Health Services Managers (SOC code 19111) was obtained from the May 2009 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 621100—Offices of Physicians located at *http://www.bls.gov/oe5/2009/may/naic54_621100.htm*.

Estimated Annual Cost to the Government

Exhibit 3 shows the estimated annualized cost to the government for developing, maintaining and managing the CAHPS CG Database, analyzing the data and reporting results. The cost is estimated to be $220,000 annually. Annualized costs for collecting and processing the CAHPS CG Database are based upon 10 years of historical CAHPS Health Plan Database project costs. AHRQ wishes to continue this data collection indefinitely and requests OMB approval for 3 years.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Total cost	Annualized cost
Database Maintenance	$120,000	$40,000
Data Submission	240,000	80,000
Data Analysis and Reporting	300,000	100,000
Total	660,000	220,000

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 20, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–2129 Filed 1–31–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Medical Office Survey on Patient Safety Culture Comparative Database.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the

public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 28th, 2011 and allowed 60 days for public comment. No substantive comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 2, 2012.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Office Survey on Patient Safety Culture Comparative Database

The Agency for Healthcare Research and Quality (AHRQ) requests that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act of 1995, AHRQ's collection of information for the AHRQ Medical Office Survey on Patient Safety Culture (Medical Office SOPS) Comparative Database. The Medical Office SOPS Comparative Database consists of data from the AHRQ Medical Office Survey on Patient Safety Culture. Medical offices in the U.S. are asked to voluntarily submit data from the survey to AHRQ, through its contractor, Westat. The Medical Office SOPS Database is modeled after the Hospital SOPS Database [OMB No. 0935–0162; approved 05/04/2010] that was originally developed by AHRQ in 2006 in response to requests from hospitals interested in knowing how their patient safety culture survey results compare to those of other hospitals.

In 1999, the Institute of Medicine called for health care organizations to develop a ''culture of safety'' such that their workforce and processes focus on improving the reliability and safety of care for patients (IOM, 1999; To Err is Human: Building a Safer Health System). To respond to the need for tools to assess patient safety culture in outpatient ambulatory health care, AHRQ developed and pilot tested the Medical Office Survey on Patient Safety Culture with OMB approval (OMB NO. 0935–0131; approved July 5, 2007).

The survey is designed to enable medical offices to assess provider and staff opinions about patient safety issues, medical error, and error reporting and includes 52 items that measure 12 dimensions of patient safety culture. AHRQ released the survey to the public along with a Survey User's Guide and other toolkit materials in December 2008 on the AHRQ Web site (located at *http://www.AHRQ.gov/QUAL/patientsafetyculture/mosurvindex.htm*). Since its release, the survey has been voluntarily used by hundreds of medical offices in the U.S.

The Medical Office SOPS and the Comparative Database are supported by AHRQ to meet its goals of promoting improvements in the quality and safety of health care in medical office settings. The survey, toolkit materials, and preliminary comparative database results are all made available to the public along with technical assistance provided by AHRQ through its contractor at no charge to medical offices, to facilitate the use of these materials for medical office patient safety and quality improvement.

The goal of this project is to create the Medical Office SOPS Comparative Database. This database will (1) Allow medical offices to compare their patient safety culture survey results with those of other medical offices; (2) provide data to medical offices to facilitate internal assessment and learning in the patient safety improvement process; and, (3) provide supplemental information to help medical offices identify their strengths and areas with potential for improvement in patient safety culture. De-identified data files will also be available to researchers conducting patient safety data analysis. The database will include 52 items that measure 12 areas, or composites, of patient safety culture.

This study is being conducted by AHRQ through its contractor, Westat, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to: the quality, effectiveness, efficiency, appropriateness, and value of healthcare services; quality measurement and improvement; and database development. 42 U.S.C. 299a(a)(1), (2), and (a)(8).

Method of Collection

To achieve the goal of this project the following activities and data collections will be implemented:

(1) Eligibility Form—The purpose of this form is to determine the eligibility status and initiate the registration process for medical offices seeking to voluntarily submit their MO SOPS data to the MO SOPS Comparative Database. The medical office point of contact (POC) will complete the form. The POC is either an office manager, nurse manager, or a survey vendor who contracts with a medical office to collect their data. The POC may submit data on behalf of multiple medical offices because many medical offices are part of a larger practice with multiple sites or part of a larger health system that includes many medical office sites.

(2) *Data Use Agreement*—The purpose of this form is to obtain authorization from medical offices to use their voluntarily submitted MO SOPS data for analysis and reporting according to the terms specified in the Data Use Agreement (DUA). The medical office POC will complete the form.

(3) *Medical Office Information Form*—The purpose of this form is to obtain basic information about the characteristics of the medical offices submitting their MO SOPS data to the MO SOPS Comparative Database (e.g., number of providers and staff, ownership, and type of specialty). The medical office POC will complete the form.

(4) *Data Submission*—After the medical office POC has completed the Medical Office Eligibility Form, the Data Use Agreement and the Medical Office Information Form, they will submit their data from the MO SOPS to the MO SOPS Comparative Database.

Data from the AHRQ Medical Office Survey on Patient Safety Culture are used to produce three types of products: (1) A Medical Office SOPS Comparative Database Report that is produced periodically and made available to the public on the AHRQ Web site (see *http://www.AHRQ.gov/QUAL/mosurvey10/moresults10.htm*); (2) Medical Office Survey Feedback Reports that are confidential, customized reports produced for each medical office that submits data to the database; and, (3) Research data sets of staff-level and medical office-level de-identified data that enable researchers to conduct additional analyses.

Medical offices are asked to voluntarily submit their Medical Office SOPS data to the comparative database. The data are then edited to detect and correct errors and aggregated and used to produce a Comparative Database Report that displays averages, standard deviations, and percentile scores on the survey's 52 items and 12 patient safety

culture dimensions, as well as displaying these results by medical office characteristics (size of office, specialty, geographic region, etc.) and staff characteristics (staff position).

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the medical office to participate in the Medical Office SOPS Comparative Database. The POC completes a number of data submission steps and forms, beginning with completion of the online Medical Office SOPS Database Eligibility Form and Data Use Agreement, which will be completed for 150 medical offices annually. The Medical Office Information Form will be completed for each medical office; since each POC represents an average of 10 medical offices, a total of 1,500 Information Forms will be completed annually, each requiring about 5 minutes to complete. The POC will submit data for all of the medical offices they represent which will take about 4 and ½ hours, including the amount of time POCs typically spend deciding whether to participate in the database, preparing their materials and data set for submission to the database, and performing the submission. The total annual burden hours are estimated to be 816.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents/ POCs	Number of responses per POC	Hours per response	Total burden hours
Eligibility Form	150	1	3/60	8
Data Use Agreement	150	1	3/60	8
Medical Office Information Form	150	10	5/60	125
Data Submission	150	1	4.5	675
Total	600	NA	NA	816

Medical offices administer the AHRQ Medical Office Survey on Patient Safety Culture on a periodic basis. Hospitals submitting to the Hospital SOPS Comparative Database administer the survey every 16 months on average. Similarly, the number of medical office submissions to the database is likely to vary each year because medical offices do not administer the survey and submit data every year. The 150 respondents/ POCs shown in Exhibit 1 are based on an estimate.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to submit their data. The cost burden is estimated to be $34,779 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents/ POCs	Total burden hours	Average hourly wage rate *	Total cost burden
Eligibility Form	150	8	$42.62	$341
Data Use Agreement	150	8	42.62	341
Medical Office Information Form	150	125	42.62	341
Data Submission	150	675	42.62	28,769
Total	600	816	NA	34,779

* Mean hourly wage rate of $42.62 for Medical and Health Services Managers (SOC code 19111) was obtained from the May 2009 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 621100—Offices of Physicians located at *http://www.bls.gov/oes/2009/may/naic4_621100.htm.*

Estimated Annual Cost to the Government

The estimated annualized cost to the government for developing, maintaining, and managing the database and analyzing the data and producing reports is shown below. The cost is estimated to be $310,000 annually for 3 years. The total cost is estimated to be $930,000.

EXHIBIT 3—ESTIMATED ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$59,715	$19,905
Data Collection Activities	82,107	27,369
Data Processing and Analysis	111,963	37,321
Publication of Results	111,966	37,322
Project Management	7,464	2,488
Overhead	556,785	185,595
Total	930,000	310,000

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 20, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–2128 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following federal committee meeting.

Times and Dates:

8 a.m.—5:30 p.m., February 22, 2012

8 a.m.—1 p.m., February 23, 2012

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent ''Oz'' Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate dose, administration interval, age groups and contraindications applicable to the vaccines. Further, under provisions of the Affordable Care Act, at section 2713 of the Public Health Service Act, immunization recommendations of the ACIP that have been adopted by the Director of the Centers for Disease Control and Prevention must be covered by applicable health plans.

Matters To Be Discussed: The agenda will include discussions on: meningococcal vaccine, hepatitis B vaccine, tetanus, diphtheria, and acellular pertussis (Tdap) vaccine, influenza, vaccine supply, 13-valent pneumococcal conjugate vaccine, and measles-mumps-rubella (MMR) vaccine. A VFC vote is scheduled for meningococcal vaccines. Recommendation votes are scheduled for meningococcal vaccines and for Tdap vaccine. Time will be available for public comment.

Agenda items are subject to change as priorities dictate.

The Meeting is webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP Web site: *http://www.cdc.gov/vaccines/recs/acip/.*

Contact Person for More Information: Stephanie B. Thomas, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., MS–A27, Atlanta, Georgia 30333, telephone 404 639–8836; Email *ACIP@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–2140 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date:

8 a.m.–5 p.m., February 29, 2012 (Closed),

8 a.m.–5 p.m., March 1, 2012 (Closed).

Place: SpringHill Suites Marriott, 3459 Buckhead Loop, NE., Atlanta, Georgia 30326, Telephone: (404) 844–4800.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Occupational Safety and Health Education and Research Centers (ERC) PAR 10–217.''

Virtual Site Visits will be conducted for University of North Carolina at Chapel Hill and University of Kentucky Research Foundation, February 27, 2012; University of California, Los Angeles and University of Alabama Birmingham, February 28, 2012 to advise and make recommendations to the Disease, Disability, and Injury Prevention and Control SEP: Occupational Safety and Health Education and Research Centers, PAR 10–217.

Contact Person For More Information: George Bockosh, M.S., Scientific Review Officer, CDC/NIOSH, 626 Cochrans Mill Road, Mailstop P–05, Pittsburgh, Pennsylvania 15236, Telephone: (412) 386–6465 AND Joan Karr, Ph.D., Scientific Review Officer, CDC/NIOSH 1600 Clifton Road, Mailstop E–74, Atlanta, Georgia 30333, Telephone: (404) 498–2506.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–2139 Filed 1–31–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Identifying Reasons for Racial/Ethnic Disparities with Completing the HPV Vaccine Series among Adolescent Females, IP12–004, and Intervention Study to Increase Use of Standing Orders Programs for Vaccinating Adults in Physician Office Settings, IP12–005, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., May 3, 2012 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Identifying Reasons for Racial/Ethnic Disparities with Completing the HPV Vaccine Series among Adolescent Females, FOA IP12–004; and Intervention Study to Increase Use of Standing Orders Programs for Vaccinating Adults in Physician Office Settings, FOA IP12–005.''

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2012–2143 Filed 1–31–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Administration for Children and Families' Office of Head Start (OHS).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of a one-day Tribal Consultation Session to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of this Consultation Session is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

DATES: February 15, 2012.

ADDRESSES: 2012 Office of Head Start Tribal Consultation Session will be held at the following location:

Wednesday, February 15, 2012—Petoskey, Michigan—Odawa Hotel, 1444 US 131 South, Petoskey, MI 49770.

FOR FURTHER INFORMATION CONTACT: Camille Loya, Acting Regional Program Manager Region XI, email *Camille.Loya@acf.hhs.gov* or phone (202) 401–5964. Additional information and online meeting registration is available at *http://www.headstartresourcecenter.org.*

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) announces Office of Head Start (OHS) Tribal Consultations with leaders of Tribal Governments operating Head Start (including Early Head Start) programs for each of the nine geographic regions of Head Start where AI/AN programs are located. We are convening the OHS Tribal Consultations in conjunction with other Tribal Leader events in order to minimize the financial and travel burden for participants. The session in Petoskey, Michigan, is being held in conjunction with the U.S. Department of Health and Human Services and Midwest Alliance of Sovereign Tribes 2012 Midwest Tribal Consultation Session. We will schedule additional consultations around the country for later in the year.

The agenda for the scheduled OHS Tribal Consultation will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2011 OHS Tribal Consultations.

Tribal leaders and designated representatives interested in submitting written testimony or proposing specific agenda topics for this Consultation Session should contact Camille Loya at *Camille.Loya@acf.hhs.gov.* Proposals must be submitted at least three days in advance of the session and should include a brief description of the topic area, along with the name and contact information of the suggested presenter.

The Consultation Session will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. The letter should be submitted at least three days in advance of the Consultation Session to Camille Loya at (202) 205–9721 (fax). Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of each Consultation Session will be prepared and made available within 90 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Camille Loya at *Camille.Loya@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in the report without attribution, along with topics of concern and recommendations. Hotel and logistical information for all Consultation Sessions has been sent to tribal leaders via email and posted on the Head Start Resource Center Web site at *http://www.headstartresourcecenter.org.*

Dated: January 24, 2012.

Yvette Sanchez Fuentes,

Director, Office of Head Start.

[FR Doc. 2012–2166 Filed 1–31–12; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Initiative: Exploratory Program To Increase Access to the Agency's Compliance and Enforcement Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Food and Drug Administration Transparency Initiative: Exploratory Program to

Increase Access to the Agency's Compliance and Enforcement Data,'' as part of the Transparency Initiative. This report includes eight initiatives adopted by the Commissioner of Food and Drugs (the Commissioner) to explore avenues for making FDA's publicly available compliance and enforcement data more accessible and user-friendly.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4254, Silver Spring, MD 20993, 301–796–4706, Fax: 301–847–8616, email: *daniel.sigelman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a report entitled ''Food and Drug Administration Transparency Initiative: Exploratory Program to Increase Access to the Agency's Compliance and Enforcement Data.'' FDA is responsible for a broad range of compliance and enforcement activities. Increasing the transparency of these activities enhances the public's understanding of the Agency's decisions and promotes accountability of the Agency and the regulated industry.

In a May 6, 2011, memorandum to the Department of Health and Human Services responding to a January 18, 2011, Presidential Memorandum on Regulatory Compliance, (76 FR 3825, January 21, 2011), FDA recounted the actions it had already implemented, as well as those proposed or underway, to increase public accessibility of its regulatory compliance and enforcement information. FDA stated that it would: (1) Issue proposals for public comment within 150 days (by October 3, 2011) if it concluded that there were additional opportunities to increase the transparency of its compliance and enforcement data, and (2) determine within 270 days (by January 31, 2012) whether to adopt such proposals.

On October 3, 2011, FDA issued a report entitled ''Food and Drug Administration Transparency Initiative: Draft Proposals for Public Comment to Increase Transparency by Promoting Greater Access to the Agency's Compliance and Enforcement Data,'' that advanced eight draft proposals to make FDA's publicly available compliance and enforcement data more accessible and user-friendly (*http://www.fda.gov/downloads/AboutFDA/Transparency/TransparencyInitiative/UCM273145.pdf*). In publishing a notice of availability of this report on October 4, 2011 (76 FR 61366), FDA sought public comment on these proposals by December 2, 2011. The Agency stated that its Transparency Task Force would ultimately recommend specific draft proposals to the Commissioner for consideration based on the comments it received, the feasibility of each draft proposal, relative priority, and available resources, and that the Commissioner would determine whether to adopt any of these draft proposals by January 31, 2012.

Based on a review of the recommendations of the Transparency Task Force, the Commissioner is adopting all eight of the draft proposals published in October 2011 as initiatives the Agency will explore, thereby committing the Agency to investigating numerous avenues for increasing the transparency and public accessibility of its compliance and enforcement data.

Dated: January 27, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–2184 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0003]

Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 20 new animal drug applications (NADAs) at the sponsor's request because the products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective February 13, 2012.

FOR FURTHER INFORMATION CONTACT: John Bartkowiak, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9079, email: *john.bartkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the 20 NADAs listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1—NADAS FOR WHICH APPROVAL IS VOLUNTARILY WITHDRAWN

Application No.	Trade name (drug)	Applicant
NADA 014–485	METOPHANE Inhalation (methoxyflurane)	Medical Developments, International Ltd., 556 Morris Ave., Summit, NJ 07901–1330.
NADA 032–322	LIQUISONE F with Cerumene (hexamethyltetracosane, prednisolone, tetracaine, neomycin sulfate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 044–655	NEOMYCANE Ophthalmic Ointment (neomycin sulfate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 045–288	OPTISONE (neomycin sulfate, prednisolone acetate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 049–890	NORCO T–2 Pre-Pak (tylosin phosphate)	Norco Mills of Norfolk, Inc., P.O. Box 56, Norfolk, NE 68701.
NADA 055–034	CHLORASOL (chloramphenicol)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 055–052	Chlora-Tabs 100 (chloramphenicol)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 065–158	CHLORICOL (chloramphenicol)	Evsco Pharmaceuticals, An Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 065–259	CHLORASONE Ophthalmic Ointment (chloramphenicol, prednisolone acetate).	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 065–488	BENZA–PEN (penicillin G benzathine, penicillin G procaine)	Walco International, Inc., 15 West Putnam, Porterville, CA 93257.

TABLE 1—NADAS FOR WHICH APPROVAL IS VOLUNTARILY WITHDRAWN—Continued

Application No.	Trade name (drug)	Applicant
NADA 095–953	MOORMABOOST TY 4000 Medicated (tylosin phosphate) ..	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 100–689	DIFIL Syrup (diethylcarbamazine citrate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 100–690	DIFIL Tablets (diethylcarbamazine citrate)	Evsco Pharmaceuticals, an Affiliate of IGI, Inc., Box 209, Harding Hwy., Buena, NJ 08310.
NADA 107–957	TYLAN 20 Sulfa-G (tylosin phosphate and sulfamethazine)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 111–069	TYLAN 40 Sulfa-G (tylosin phosphate and sulfamethazine)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 131–956	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 131–957	TYLAN 40 (tylosin phosphate)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 133–490	Ban-D–Wormer II BANMINTH (pyrantel tartrate)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 140–842	HYGROMIX 2.4 Premix (hygromycin B)	ADM Alliance Nutrition, Inc., 1000 North 30th St., Quincy, IL 62305–3115.
NADA 140–958	EQUIPHEN Paste (phenylbutazone)	Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 014–485, 032–322, 044–655, 045–288, 049–890, 055–034, 055–052, 065–158, 065–259, 065–488, 095–953, 100–689, 100–690, 107–957, 111–069, 131–956, 131–957, 133–490, 140–842, and 140–958, and all supplements and amendments thereto, is hereby withdrawn, effective February 13, 2012.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these applications.

Dated: January 26, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–2109 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Perinatal HIV-Infected Youth.

Date: February 22, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01 Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2189 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group, DCLG Meeting.

Date: February 29–March 1, 2012.

Time: 9 a.m. to 1 p.m.

Agenda: 2/29—Drug Shortage—A Critical Challenge for the Cancer Community; Cancer Drug Shortages: Economic, Regulatory, and Manufacturing Issues; The Role of the Cancer Advocacy Community 3/01—Advocate Engagement at the National Cancer Institute.

Place: National Institutes of Health, Building 16, 1st Floor, 16 Center Drive, Bethesda, MD 20892.

Contact Person: Amy Bulman, Acting Director, Office of Advocacy Relations, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 10A30, Bethesda, MD 20892, 301–496–9723.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the

name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2191 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Testosterone Studies.

Date: February 16, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2192 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Integrative Neurosensory Studies.

Date: February 21–22, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: February 23, 2012.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Solamar, 435 6th Avenue, San Diego, CA 92101.

Contact Person: Geoffrey G Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research in Biomedicine and Agriculture.

Date: February 24, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard G Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Function and Neurological Disorders.

Date: February 29–March 1, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kevin Walton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Services Organization and Delivery Study Section.

Date: February 29–March 1, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Health Disparities and Equity Promotion Study Section.

Date: February 29–March 1, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.

Date: February 29–March 1, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Priscah Mujuru, RN, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2204 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of a Meeting of a Working Group of the Advisory Committee to the Director

SUMMARY: The purpose of this notice is to inform the public about a meeting of the Advisory Committee to the Director (ACD) Working Group on Diversity in the Biomedical Research Workforce (WGBDRW).

DATES: The meeting will be held on Tuesday, February 14, 2012, from approximately 10 a.m. to 3:45 p.m. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 p.m. on February 10, 2012.

ADDRESSES: The meeting will be held at the National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 6, Bethesda, MD 20892. Comments and letters of intent to present comments should be sent to Mr. Justin D. Hentges, Office of the Director, NIH, 1 Center Drive, Room 108, Bethesda, MD 20892; telephone (301) 443–7975; fax (301) 402–2700; email *ACDDiversity@mail.nih.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this meeting, contact Mr. Justin D. Hentges, Office of the Director, National Institutes of Health, 1 Center Drive, Room 108, Bethesda, MD 20892; telephone (301) 443–7975; fax (301) 402–2700; email *ACDDiversity@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Working Group to receive public input on ways to improve the retention of underrepresented minorities, persons with disabilities, and persons from disadvantaged backgrounds throughout various research career stages. The White House Initiative on Historically Black Colleges and Universities, the White House Initiative on Educational Excellence for Hispanics, the White House Initiative on American Indian and Alaska Native Education, and the White House Initiative on Asian American and Pacific Islanders have been invited to participate in this discussion and provide their views.

The public comments session of the ACD WGBDRW is scheduled from 2:00 p.m. to 3:45 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted five minutes for his/her presentation. Interested individuals and representative of organizations are requested to notify Mr. Justin D. Hentges, Office of the Director, NIH, 1 Center Drive, Room 108, Bethesda, MD 20892; telephone (301) 443–7975; fax (301) 402–2700; email *ACDDiversity@mail.nih.gov*. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 p.m. on February 10, 2012. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson.

In the event that time does not allow for all those interested to present oral comments, anyone may file written comments by sending them to Mr. Justin Hentges at the address above. Comments should include the name, address, telephone number and when applicable, the business or professional affiliation of the commenter. In addition, written comments may be submitted to the corresponding Request for Information published at: *http://grants.nih.gov/grants/guide/notice-files/NOT-OD-12-031.html*.

The meeting will be open to the public, with attendance limited to space available. There will be a live Web cast of the meeting which can be accessed at *http://videocast.nih.gov/*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Mr. Justin Hentges in advance of the meeting.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

A draft agenda and materials for the meeting may be obtained by connecting to *http://acd.od.nih.gov/DBR.asp*.

Dated: January 25, 2012.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2012–2215 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: February 23, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street NW, Washington, DC 20007.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, (301) 435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation

Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2194 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: February 23–24, 2012.

Time: February 23, 2012, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn San Diego Downtown Gaslamp Quarter, 356 6th Avenue, San Diego, CA 92101.

Time: February 24, 2012, 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn San Diego Downtown Gaslamp Quarter, 356 6th Avenue, San Diego, CA 92101.

Contact Person: Susan Sullivan, Ph.D., Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, (301) 496–8683, *sullivas@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/cdrc/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2185 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training NCI F Manpower and Training Grants.

Date: February 21–22, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Timothy C. Meeker, Ph.D., MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892 (301) 594–1279, *meekert@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2183 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 5–6, 2012.

Time: March 5, 2012, 9 a.m. to 6 p.m.

Agenda: Director's Report: Ongoing and New Business; Reports of Program Review Group(s); and Budget Presentations; Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD 20892.

Time: March 6, 2012, 9 a.m. to 12 p.m.

Agenda: Reports of Special Initiatives; RFA and RFP Concept Reviews; and Scientific Presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, 6th Floor, Conf. Rm. 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, (301) 496–5147, *grayp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All

visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsa/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2211 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 23–24, 2012.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maqsood A Wani, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, (301) 435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Tumor Microenvironment Study Section.

Date: February 27–28, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Angela Y Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, (301) 435–1715, *ngan@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cornea and Eye Diseases.

Date: February 27–28, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: James P Harwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, (301) 435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cardiovascular and Surgical Devices.

Date: February 27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Suites by Hilton Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: John Firrell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–2598, *firrellj@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Community Influences on Health Behavior.

Date: February 28–29, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *liangw3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–228: Shared Instrumentation: High-End Microscopy.

Date: February 28–29, 2012.

Time: 11 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria DeBernardi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–11–216: Early Phase Clinical Trials in Imaging and Image-Guided Interventions.

Date: February 28, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David L Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *williamsdl2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: January 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2207 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–11–100: Alzheimer's Disease Pilot Clinical Trials.

Date: February 20, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mark Lindner, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 435–0913, *mark.lindner@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: February 22, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Genetics and Epidemiology: Collaborative Applications.

Date: February 22, 2012.

Time: 3:00 p.m.to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard Santa Monica, CA 90405.

Contact Person: Suzanne Ryan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: System Sciences.

Date: February 23–24, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *tdrgon@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention and Intervention for Addictions: Overflow.

Date: February 23–24, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies Study Section.

Date: February 23–24, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street Santa Monica, CA 90401.

Contact Person: Valerie Durrant, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2205 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PAR–09–247 Ancillary Studies: Bariatric Surgery.

Date: March 8, 2012.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2193 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Sequencing Technology RFAs—SEP

Date: February 23, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 11700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *nakamurk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Initial Review Group Genome Research Review Committee GNOM–G.

Date: March 1, 2012.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 5635 Fishers Lane, 3rd floor Conference Room, Rockville, MD (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Teleconference Review.

Date: March 1, 2012.

Time: 3 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 5634 Fishers Lane 3rd floor Conf. Room, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2190 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (PO1).

Date: February 22, 2012.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive MDS–7616, Bethesda, MD 20892–7616, (301) 496–2550, *jay.radke@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 26, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2187 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: February 17, 2012.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–8382, *hindialm@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2196 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The concept review and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the concept review, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Safety and efficacy of interventions to prevent iron deficiency in regions with malaria: An individual patient based meta-analysis.

Date: February 15, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To evaluate concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6100 Executive Blvd., Room 5B01 Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2208 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Affordable Hearing.

Date: February 14, 2012.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific, Review Officer Scientific, Review Branch Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, (301) 496–8683, *singhs@nidcd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Deafness and Other Communication Disorders; Special Emphasis Panel; CDRC Member Conflicts.

Date: February 24, 2012.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn San Diego Downtown Gaslamp Quarter, 356 6th Avenue, San Diego, CA 92101 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders National Institutes of Health, Rockville, MD 20850, (301) 402–3587, *rayk@nidcd.nih.gov*

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/sep/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 24, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–2210 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of Human Anti-Mesothelin Monoclonal Antibodies for the Treatment of Human Cancers

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive evaluation option license to practice the inventions embodied in U.S. Patent Application 61/040,005 entitled ''Human Monoclonal Antibodies Specific for Mesothelin'' [HHS Ref. E–079–2008/0–US–01], PCT Application PCT/US2009/038228 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–PCT–02], Australian patent application AU 2009228361 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–AU–03], Canadian patent application CA 2718321 entitled ''Human Anti-Mesothelin Monoclonal Antibodies'' [HHS Ref. E–079–2008/0–CA–04], European patent application EP 09726082.2 entitled ''Human Monoclonal Antibody Against Mesothelin'' [HHS Ref. E–079–2008/0–EP–05], U.S. patent application 12/934,060 entitled ''Human Anti-Mesothelin Monoclonal Antibodies '' [HHS Ref. E–079–2008/0–US–06], and all related continuing and foreign patents/patent applications for the technology family, to Sanomab, Ltd. The patent rights in these inventions have been assigned to and/or exclusively licensed to the Government of the United States of America.

The prospective exclusive evaluation option license territory may be worldwide, and the field of use may be limited to:

The use of the monoclonal antibody m912 (SM–101) as an antibody therapy for the treatment of pancreatic cancer, ovarian cancer, lung cancer, mesothelioma, and stomach/gastric cancer. The Licensed Field of Use explicitly excludes the use of the antibody in the form of an immunoconjugate, including, but not limited to, immunotoxins.

Upon the expiration or termination of the exclusive evaluation option license, Sanomab, Ltd. will have the exclusive right to execute an exclusive commercialization license which will supersede and replace the exclusive evaluation option license with no greater field of use and territory than granted in the exclusive evaluation option license.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before February 16, 2012 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive evaluation option license should be directed to: David A. Lambertson, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4632; Facsimile: (301) 402–0220; Email: *lambertsond@od.nih.gov*.

SUPPLEMENTARY INFORMATION: This invention concerns a monoclonal antibody and methods of using the antibody for the treatment of mesothelin-expressing cancers, including mesothelioma, lung cancer, stomach/gastric cancer, ovarian cancer and pancreatic cancer. The specific antibody covered by this technology is designated m912 (SM–101), which is a fully human monoclonal antibody against mesothelin.

Mesothelin is a cell surface antigen that is preferentially expressed on certain types of cancer cells. The m912 antibody can selectively bind to these cancer cells and induce cell death while leaving healthy, essential cells unharmed. This can result in an effective therapeutic strategy with fewer side effects due to less non-specific killing of cells.

The prospective exclusive evaluation option license is being considered under the small business initiative launched on 1 October 2011, and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive evaluation option license, and a subsequent exclusive commercialization license, may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7 within fifteen (15) days from the date of this published notice. A previous notice for this license was published on 12 October 2011.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive evaluation option license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 24, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development & Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–2213 Filed 1–31–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory);

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264;

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150;

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.);

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll: Laboratory Specialists, Inc.);

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.);

Baptist Medical Center—Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center);

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917;

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281;

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310;

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609;

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630;

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387;

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.);

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group);

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center);

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.);

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.);

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244;

MetroLab—Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295;

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088;

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515;

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory),

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory);

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7;

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555;

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories);

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227;

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276;

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027,

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052;

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438;

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273;

Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, 305–593–2260;

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in

the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2012–2144 Filed 1–31–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0641]

Accommodation Service Provided on Vessels Engaged in U.S. Outer Continental Shelf Activities

AGENCY: Coast Guard, DHS.

ACTION: Request for public comments.

SUMMARY: The Coast Guard requests public comment on the appropriate standards for the design, construction, and operation of all vessels providing accommodation service on the U.S. Outer Continental Shelf.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 1, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0641 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. William Peters, U.S. Coast Guard, Office of Design and Engineering Standards, Naval Architecture Division (CG–5212), telephone (202) 372–1371. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2011–0641), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2011–0641'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments

To view comments, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0641'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Background

A. General

The offshore mineral and energy exploration and production industry has progressively moved Outer Continental Shelf (OCS) activities into deeper waters and further offshore. Because of this, we believe that the use of vessels providing accommodation service on the U.S. OCS will continue to grow.

Vessels that provide accommodation service are commonly referred to as ''floating hotels,'' ''floatels,'' or ''flotels,'' and typically supply hotel-like services (such as dining, berthing, and access to recreational facilities) for personnel who are not engaged in work aboard the vessel itself but are engaged in work on a nearby OCS installation (referred to hereafter as ''accommodated personnel''). These vessels support OCS installations during various phases of construction and operation, including initiation, commissioning, maintenance, repair, modification, and decommissioning. During these phases, the OCS installation may not always be fully operational and may not have necessary safety systems in place for the accommodation of any personnel.

There are several vessel types that are capable of providing accommodation service, including purpose-built accommodation vessels, passenger vessels, industrial vessels, and multi-purpose support vessels. The number of accommodated personnel can range from a handful to several hundreds. The designs of these vessels range from the traditional ship-shape monohull to column-stabilized Mobile Offshore Units (MOUs) and box-shape barges. It is not uncommon for these vessels to maintain station near an OCS installation by using a dynamic positioning system (DPS) while accommodated personnel are transferred to and from the OCS installation, often by means of a motion-compensated gangway or personnel transfer baskets.

B. Existing Standards

U.S. law grants broad authority to the Coast Guard for the promulgation of regulations governing vessels providing

accommodation service on the U.S. OCS.[1] While there are no current federal regulations for vessels providing accommodation service, U.S. flag vessels must comply with Coast Guard requirements, which are organized according to intended service. The current vessel categories include, among others, passenger vessels, Mobile Offshore Drilling Units (MODUs), offshore supply vessels (OSVs), and cargo and miscellaneous vessels. These categories of vessels are inspected under Title 46, Code of Federal Regulations (CFR), Chapter I, Subchapters H, I–A, L, and I, respectively.

Federal regulations also currently do not contain a category for accommodated personnel. Existing categories used by the Coast Guard on Certificates of Inspection are: Passengers, crew, other persons in crew, and persons in addition to crew. On specific vessel types, the Coast Guard uses additional personnel categories, including industrial personnel, offshore workers, scientific personnel, cadets, instructors, and sailing school students.

In the absence of applicable U.S. regulations, the Coast Guard has not inspected any U.S. flag vessels engaged in accommodation service. Foreign flag vessels providing accommodation service must meet requirements established by their flag Administration.

In mandatory provisions of the International Convention for the Safety of Life at Sea Convention (SOLAS), vessels are characterized either as passenger or cargo ships, and personnel as either passengers or crew.[2] In addition, the International Maritime Organization (IMO) promulgates voluntary codes and guidelines, which also identify another personnel category—special personnel who are carried on board in connection with the special purpose of or the special work carried out on the ship. Voluntary codes also often mention other specialized vessel types.

These existing requirements, voluntary codes, and guidelines take into account the risks generally associated with each ship type's operation, and include design and operation standards for damage stability, fire safety, safe means of escape, and training. Despite the lack of current federal regulations that specifically address the design, construction, and operation of vessels providing accommodation service, we are aware that some of these vessels have been built to certain classification society or proprietary standards.

III. Discussion

A. Areas of Concern and Casualties

Under federal statutes and regulations, the Coast Guard is responsible for promoting the safety of life and property and protection of the marine environment on, under and over waters subject to the jurisdiction of the United States.[3] The Coast Guard is concerned about the safety of operations of vessels providing accommodation service on the U.S. OCS because those operations are typically far offshore, distant from search and rescue assets, and located near high risk industrial activities.

More critically, those operations may involve large numbers of accommodated personnel, many of whom may not have received adequate training in firefighting, personal survival, lifeboat/raft procedures, modes of evacuation, or personal safety and may not be sufficiently familiar with the vessel. Accommodated personnel might not be credentialed mariners and their marine experience, capability and training may range from none to extensive. Additionally, the number of marine crew, who are responsible for shipboard safety, may not be sufficient to direct and assist the number of accommodated personnel in the event of an emergency.

These risk factors drive concerns about requirements governing vessel manning and design, emergency systems, design and operation of DPS, design and operation of systems used to transfer personnel between a vessel providing accommodation service and an OCS installation, and training. Many of these safety concerns, which are common for most vessels, are associated with fire safety systems, lifesaving equipment, means of escape, subdivision and stability. In the case of a vessel providing accommodation service, these systems should be appropriate for the number of personnel being accommodated, their experience level as mariners, and their familiarity with those systems.

There are other concerns, too. When a vessel is providing accommodation service for an OCS installation, the vessel is relatively close to the installation and often uses a DPS to maintain position. In the event of a malfunction of the DPS, there is increased risk of collision with the OCS installation or uncontrolled movement of the vessel. In addition, the risks associated with the operation or failure of the system used to transfer personnel between the OCS installation and the vessel providing the accommodation service are a source of concern.

The degree of concern in these areas may be elevated if the vessel providing accommodation service was designed and constructed using standards appropriate for vessels with fewer people on-board and/or with people with greater familiarity with the vessel and its systems. In this context, we note that neither Coast Guard nor international standards for MODUs, OSVs, cargo and miscellaneous vessels were developed for vessels providing accommodation service. The factors associated with the concerns cited above, combined with greater distances from available search and rescue assets, could affect the outcome of an emergency on board a vessel providing accommodation service.

There have also been a number of casualties over the years involving vessels providing accommodation service. The most recent of these involved the April 12, 2011, capsizing of the Mexican flagged, column-stabilized accommodation vessel *Jupiter 1* with over 700 persons aboard in relatively shallow, calm water in the Bay of Campeche. The people were safely evacuated by ship in this case, but the outcome could have been tragically worse had it occurred in deep water, far from shore and rescue assets, or in more severe environmental conditions. Other casualties[4] further highlight our concerns.

In light of these risk factors, concerns and casualties, and the lack of regulations written specifically to govern the design, construction and operation of U.S. and foreign flag vessels providing accommodation service on the U.S. OCS, the Coast Guard is soliciting public input on the most appropriate standards for all vessels providing accommodation service on the U.S. OCS.

[1] The ''Outer Continental Shelf Lands Act'', 43 U.S.C. 1331, *et seq.*

[2] ''* * *or other persons employed or engaged in any capacity on board a ship on the business of that ship;'' SOLAS, 1974, as amended, Regulation I/2(e).

[3] *See, e.g.,* 14 U.S.C. 2, 43 U.S.C. 1331, *et seq.,* and 33 CFR 140.1.

[4] The capsizing of the semi-submersible accommodation vessel *Alexander L. Kielland* on March 27, 1980, while positioned in the central North Sea resulted in the loss of 123 lives. In February 1992, eleven people died in a helicopter crash in very high gusting winds during a 200 meter transport of workers from the Cormorant Alpha production platform to the accommodation vessel *Safe Supporter* in the North Sea. On July 21, 2010, five oil cleanup workers were injured in a mess hall fire aboard a barge on Baptiste Collette Bayou, Louisiana that was fitted with stacked shipping containers converted to accommodation modules sufficient to quarter more than 500 workers. On August 10, 2010, while accommodating 270 workers off Barrow Island, Western Australia, the Norwegian flag passenger ship *Finnmarken* was holed by a barge after it broke free from moorings during severe weather—the vessel subsequently sailed under its own power to port for repairs.

B. Standards for Vessels Providing Accomodation Service

We recognize that accommodated personnel are neither marine crew nor explicitly included in other personnel categories, and are not treated as traditional passengers either. While passengers would generally be expected to have little or no sea-going experience or familiarity with vessel systems, the level of that experience and familiarity may vary widely among accommodated personnel. For this reason, some accommodated personnel could be expected to behave like passengers in an emergency.

Because accomodated personnel are not marine crew or explicitly included in another personnel category, and in view of the risks, concerns and casualties described above in section III.A., the use of MODU, OSV, or cargo and miscellaneous vessel standards may not be appropriate for vessels providing accommodation service. Instead, passenger ship safety standards, supplemented by requirements addressing DPS and personnel transfer, may be more appropriate for these vessels.

IV. Request for Comments

In summary, the Coast Guard recognizes that federal statutes or regulations that explicitly address the design, construction, and operation of vessels providing accommodation services do not exist, that cargo ship or MODU safety standards may not be appropriate for these vessels, and that passenger ship safety standards supplemented by DPS and personnel transfer standards may be more appropriate.

We request comment on the standards appropriate for existing, new, and planned U.S. and foreign flag vessels that are engaging or would engage in accommodation service on the OCS, including appropriate DPS, personnel transfer system, manning, and training standards. We also request views on whether accommodated personnel should be treated as passengers, marine crew, special personnel, another personnel category, or a combination thereof. We further request information on the impact appropriate standards might have on such vessels and their operation. Additionally, we are interested in obtaining information about the scope of accommodation service provided by U.S. and foreign flag vessels on the U.S. OCS since January 1, 2002, including:

A. On vessels that are providing, or have provided, accommodation service:

1. The type of vessel used (*e.g.,* column-stabilized mobile offshore unit, passenger ship, offshore supply vessel, liftboat, barge, *etc.*);

2. The number and size of such vessels, including the length, breadth, depth, number of crew, number of accommodated persons, tonnage and any other information relevant to vessel capability;

3. The time interval that a vessel provided accommodation service;

4. The safety standards the vessel uses (*e.g.,* SOLAS Cargo Ship, SOLAS Passenger Ship, 2009 IMO MODU Code, *etc.*);

5. The DPS used, if any, and the standards associated therewith;

6. The personnel transfer system used and the standards associated therewith; and,

7. Any other pertinent vessel information, including construction and operation costs, charter rates, and the average day rate per accommodated person on a vessel.

B. On crew and accommodated personnel:

1. The training, including special training, that crew receive in crowd or crisis management, passenger safety, or similar training required to be provided to crew on SOLAS passenger ships by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW);

2. The crew size, both licensed and other credentialed, and variations based on the number of accommodated personnel;

3. The frequency or degree to which the population of accommodated personnel changes over the course of a job or a given period of time;

4. The degree of training and experience of accommodated personnel (*e.g.,* marine credentials, STCW basic safety training or similar, training provided by vessel crew, frequency and degree of participation in drills); and,

5. Any other pertinent information on the scope of accommodation service (*e.g.,* crew cycling, replenishment, shore-based and on-board training, repatriation).

Please provide any comments in accordance with the procedures in the ''Public Participation and Request for Comments'' section above.

V. Authority

This document is issued under the authority of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, *et seq.,* 5 U.S.C. 552(a), and 33 CFR 1.05–1.

Dated: January 26, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–2119 Filed 1–31–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–1179]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet by teleconference to review and discuss reports and recommendations on (1) the Diving Subcommittee and Task Statement to Study the Matter of Medical Treatment of Injured Divers while working on the Outer Continental Shelf (OCS) and (2) receive and discuss the Standards for DP Operating Personnel subcommittee interim report. This meeting will be open to the public.

DATES: The teleconference meeting will take place on Wednesday, February 15, 2012, from 10:30 a.m. to 12 p.m. EST. This meeting may close early if all business is finished.

ADDRESSES: The Committee will meet via telephone conference, on February 15, 2012. The Public may participate by contacting the DFO and obtaining the telephone number to call in. Please contact the DFO as listed below in the **FOR FURTHER INFORMATION CONTACT** section to obtain teleconference information; however, the number of teleconference lines is limited and available on a first come first served basis. Members of the public may also participate by coming to Room 5–0622, U.S. Coast Guard Headquarters Building, 2100 Second Street SW., Washington DC 20593. Requests to make oral presentations should be sent to Commander Rob Smith, Designated Federal Officer (DFO) of NOSAC, Commandant (CG–5222), 2100 Second Street SW., Stop 7126, Washington, DC 20593–0005 or by fax to (202) 372–1926 on or before February 8, 2012.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

To facilitate public participation we are inviting public comment on the

issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing no later than February 8, 2012, and must be identified by USCG–2011–1179 and may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *Kevin.Y.Pekarek2@uscg.mil.* Include the docket Number in the subject line of the message.
- Fax: (202) 372–1926.
- Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9239.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number of this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *www.regulations.gov.* A public comment period will be held during the meeting on February 15, 2012, from 11:30–12:00 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Commander Rob Smith, Designated Federal Officer (DFO) of NOSAC, or Mr. Kevin Pekarek, Alternate Designated Federal Officer (ADFO), telephone (202) 372–1386, fax (202) 372–1926. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). NOSAC provides advice and recommendations to the Department of Homeland Security (DHS) on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

Agenda of Meeting

The agenda for the February 15, 2012, Committee meeting is as follows:

(1) Roll Call of committee members participating in the teleconference.

(2) Approval of minutes from the November 15, 2011, meeting.

(3) Presentation and discussion of interim reports and recommendations on:

(a) Diving Sub-committee and Task Statement to Study the Matter of Medical Treatment of Injured Divers While Working on the OCS.

(b) Standards for DP Operating Personnel.

(4) Period for public comment.

Minutes

Minutes from the meeting will be available for public review and copying 30 days following the meeting at the *www.fido.gov* Web site. The meeting minutes may be accessed via this Web site by using the Committee Search function and searching for the Committee by name or by using the Committee number of ''68.'' Once you have accessed the Committee page, click on the meetings tab and then the ''View'' button for the meeting dated February 15, 2012, to access the information for this meeting. Minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil* and use these key strokes: Missions>Port and Waterways>Safety Advisory Committee>NOSAC and then use the event key.

Dated: January 26, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–2120 Filed 1–31–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4050–DR; Docket ID FEMA–2011–0001]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4050–DR), dated December 22, 2011, and related determinations.

DATES: *Effective Date:* December 22, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 22, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from severe winter storms and flooding during the period of November 8–10, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

The North Slope Borough, the Bering Strait Regional Educational Attendance Area (REAA), the Lower Kuskokwim REAA, the Lower Yukon REAA, and the Southwest Region REAA for Public Assistance.

All boroughs and REAAs within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–2095 Filed 1–31–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5300–FA–08]

Announcement of Funding Awards for the Brownfields Economic Development Initiative (BEDI) Program for Fiscal Year 2009

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA) for the Brownfield Economic Development Initiative (BEDI) program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic Development Grants Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone number 202–402–4612 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: HUD's BEDI program provides Federal support to CDBG entitlement and non-entitlement units of general local government to enhance the security of loan guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, (42 U.S.C. 5308(q)) as amended, for the same brownfields economic development project, or to improve the viability of a brownfields economic development project financed with the Section 108-guaranteed loan, in order to stimulate economic development by local governments and private sector parties at brownfields sites and to return those sites to productive economic use.

On April 8, 2009, (FR–5300–N–08) HUD published a NOFA announcing the availability of approximately $20,000,000 in FY 2009 funds for the BEDI program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded the applications announced below, and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth in Appendix A to this Notice. Information regarding the awardees' project descriptions is posted at *http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/funding09/fy09awards.cfm* and is incorporated in this Notice.

Dated: January 20, 2012.

Valerie Piper,

Deputy Assistant Secretary for Economic Development.

APPENDIX A FISCAL YEAR 2009 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Burlington, VT	$1,040,000
Bremerton, WA	1,750,000
Cleveland, OH	2,000,000
Las Cruces, NM	2,000,000
Palm Beach County, FL	1,058,971
Philadelphia, PA	2,000,000
Wayne County, MI	2,000,000
Total	11,848,971

[FR Doc. 2012–2235 Filed 1–31–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5419–FA–01]

Announcement of Funding Awards for the Brownfields Economic Development Initiative (BEDI) Program for Fiscal Year 2009 Second Competition

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Second Round Fiscal Year (FY) 2009 Notice of Funding Availability (NOFA) for the Brownfield Economic Development Initiative (BEDI) program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic Development Grants Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW; Washington, DC 20410–7000; telephone number 202–402–4612 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: HUD's BEDI program provides Federal support to CDBG entitlement and non-entitlement units of general local government to enhance the security of loan guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, (42 U.S.C. 5308(q)), as amended, for the same brownfields economic development project, or to improve the viability of a brownfields economic development project financed with the Section 108-guaranteed loan, in order to stimulate economic development by local governments and private sector parties at brownfields sites and to return those sites to productive economic use.

On June 4, 2010, (FR–5419–N–01) HUD published a NOFA announcing the

availability of approximately $8,100,000 in FY 2009 Second Round funds for the BEDI program. The Department reviewed, evaluated and scored the applications received based on the criteria in the SuperNOFA. As a result, HUD funded the applications announced below, and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth in Appendix A to this Notice. Information regarding the awardees' project descriptions is posted at *http://www.hud.gov/offices/cpd/economicdevelopment/programs/bedi/funding09/fy2009bedi_2.pdf* and is incorporated in this Notice.

Dated: January 20, 2012.

Valerie Piper,

Deputy Assistant Secretary for Economic Development.

APPENDIX A FISCAL YEAR 2009 SECOND ROUND FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Memphis, TN	$2,000,000
Philadelphia, PA	2,000,000
Port Huron, MI	1,000,000
Reading, PA	750,000
Total	5,750,000

[FR Doc. 2012–2250 Filed 1–31–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–40]

Announcement of Funding Awards for the Brownfields Economic Development Initiative (BEDI) Program for Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fiscal Year (FLY) 2010 Notice of Funding Availability (NOFA) for the Brownfield Economic Development Initiative (BEDI) program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: David Kaminsky, Office of Economic Development Grants Management Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW; Washington, DC 20410–7000; telephone number 202–402–4612 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: HUD's BEDI program provides federal support to CDBG entitlement and non-entitlement units of general local government to enhance the security of loan guaranteed by HUD under Section 108 of the Housing and Community Development Act of 1974, (42 U.S.C. 5308(q)) as amended, for the same brownfields economic development project, or to improve the viability of a brownfields economic development project financed with the Section 108-guaranteed loan, in order to stimulate economic development by local governments and private sector parties at brownfields sites and to return those sites to productive economic use.

On June 1, 2011, (FR–5415–N–40) HUD published a NOFA announcing the availability of approximately $17,325,000 in FY 2010 funds for the BEDI program. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD funded the applications announced below, and, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as set forth in Appendix A to this Notice. Information regarding the awardees' project descriptions is posted on September 13, 2011 at *http://portal.hud.gov/hudportal/documents/huddoc?id=fy2010_bedi_fa.pdf* and is incorporated in this Notice.

Dated: January 20, 2012.

Valerie Piper,

Deputy Assistant Secretary for Economic Development.

APPENDIX A FISCAL YEAR 2010 FUNDING AWARDS FOR THE BROWNFIELDS ECONOMIC DEVELOPMENT INITIATIVE PROGRAM

Cleveland, OH	$3,000,000
Philadelphia, PA	3,000,000
Philadelphia, PA	1,250,000
Ranson, WV	1,500,000
Santa Rosa, CA	1,500,000
Taunton, MA	1,000,000
Toledo, OH	2,000,000
Total	13,250,000

[FR Doc. 2012–2234 Filed 1–31–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2011–N220; BAC–4311–K9–S3]

Mashpee National Wildlife Refuge, Barnstable County, MA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Mashpee National Wildlife Refuge (the refuge, NWR), Barnstable County, Massachusetts. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge.

DATES: We will announce opportunities for public input throughout the CCP process in the **Federal Register**, local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/planning/Eastern%20Mass%203/ccphome.html.*

ADDRESSES: Send your comments or requests for more information by any of the following methods.

Email: northeastplanning@fws.gov. Include ''Mashpee CCP'' in the subject line of the message.

Fax: Attn: Carl Melberg, (978) 443–2898.

U.S. Mail: Eastern Massachusetts National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, 73 Weir Hill Road Sudbury, MA 01776.

In-Person Drop-off: You may drop off comments during regular business hours at address above.

FOR FURTHER INFORMATION CONTACT: Carl Melberg, Planning Team Leader, (978) 443–4661 extension 32 (phone) or Libby Herland, Project Leader, 978–443–4661 extension 11 (phone), *fw5rw_emnrw@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Mashpee NWR, in Barnstable County, Massachusetts. This notice complies with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreational opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, and local governments, agencies, organizations, and the public. Throughout the process, we will have formal comment periods and hold public meetings to gather comments, issues, concerns, ideas, and suggestions for the future management of Mashpee NWR. You may also send comments anytime during the planning process by mail, email, or fax (see **ADDRESSES**).

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Mashpee National Wildlife Refuge

Mashpee NWR is one of eight refuges that comprise the Eastern Massachusetts NWR Complex. Mashpee NWR is located in the towns of Mashpee and Falmouth, Massachusetts. It was established in 1995 for the development, advancement, management, conservation, and protection of fish and wildlife resources. The refuge is cooperatively managed through a unique partnership among Federal and State agencies, a Tribe, municipalities, and private conservation groups. The approved refuge boundary totals 5,871 acres. The refuge includes fee or easement interest on 342 acres within that boundary. Refuge habitats include salt marsh, cranberry bog, Atlantic white cedar swamp, freshwater marsh, and vernal pool habitat. These habitats support a variety of migratory waterfowl, songbirds, shorebirds, raptors, and other native wildlife.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified several preliminary issues, concerns, and opportunities that we intend to address in the CCP. These include the following:

- The refuge's public use program;
- The refuge's prescribed burning program;
- The possibility for additional land protection;
- The possibility of expanding partnership opportunities to cooperatively manage the refuge;
- The opportunity to provide and manage New England cottontail habitat;
- The impact of climate change on refuge resources;
- The potential to improve community relations and increase outreach;
- The opportunity to increase local awareness of the refuge and the NWRS; and
- The potential to improve coordination and communication with other Federal and State agencies, and Tribal Governments.

We expect that during public scoping, members of the public, our conservation partners, and Federal, State, Tribal, and local agencies may identify additional issues.

Public Meetings

During the planning process, we will hold public meetings for the public to provide comments, issues, concerns, ideas, and suggestions about refuge management. When we schedule formal comment periods and public meeting(s), we will announce them in the **Federal Register**, local news media, and on our refuge planning Web site at *http://www.fws.gov/northeast/planning/Eastern%20Mass%203/ccphome.html.* You can also obtain the schedule from the planning team leader or project leader (see **ADDRESSES**).

Public Availability of Comments

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: January 4, 2012.

Paul R. Phifer,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 2012–2142 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2012–N007; FXES11130800000–123–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

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 (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before March 2, 2012.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–163367

Applicant: Ryan O'Dell, Hollister, California.

The applicant requests an amendment to an existing permit to remove and reduce to possession from lands under Federal jurisdiction the *Monolopia congdonii* (San Joaquin woolly-thread) in conjunction with floristic surveys and research activities to determine competition from exotic plants and effects of grazing throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58862A

Applicant: Greg Mason, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–59772A

Applicant: Clinton R. Elsholz, Lathrop, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with survey and annual monitoring activities on State Park lands throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–161483

Applicant: Linette A. Lina, Orange, California.

The applicant requests an amendment to a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–58760A

Applicant: Jason D. Yakich, Forest Knolls, California.

The applicant requests a permit to take (survey, locate, and monitor nests) the California least tern (*Sterna antillarum browni*) and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–179013

Applicant: Scott M. Werner, Ojai, California.

The applicant requests an amendment to a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–59775A

Applicant: Norman R. Sisk, Friant, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) and arroyo toad (*Anaxyrus californicus*) in conjunction with survey and annual monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–48169A

Applicant: Katie A. Hall, Oceanside, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis),* and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species within the jurisdiction of the U.S. Fish and Wildlife Service's Carlsbad Field Office in California for the purpose of enhancing the species' survival.

Permit No. TE–61778A

Applicant: Karen Miller LaCoste, Ramona, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–60147A

Applicant: Heather L. Moine, Goleta, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–60149A

Applicant: California Department of Fish and Game, Arcata, California.

The applicant requests a permit to take (survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with salmonid and longfin smelt monitoring studies and tidewater goby presence, distribution, and rescue activities throughout the range of the species in Del Norte, Humboldt, and Mendocino Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–60117A

Applicant: Maia L. Lipschutz, San Diego, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California, Nevada, Arizona, New Mexico, Texas, Colorado, and Utah for the purpose of enhancing the species' survival.

Permit No. TE–027296

Applicant: Michael H. Fawcett, Bodega, California.

The applicant requests a permit to take (survey, capture, handle, release, and collect voucher specimens) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys and population monitoring activities throughout the range of the species in Mendocino, Alameda, Marin, Sonoma, San Francisco, San Mateo, Santa Cruz, and Monterey Counties, California, and take (survey, capture, handle, and release) the California freshwater shrimp (*Syncaris pacifica*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–61783A

Applicant: Sonya E. Steckler, Carlsbad, California.

The applicant requests a permit to take (harass by survey using taped vocalizations; and locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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 Long,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2012–2149 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY9210000, L14300000.ET0000, WYW4471D]

Notice of Correction for Public Land Order No. 7261; Modification and Partial Revocation of 12 Executive Orders and 7 Secretarial Orders; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Correction.

SUMMARY: This notice corrects the legal land description published in the **Federal Register** on May 21, 1997 (62 FR 27773) for the Department of the Interior, Bureau of Land Management, Public Land Order No. 7261 for public water reserves, Wyoming.

Correction

On page 27773 in the third column, line 38, correct the legal description to read: sec. 18, SW¼SE¼.

FOR FURTHER INFORMATION CONTACT: Jennifer Whyte, Realty Specialist, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, 307–775–6232 or via email at *jwhyte@blm.gov*.

Dated: December 29, 2011.

Brenda V. Neuman

Acting State Director, Wyoming.

[FR Doc. 2012–2169 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14871–A, F–14871–A2; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to The Kuskokwim Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. The lands are in the vicinity of Upper Kalskag, Alaska, and are located in:

Seward Meridian, Alaska

T. 17 N., R. 59 W.,
Secs. 30 and 32.
Containing 49.24 acres.

T. 17 N., R. 60 W.,
Secs. 25 and 34.
Containing 3 acres.

T. 18 N., R. 60 W.,
Sec. 13.
Containing 640 acres.

T. 16 N., R. 61 W.,
Secs. 1, 2, 7, 8, and 9.
Containing 58 acres.
Aggregating 750.24 acres.

Notice of the decision will also be published four times in the *Tundra Drums.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 2, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–2167 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14951–A; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Tununrmiut Rinit Corporation. The decision approves the surface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601, *et seq.*). The lands approved for conveyance lie partially within a national wildlife refuge in existence on the date ANCSA was enacted, December 18, 1971. As provided by ANCSA, the subsurface estate in the lands lying outside the refuge will be conveyed to Calista Corporation when the surface estate is conveyed to Tununrmiut Rinit Corporation. The subsurface estate in the lands lying within the refuge is not available for conveyance to Calista Corporation and will be reserved to the United States at the time of conveyance. The lands are in the vicinity of Tununak, Alaska, and are described as:

LANDS *WITHIN* THE Clarence Rhode National Wildlife Range

NATIONAL WILDLIFE REFUGE

(PUBLIC LAND ORDER4584 EXECUTIVE ORDER NO. 7770), NOW KNOWN AS

THE

YUKON DELTA NATIONAL WILDLIFE REFUGE

Surface estate to be conveyed to Tununrmiut Rinit Corporation; subsurface estate to be reserved to the United States

Seward Meridian, Alaska

T.4 N., R. 90 W.,
Secs. 11 and 14.
Containing 160 acres.

LANDS *OUTSIDE* THE Clarence Rhode National Wildlife Range NATIONAL WILDLIFE REFUGE

(PUBLIC LAND ORDER4584 EXECUTIVE ORDER NO. 7770), NOW KNOWN AS

THE

YUKON DELTA NATIONAL WILDLIFE REFUGE

Surface estate to be conveyed to Tununrmiut Rinit Corporation; subsurface estate to be conveyed to Calista Corporation

T. 7 N., R. 89 W.,
Sec. 5.
Containing 159.96 acres.
Aggregating 319.96 acres.

Notice of the decision will also be published four times in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 2, 2012 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov*. Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Charmain McMillan,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2012–2165 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–1220–PA–24 1A]

Notice of Bureau of Land Management Implementation of Recreation Resource Advisory Committee Provisions of the Federal Lands Recreation Enhancement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the Bureau of Land Management's (BLM) implementation of the Recreation Resource Advisory Committee (R/RAC) provisions of the Federal Lands Recreation Enhancement Act (REA).

The BLM Resource Advisory Council (RAC) charters have been modified to reflect that upon the request of the BLM RAC's Designated Federal Official, and with the concurrence of the U.S. Forest Service (USFS) when their recreation fee proposals are at issue, the BLM RACs may review recreation fee proposals for BLM and/or USFS if that would facilitate the effective implementation of REA. The BLM will publish a **Federal Register** Notice if and when a BLM RAC serves to review recreation fee proposals.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, U.S. Department of the Interior, Bureau of Land Management, 1849 C Street MS–5070, Washington, DC 20240, Phone (202) 208–4294; Anthony Bobo, Jr., U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, MS–M–250, Washington, DC 20240, Phone (202) 912–7248.

SUPPLEMENTARY INFORMATION: On September 1, 2006, the BLM and USFS signed an Interagency Agreement which provided the structure necessary for the USFS to use existing BLM RACs and the

BLM to use USFS-established R/RACs for the public participation purposes required by REA. Pursuant to the Interagency Agreement, the BLM and USFS utilized the BLM Resource Advisory Councils (RAC) to make recommendations on BLM and USFS recreation fee proposals in the following states: Arizona, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota and Utah. The BLM and USFS utilized USFS R/RACs for the USFS's Eastern, Southern, Pacific Northwest (including BLM land in Oregon and Washington), Pacific Southwest (including BLM land in California) Regions, and the BLM and USFS land in the State of Colorado. The governors of Wyoming and Alaska have opted out of the advisory review process.

Although the Interagency Agreement expired September 1, 2011, the agencies have incorporated the outlined structure into current policies and procedures. Upon the request of the BLM RAC's Designated Federal Official, and with the concurrence of the USFS when their recreation fee proposals are at issue, the BLM RACs may review recreation fee proposals for BLM and/or USFS if that would facilitate the effective implementation of the REA.

Authority: Public Law 108–447, Div. J, Title VIII.

Mike Pool,

Deputy Director.

[FR Doc. 2012–2168 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement; Notice of Proposed Information Collection for 1029–0103

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 (OSM) is announcing its intention to renew its authority for the collection of information for Noncoal Reclamation.

DATES: Comments on the proposed information collection must be received by April 2, 2012, 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 via email at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection activity that OSM will submit to OMB for extension. This collection is contained in 30 CFR Part 875—Noncoal Reclamation. OSM will request a 3-year term of approval for each information collection activity. Responses are required to obtain a benefit.

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 875—Noncoal Reclamation. OMB Control Number: 1029–0103.

Summary: This Part establishes procedures and requirements for States and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 10.

Dated: January 25, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–1942 Filed 1–31–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–895 (Second Review)]

Pure Magnesium From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium in granular form from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 2, 2012. Comments on the adequacy of responses may be filed with the Commission by April 16, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–265, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 19, 2001, the Department of Commerce issued an antidumping duty order on imports of pure magnesium in granular form from China (66 FR 57936). Following expedited first five-year reviews by Commerce and the Commission, effective March 26, 2007, Commerce issued a continuation of the antidumping duty order on imports of pure magnesium in granular form from China (72 FR 5417). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined one *Domestic Like Product*—pure magnesium that included both granular magnesium and magnesium ingot. Two Commissioners defined the *Domestic Like Product* differently in the original determination. They found two *Domestic Like Products* corresponding to granular pure magnesium and pure magnesium ingot. In its expedited first five-year review determination, the Commission found one *Domestic Like Product* to include primary and secondary pure and alloy magnesium whether in ingot or granular form. One Commissioner defined the *Domestic Like Product* differently in the expedited first five-year review, instead finding that pure magnesium and alloy magnesium (including secondary magnesium) were separate *Domestic Like Products.* For purposes of responding to the items requested in this notice, please provide information according to one *Domestic Like Product* that includes primary and secondary pure and alloy magnesium whether in ingot or granular form.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of pure magnesium, including grinding operations. One Commissioner defined the *Domestic Industry* differently in the original determination (i.e, not including grinders), and two Commissioners defined two separate *Domestic Industries* (i.e., domestic producers of granular pure magnesium and domestic producers of pure magnesium ingot, including grinders). The Commission also found that appropriate circumstances existed to exclude ESM from the *Domestic Industry.* In its expedited first five-year review determination, the Commission defined the *Domestic Like Product* as domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form. The Commission also included grinders in the *Domestic Industry* producing magnesium. One Commissioner defined the *Domestic Industry* differently in the first five-year review, instead finding that grinders were not included in the *Domestic Industry.* Another Commissioner defined the *Domestic Industry* differently in the first five-year review, instead finding that there was one *Domestic Industry* composed of the domestic producers of pure magnesium whether in ingot or granular form, including grinders. For purposes of responding to the items requested in this notice, please provide information according to one *Domestic Industry* that includes domestic producers of pure and alloy magnesium, including primary and secondary magnesium, and magnesium in ingot and granular form.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 16, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 25, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1919 Filed 1–31–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Third Review)]

Clad Steel Plate From Japan; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 2, 2012. Comments on the adequacy of responses may be filed with the Commission by April 16, 2012. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: Effective Date: February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 2, 1996, the Department of Commerce issued an antidumping duty order on imports of clad steel plate from Japan (61 FR 34421). Following first five-year reviews by Commerce and the Commission, effective November 16, 2001, Commerce issued a continuation of the antidumping duty order on imports of clad steel plate from Japan (66 FR 57703). Following second five-year reviews by Commerce and the Commission, effective March 22, 2007, Commerce issued a continuation of the antidumping duty order on imports of clad steel plate from Japan (72 FR 13478). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–264, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Japan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as all clad steel plate coextensive with Commerce's scope of the investigation, i.e., all clad steel plate of a width of 600mm or more and a composite thickness of 4.5mm or more, regardless of cladding alloy.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as producers of clad steel plate of a width of 600mm or more and a composite thickness of 4.5mm or more.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 16, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the

Subject Merchandise, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2005 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions,

please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 25, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1920 Filed 1–31–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–782]

Certain Liquid Crystal Display Devices and Products Containing the Same; Determination Not To Review Initial Determination Granting Joint Motion To Terminate Based on Settlement Agreement; 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 determined not to review an initial determination (''ID'') (Order No. 10) of the presiding administrative law judge (''ALJ'') granting a joint motion to terminate the investigation based on a settlement agreement in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 7, 2011, based on a complaint filed by Samsung Electronics Co., Ltd. of Korea. 76 FR 39897 (Jul. 7, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) by reason of infringement of certain claims of U.S. Patent Nos. 6,771,344; 6,882,375; 7,535,537; 7,787,087; and RE41,363. The complaint names AU Optronics Corp. of Hsinchu, Taiwan; AU Optronics Corporation America of Houston, Texas; Acer America Corporation of San Jose, California; Acer Inc. of Taipei, Taiwan; BenQ America of Irvine, California; BenQ Corp. of Taipei, Taiwan; SANYO Electric Co., Ltd. of Osaka, Japan; and SANYO North America Corporation of San Diego, California as respondents. SANYO North America was subsequently terminated from the investigation.

On January 9, 2012, the parties filed a joint motion to terminate the investigation based on a settlement agreement. On July 21, 2011, the ALJ issued the subject ID granting the joint motion. No petitions for review were filed.

The Commission has determined not to review the subject ID.

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 section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: January 26, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–2145 Filed 1–31–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Review)]

Certain Lined Paper School Supplies From China, India, and Indonesia; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty orders on certain lined paper school supplies from India and Indonesia and/or the revocation of the antidumping duty orders on certain lined paper school supplies from China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined that these reviews are extraordinarily complicated, and will therefore exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 26, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202) 205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (76 FR 72213, November 22, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance.

The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in these reviews will be placed in the nonpublic record on May 22, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on June 12, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 6, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 8, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 1, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 21, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 21, 2012. On July 23, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 25, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 26, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–2146 Filed 1–31–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested: September 11th Victim Compensation Fund Claimant Eligibility and Compensation Form

ACTION: 60-Day Notice of information collection under review.

The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 2, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Jonathan Olin at (202) 514–5585.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reauthorization of a currently approved collection.

(2) *Title of the Form/Collection:* Eligibility and Compensation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The September 11th Victim Compensation Fund of 2001 provides compensation to any individual (or beneficiary of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The information collected from the Eligibility and Compensation Form will be used to determine whether claimants will be eligible for compensation from the Fund, and if so, the amount of compensation they will be awarded. The Form consists primarily of two main sections: Eligibility and Compensation.

The Eligibility section seeks the information required by the Zadroga Act to determine whether a claimant is eligible for the Fund, including information related to: participation in lawsuits related to September 11, 2001; presence at a 9/11 crash site between September 11, 2001 and May 30, 2002; and physical harm suffered as a result of the air crashes and/or debris removal.

The Compensation section seeks the information required by the Zadroga Act to determine the amount of compensation for which the claimant is eligible. Specifically, the section seeks information regarding the out-of-pocket losses (including medical expenses) incurred by the claimant that are attributable to the 9/11 air crashes or debris removal; the claimant's loss of earnings or replacement services that are attributable to the 9/11 air crashes or debris removal; and any collateral source payments (such as insurance payments) that the claimant received as a result of the terrorist-related aircraft crashes of September 11, 2001 or debris removal efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 70,000 respondents will complete the form in an average of 10 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 700,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–2113 Filed 1–31–12; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 24, 2012, a proposed Consent Decree in *United States* v. *E.I. DuPont De Nemours & Company, et al.,* Civil Action No. 1:12–cv–00428–RBK–KMW, was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree resolves the United States' claims for past and future costs and performance of the remaining portions of the remedial action at the Swope Oil Superfund Site (''Site'') in Camden County, New Jersey. Under the proposed Consent Decree, EPA will receive 100% of its unreimbursed response costs as a result of the payment of $25,983.73 for past costs and a commitment to pay all future response costs at the Site. In addition, the performing settling defendants agree to construct, operate and maintain the cap required for the Site and implement the remedy addressing groundwater contamination at the Site. EPA's current estimate of the value of the work to be performed pursuant to the Consent Decree is approximately $5.1 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the matter as *United States* v. *E.I. DuPont De Nemours & Company,* D.J. Ref. Number 90–11–3–10228.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting by mail from the Consent Decree Library a copy of the proposed Consent Decree only, please so note and enclose a check in the amount of $13.50 (25 cents per page reproduction cost for the 54 page proposed Consent Decree) payable to the U.S. Treasury. If you would also like a copy of the attachments to the proposed Consent Decree, please so note and include an additional $74.25 (25 cents per page for the 297 pages of attachments). If requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2012–2121 Filed 1–31–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1580]

Draft Guidelines for Coroner/Medical Examiner Media Relations

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation will make available to the general public a draft document entitled, ''Guidelines for Media Relations: Dissemination of Public Information in Medicolegal Death Investigations.'' The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are

directed to the following Web site: *http://www.swgmdi.org*

DATES: Comments must be received on or before March 6, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [Note: this is not a toll-free telephone number], or by e-mail at *Patricia.Kashtan@usdoj.gov.*

John Laub,

Director, National Institute of Justice.

[FR Doc. 2012–2163 Filed 1–31–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electrical Standards for Construction and for General Industry

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Electrical Standards for Construction and for General Industry,'' 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 March 2, 2012.

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, 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: 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: The information collection requirements specified by the Electrical Standards for Construction and for General Industry alert workers to the presence and types of electrical hazards in the workplace, and thereby prevent serious injury and death by electrocution. The information collection requirements in these Standards involve the following: The employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters.

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 1218–0130. The current OMB approval is scheduled to expire on January 31, 2012; 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 November 10, 2011 (76 FR 70116).

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 1218–0130. 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.

Title of Collection: Electrical Standards for Construction and for General Industry.

OMB Control Number: 1218–0130.

Affected Public: Private Sector—Businesses or Other For-Profits and Not-For-Profit Institutions.

Total Estimated Number of Respondents: 500,000.

Total Estimated Number of Responses: 2,511,139.

Total Estimated Annual Burden Hours: 170,098.

Total Estimated Annual Other Costs Burden: $2,406,833.

Dated: January 25, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–2089 Filed 1–31–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Automatic Fire Sensor and Warning Devices Systems; Examination and Test Requirements

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA)

sponsored information collection request (ICR) titled, ''Automatic Fire Sensor and Warning Devices Systems,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 2, 2012.

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, Mine Safety and Health Administration (MSHA), 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: 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: The information collection addressed by this notice is intended by MSHA to help ensure the protection of miners by assuring that automatic fire sensor and warning device systems are maintained and calibrated in order to function properly at all times. Technical advances have made it practicable automatically to detect fires in mines and to warn miners when fires are detected. When these systems function as designed, they can prevent fatal or serious injuries to miners when a fire occurs. The MSHA requires mine operators to record tests to ensure they function and to calibrate the systems, ensuring they operate reliably and warn miners of the presence of fires.

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 1219–0145. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that information collections 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 September 20, 2011 (76 FR 58301).

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 1219–0145. 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: Mine Safety and Health Administration (MSHA).

Title of Collection: Automatic Fire Sensor and Warning Devices Systems.

OMB Control Number: 1219–0145.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 554.

Total Estimated Number of Responses: 146,096.

Total Estimated Annual Burden Hours: 2,518.

Total Estimated Annual Costs Burden: $3,477.

Dated: January 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–2151 Filed 1–31–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Standards for the Registration of Apprenticeship Programs

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration sponsored information collection request (ICR) revision titled, ''Labor Standards for the Registration of Apprenticeship Programs,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before March 2, 2012.

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, Employment and Training Administration, 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: Regulations 29 CFR 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of

apprenticeship. This information collection, Form ETA–671, has two sections. The first records the sponsor's information and the second is for the apprentice's information. The information is collected on a one-time basis.

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 1205–0223. The current OMB approval is scheduled to expire on January 31, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. Revisions only take effect after OMB approval. For additional information, see the related notice published in the **Federal Register** on September 29, 2011 (76 FR 60534).

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 1205–0223. 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: Employment and Training Administration.

Title of Collection: Labor Standards for the Registration of Apprenticeship Programs.

OMB Control Number: 1205–0223.

Affected Public: Individuals or Households and Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 140,966.

Total Estimated Number of Responses: 140,966.

Total Estimated Annual Burden Hours: 15,433.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–2150 Filed 1–31–12; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bloodborne Pathogens Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Bloodborne Pathogens Standard,'' 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 March 2, 2012.

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: The Bloodborne Pathogen Standard is an occupational safety and health standard that prevents occupational exposure to bloodborne pathogens. The standard's information collection requirements are essential components that protect workers from occupational exposure. The information is used by employers and workers to implement the protection required by the Standard. OSHA compliance officers will use some of the information in their enforcement of the Standard. The collections of information contained in the Bloodborne Pathogens Standard include a written exposure control plan, documentation of workers' hepatitis B vaccinations and post-exposure evaluations and follow-up medical visits, training, related recordkeeping and a sharps injury log. Information generated in accordance with these provisions provides the employer and the worker with means to provide protection from the adverse health effects associated with occupational exposure to bloodborne pathogens.

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 1218–0180. The current OMB approval is scheduled to expire on January 31, 2012; 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 November 1, 2011 (76 FR 67478).

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 1218–0180. 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: Bloodborne Pathogens Standard.

OMB Control Number: 1218–0180.

Affected Public: Private Sector—Businesses or other for profits.

Total Estimated Number of Respondents: 666,933.

Total Estimated Number of Responses: 26,171,202.

Total Estimated Annual Burden Hours: 14,518,778.

Total Estimated Annual Other Costs Burden: $34,342,534.

Dated: January 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–2107 Filed 1–31–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Inorganic Arsenic Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Inorganic Arsenic Standard,'' 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 March 2, 2012.

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, 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: 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: The purpose of the Inorganic Arsenic Standard is to protect workers from the adverse health effects associated with occupational exposure to inorganic arsenic. The Standard affects primarily copper smelters and some chemical facilities. The Standard requires employers to monitor workers' exposure to inorganic arsenic, to monitor worker health, to develop and maintain worker exposure monitoring and medical records, to establish and implement written compliance programs, and to provide workers with information about their exposures and the health effects of exposure to inorganic arsenic.

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 1218–0104. The current OMB approval is scheduled to expire on January 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 October 20, 2011 (76 FR 65217).

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 1218–0104. 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.

Title of Collection: Inorganic Arsenic Standard.

OMB Control Number: 1218–0104.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 5.

Total Estimated Number of Responses: 1,935.

Total Estimated Annual Burden Hours: 637.

Total Estimated Annual Other Costs Burden: $54,197.

Dated: January 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–2124 Filed 1–31–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–008)]

Notice of Intent To Grant a Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Partially Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Application No. 13/105,004 entitled ''Photogrammetry System and Method for Determining Relative Motion Between Two Bodies,'' to Magic Leap, Incorporated having its principal place of business in Hollywood, Florida. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, (757) 864–7686 (phone), (757) 864–9190 (fax).

FOR FURTHER INFORMATION CONTACT: Andrea Z. Warmbier, Patent Attorney, Office of Chief Counsel, NASA Langley Research Center, MS 30, (757) 864–7686; Fax: (757) 864–9190. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Dated: January 26, 2012.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. 2012–2176 Filed 1–31–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Consolidation of National Labor Relations Board Systems of Records

AGENCY: National Labor Relations Board.

ACTION: Notification of the consolidation of six Privacy Act systems of records notices into one notice: Next Generation Case Management System (NxGen) (NLRB–33).

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, the National Labor Relations Board is giving notice that it has consolidated the following Privacy Act systems of records notices: Judicial Case Management System—Pending Case List (JCMS–PCL) and Associated Headquarters Files (NLRB–21); Judicial Case Management System—eRoom (JCMS-eRoom) (NLRB–22); Solicitor's System (SOL) and Associated Headquarters Files (NLRB–23); Case Activity Tracking System (CATS) and Associated Regional Office Files (NLRB–25); Regional Advice and Injunction Litigation System (RAILS) and Associated Headquarters Files (NLRB–28); and Appeals Case Tracking System (ACTS) and Associated Headquarters Files (NLRB–30). These systems are now consolidated into the Agency's single enterprise case management system: Next Generation Case Management System (NxGen) (NLRB–33). NxGen stores electronic case tracking information and associated electronic case files, permitting the accurate and timely collection, retrieval, and retention of information maintained by offices of the Agency, regarding those offices' handling of matters before them, including unfair labor practice and representation cases. Other than JCMS-eRoom (NLRB–22), the legacy systems have associated paper files, which are now associated with NxGen. The legacy systems remain accessible, but no additional, unique information is being added to them.

At this time, information described in the legacy systems of records notices remains applicable to information contained in NxGen, including routine uses and exemptions asserted (systems notices previously published at 71 FR 74941 (Dec. 13, 2006)). Upon the integration of additional Agency electronic systems into NxGen, the Agency will re-publish a new Privacy Act system of records notice for NxGen.

DATES: *Effective Date:* Upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Senior Agency Official for Privacy, National Labor Relations Board, Room 7620, 1099 14th Street NW., Washington, DC 20570–0001, (202) 273–2555.

Dated: January 26, 2012.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–2137 Filed 1–31–12; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL LABOR RELATIONS BOARD

Public Availability of National Labor Relations Board's FY 2011 Service Contract Inventory

AGENCY: National Labor Relations Board.

ACTION: Notice of public availability of FY 2011 Service Contract inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Labor Relations Board (NLRB) is publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The NLRB has posted its inventory and a summary of the inventory on the NLRB homepage at the following link: *http://www.nlrb.gov/service-contract-inventories.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to David Graham in the Acquisitions Management Branch at (202) 273–4047 or *david.graham@nlrb.gov.*

Dated: January 26, 2012.

By Direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–2136 Filed 1–31–12; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, February 14, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTER TO BE CONSIDERED:

8145A: Railroad Accident Report—Derailment of CN Freight Train U70691–18 with Subsequent Hazardous Materials Release and Fire, Cherry Valley, Illinois, June 19, 2009.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, February 10, 2012.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *http://www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

Friday, January 27, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–2277 Filed 1–30–12; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Thermal-Hydraulics Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulics Phenomena will hold a meeting on February 22, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 22, 2012—8:30 a.m. Until 4 p.m.

The Subcommittee will review Final Regulatory Guide (1.79), ''Preoperational Testing of Emergency Core Cooling Systems for Pressurized Water Reactors,'' and Draft Guide DG–1277, ''Initial Test Program of Emergency Core Cooling Systems for Boiling Water Reactors.'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone (301) 415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: January 25, 2012.

Antonio F. Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–2175 Filed 1–31–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission,

DATE: Week of January 30, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of January 30, 2012

Monday, January 30, 2012

1 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6)

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on January 26 and 27, 2012, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Discussion of Management and Personnel issues be held with less than one week notice to

the public. The meeting is scheduled on January 30, 2012.

* * * * *

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.*

January 27, 2012.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–2310 Filed 1–30–12; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–116; Order No. 1175]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Imperial, Texas 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: *Deadline for Petitioner's Form 61:* February 15, 2012, 4:30 p.m., eastern time; *deadline for answering brief in support of the Postal Service:* March 6, 2012, 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), the Commission received four petitions for review of the Postal Service's determination to close the Imperial post office in Imperial, Texas. The first petition for review received January 11, 2012, was filed by Maxine King. The second petition for review received January 11, 2012, was filed by Wanda Lewis. The third petition for review received January 11, 2012, was filed by the Imperial Public Library. The fourth petition for review received January 11, 2012, was filed by Nellie McDowell. The earliest postmark date is January 4, 2012.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–116 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 15, 2012.

Issues apparently raised. Petitioners contend 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) there are factual errors contained in the Final Determination.

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 January 26, 2012. The due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Notwithstanding the Postal Service's determination to close this post office, on December 15, 2011, the Postal Service advised the Commission that it ''will delay the closing or consolidation of any Post Office until May 15, 2012''.[1] The Postal Service further indicated that it ''will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.'' *Id.* It stated that the only ''Post Offices'' subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. It affirmed that it ''will not close or consolidate any other Post Office prior to May 16, 2012.'' *Id.* Lastly, the Postal Service requested the Commission ''to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.'' *Id.*

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. 404(d)(5).

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

[1] United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 20, 2012. 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 January 26, 2012.

2. Any responsive pleading by the Postal Service to this Notice is due no later than January 30, 2012.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Natalie Rea Ward 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.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

January 11, 2012	Filing of Appeal.
January 26, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
January 30, 2012	Deadline for the Postal Service to file any responsive pleading.
February 20, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 15, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
March 6, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 21, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 28, 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).
May 3, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–2174 Filed 1–31–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29937; 812–13965]

Preservation Trust Advisors, LLC and Northern Lights Fund Trust; Notice of Application

January 26, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940, as amended (the ''Act''), for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Preservation Trust Advisors, LLC (''PTA'' or the ''Adviser'') and Northern Lights Fund Trust (the ''Trust'').

FILING DATES: The application was filed on September 29, 2011, and amended on January 19, 2012 and January 26, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: PTA, One Embarcadero Center, Suite 1140, San Francisco, CA 94111; Trust: 4020 South 147th Street Omaha, NE 68137.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Attorney-Advisor, at (202) 551–6878, or Dalia Osman Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and as of January 18, 2012 was comprised of 133 individual registered series, including the PTA Comprehensive Alternatives Fund (the ''PTA Fund''), and 2 additional series that are in registration. The PTA Fund does not currently employ unaffiliated investment subadvisers (each, a ''Subadviser''), but anticipates doing so in the future.[1] PTA, a Delaware limited

[1] Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common

Continued

liability company, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). PTA serves as the investment adviser of the PTA Fund, and an Adviser will serve as investment adviser to each future Fund, pursuant to investment advisory agreements. The PTA Fund has entered into an investment advisory agreement with PTA (the ''Advisory Agreement''),[2] approved by the Trust's board of trustees (the ''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (the ''Independent Trustees''), and by shareholders representing a majority of the PTA Fund's shares.

2. Under the terms of the Advisory Agreement, the Adviser is responsible for the overall management of the PTA Fund's business affairs and selecting investments according to their respective investment objectives, policies and restrictions. For the investment management services that it provides to the PTA Fund, the Adviser receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Adviser to retain one or more subadvisers for the purpose of managing the investments of all or a portion of the assets of the PTA Fund. Pursuant to this authority, the Adviser may enter into investment subadvisory agreements with Subadvisers to provide investment advisory services to the PTA Fund (each, a ''Subadvisory Agreement'' and together, the ''Subadvisory Agreements''). Each Subadviser will be registered as an investment adviser under the Advisers Act. The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

4. Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [4] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in this Application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the Board would comply with the requirements of Sections 15(a) and 15(c) of the 1940 Act before entering into or amending Subadvisory Agreements.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a

control with the Adviser or its successors (included within the term ''Adviser''); (b) uses the manager of managers structure (the ''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the PTA Fund, the ''Funds'' and each, individually, a ''Fund''). For the purposes of the requested order, ''successor'' is limited to those one or more entities that would result from a reorganization into another jurisdiction or a change in the type of business organization. All existing entities that currently intend to rely on the requested order are named as applicants, and the PTA Fund is the only series that currently intends to rely on the requested order. If the name of any Fund contains the name of a Subadviser, the name of the Adviser will precede the name of the Subadviser.

[2] The Adviser will enter into substantially similar investment advisory agreements to provide investment management services to future Funds (''Future Advisory Agreements''). The terms of Future Advisory Agreements will comply with Section 15(a) of the Act and Future Advisory Agreements will be approved by shareholders and by the Board, including a majority of the Independent Trustees, in the manner required by Sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. References to any Advisory Agreement or Advisory Agreements include Future Advisory Agreements as they pertain to future Funds.

[3] The term ''Board'' also includes the board of trustees or directors of a future Fund.

[4] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2158 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66243; File No. SR–NSX–2012–03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Effectuate an Amendment to Its Amended and Restated Certificate of Incorporation To Include a Reference to Section 242 of the General Corporation Law of the State of Delaware

January 26, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 20, 2012, National Stock Exchange, Inc. 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 comment on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') proposes to effectuate an amendment to its Amended and Restated Certificate of Incorporation to include a reference to Section 242 of the General Corporation Law of the State of Delaware.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to effectuate an amendment to its Amended and Restated Certificate of Incorporation (''Certificate'') to include a reference to Section 242 of the General Corporation Law of the State of Delaware (''Delaware Corporation Law'').

Section 242 of Delaware Corporation Law refers to amendments to certificates of incorporation after the receipt of payment for stock.[3] Section 242 states that, after receipt of payment for stock, a corporation ''may amend its certificate of incorporation * * * so long as its certificate of incorporation as amended would contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation filed at the time of the filing of the amendment.'' [4] Amended certificates of incorporation must explicitly reference Section 242 to be deemed acceptable for filing with the Delaware Secretary of State.

On November 28, 2011, the Exchange filed with the Commission, as part of its Exhibit 5 to a rule filing seeking Commission approval of the acquisition of the Exchange by CBOE Stock Exchange, LLC, a proposed form of Certificate. The Certificate in the form

[3] 8 Del. C. 1953, 242.

[4] 8 Del. C. 1953, 242(a).

proposed was approved by the Commission on December 29, 2011.[5] However, the Certificate in the form proposed failed to contain an explicit reference to Section 242 of Delaware Corporation Law. Instead, the last sentence in the first paragraph of the approved Certificate stated ''* * * [p]ursuant to, and being duly adopted in accordance with, Section 245 of the General Corporation Law of the State of Delaware, this * * * Certificate * * * amends and restates the Restated Certificate of Incorporation in its entirety * * *.''

On December 30, 2011, the Certificate, in the form approved by the Commission (i.e., without explicit reference to Section 242), was submitted for filing to the Delaware Secretary of State. The Delaware Secretary of State refused to accept the Certificate unless a reference to Section 242 was added to the text of the Certificate. Such reference was added and the Certificate, as modified, was accepted by and successfully filed with the Delaware Secretary of State. As a result, pursuant the instant rule filing, the Exchange is proposing to amend the text of the Certificate previously filed with, and approved by, the Commission by explicitly referencing Section 242 of the Delaware Corporation Law in the text of the Certificate immediately before the reference to Section 245. In so doing, the Exchange seeks to fully comply with Delaware Corporation Law and with the Securities Exchange Act of 1934 (the ''Act'').

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

Moreover, the proposed rule change is not discriminatory in that it is solely administrative and does not affect the rights of any ETP Holder, does not impact any other provision of the Certificate, and is consistent with the Commission's recent order approving the Certificate. The proposed amendment simply adds to the Certificate an explicit cross-reference to applicable law and consequently constitutes a technical amendment that relates solely to the administration of the Exchange and the Exchange's ability to successfully file the Certificate with the Delaware Secretary of State.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4[9] thereunder, because, as provided in (f)(3), the proposed rule change is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities and Exchange Act of 1934.

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–NSX–2012–03 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–NSX–2012–03. 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 such filing will also 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 No. SR–NSX–2012–03 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2131 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Securities Exchange Act Release No. 66071 (December 29, 2011) (SR–NSX–2011–14 and SR–CBOE–2011–107).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66244; File No. SR–FINRA–2012–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date of SR–FINRA–2011–019

January 26, 2012.

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 January 20, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b-4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing a rule change to delay the implementation date of amendments that became effective pursuant to SR–FINRA–2011–019. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 25, 2011, FINRA filed an immediately effective proposed rule change to rename the OTC Bulletin Board (''OTCBB'') as the Non-NMS Quotation Service (''NNQS'').[4] In the Original Filing, FINRA stated that the implementation date of the proposed rule change would be no later than 270 days following the date of filing of the proposed rule change, but in no event would be sooner than 120 days following the date of filing of the proposed rule change.[5] FINRA is revising the timeframe for the implementation date of SR–FINRA–2011–019 to allow additional time for the renaming of OTCBB as NNQS, transitioning of the related domain name, and consummation of the sale transaction discussed in the Original Filing.[6] FINRA will announce the implementation date of the changes effected pursuant to SR–FINRA–2011–019 at a later date; however, the implementation date will be no sooner than 120 days following the date of filing of this proposed rule change, but no later than December 31, 2012.[7]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(11) of the Act[9] requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. In addition, Section 15A(b)(11) of the Act[10] requires that such rules be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

FINRA believes the proposed rule change is consistent with Sections 15A(b)(6) and (11) of the Act in that it facilitates FINRA's continued ability to operate an interdealer quotation system for use by market makers in OTC equity securities that is functionally identical to the service provided under the current name, thereby supporting the availability of quotation information in the over-the-counter equity securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not:
(i) Significantly affect the protection of investors or the public interest;
(ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

[4] *See* Securities Exchange Act Release No. 64397 (May 4, 2011); 76 FR 27123 (May 10, 2011) (''SR–FINRA–2011–019'' or ''Original Filing'').

[5] Upon implementation of the proposed rule change, FINRA's interdealer quotation system will be known as NNQS, and FINRA no longer will own the *www.OTCBB.com* Web site.

[6] *See* Original Filing. *See also* Rodman & Renshaw Capital Group, Inc., Press Release September 14, 2010 (Rodman and FINRA Reach Preliminary Agreement on Terms for Rodman Acquisition of OTCBB Assets).

[7] FINRA will continue its concerted communications campaign to ensure that the public (including retail investors) is well-informed with respect to the pending changes. *See www.OTCBB.com* August 1, 2011 news item, available at *www.otcbb.com/news/2011/GeneralNews/080111.stm.*

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78*o*–3(b)(11).

[10] 15 U.S.C. 78*o*–3(b)(11).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow FINRA immediately to delay the implementation date of amendments to various FINRA rules regarding the renaming of the OTCBB service. For this reason, the Commission designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–FINRA–2012–003 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 No. SR–FINRA–2012–003. 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 such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2012–003 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2132 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission written notice of the self-regulatory organization's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66250; File No. SR–CME–2012–01]

Self-Regulatory Organizations; Chicago Mercantile Exchange, Inc.; Notice of Filing of Proposed Rule Change To Amend Rules Relating to Credit Default Swap Guaranty Fund

January 26, 2012.

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 January 23, 2012, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

CHICAGO MERCANTILE EXCHANGE INC. RULEBOOK

Rule 100—Rule 8H06—No Change.

* * * * *

Rule 8H07. CDS FINANCIAL SAFEGUARDS AND GUARANTY FUND DEPOSIT

Rule 8H07.1(i)—No Change.

Rule 8H07.1(ii). (ii) Each CDS Clearing Member's required contribution to the CDS Guaranty Fund shall be the greater of: (a) such CDS Clearing Member's proportionate share of the largest two losses described in 8H07.1(i)(a) above, each CDS Clearing Member's proportionate share being based on the 90-day trailing average of its [aggregate performance requirements] *potential residual loss (''PRL'')* and the 90-day trailing average gross notional open interest outstanding at the Clearing House (or, in either case, such other shorter time interval determined by the CDS Risk Committee); and (b) $50,000,000.

* * * * *

Rule 8H07.2—End—No Change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CME CDS MANUAL OF OPERATIONS

CHAPTERS 1—9—No Change.

CHAPTER 10—CDS GUARANTY FUND CALCULATION

Separate CDS Guaranty Fund

CME Clearing shall establish an additional CDS Guaranty Fund as described in Rule 8H07.

Guaranty Fund Calculation

Each CDS Clearing Member's Guaranty Fund contribution to the Financial Safeguards Package will be equal to the greater of:

(1) 50MM; and

(2) An amount using stress test methodology equal to such Clearing Member's proportionate share of the overall CDS Guaranty Fund based on a 90 day trailing average of such Clearing Member's [performance bond] *PRL* performance bond requirement (95% weight) and its average CDS gross notional open interest at the CME (5% weight), as further set forth in Rule 8H07.

Once the overall financial safeguards pool size has been determined using the stress testing described below, the guaranty fund calculation is calculated as per the example below:

Determine overall financial safeguards pool size based on net debtor stress testing results	Time Period X
Aggregate	
1st Largest Net Debtor stress test	$500,000,000
2nd Largest Net Debtor stress test	$400,000,000
Required Guaranty Fund Size (Sum of 2 Largest Net Debtor stress tests)	$900,000,000
.....	.....
Hypothetical CDS Clearing Member's Guaranty Fund Contribution	
[performance bond] *PRL* Component—95% weight.	
Total average aggregate CDS [performance bond] *PRL* over trailing 90 days at CME	$10,000,000,000
Clearing member XYZ's average 90-day[, performance bond requirement] *PRL*	$800,000,000
Clearing member XYZ's % of aggregate	8%
Clearing member XYZ's calculated contribution to the CDS guaranty fund ($900M Target × 8%)	**$72,000,000**
Clearing member XYZ's weighted (95%) [performance bond] *PRL* contribution to the CDS guaranty fund	$68,400,000
Open Interest (Gross Notional) Component—5% weight	
Total average aggregate CDS gross notional over trailing 90 days at CME	$100,000,000,000
Clearing member XYZ's average 90-day CDS gross notional	7,000,000,000
Clearing member XYZ's open interest % of aggregate	7%
Clearing member XYZ's open interest component of the CDS guaranty fund ($900M Target × 7%)	**$63,000,000**
Clearing member XYZ's weighted (5%) open interest component of the CDS guaranty fund	**$3,150,000**
Clearing member XYZ's [performance bond] *PRL* component of the CDS guaranty fund	$68,400,000
Clearing member XYZ's gross notional component of the CDS guaranty fund	$3,150,000
Total clearing member XYZ's calculated guaranty fund contribution	**$71,550,000**

* * * * *

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 offers clearing services for certain credit default swap index products. Current CME Rule 8H07 provides that each CDS Clearing Member's allocation to the CDS Guaranty Fund will be the greater of (i) $50,000,000 and (ii) its proportionate share of the 90-day trailing average of its aggregate performance bond requirements and average gross notional open interest outstanding at the Clearing House. The rule change that is the subject of this filing would replace the ''aggregate performance bond requirement'' standard with a new standard that CME believes better allocates tail risk. CME is also proposing to make conforming changes to its CDS Manual of Operations.

CME believes the current ''aggregate performance bond requirement'' standard set forth in Rule 8H07 is designed to provide for margin requirements that adequately cover day-to-day P/L moves, however, CME believes changes could be made to provide for a more accurate allocation of potential tail risk. Therefore, in order to more accurately align the allocation of the CDS Guaranty Fund to each CDS Clearing Member, consistent with the CDS Guaranty Fund's purpose of covering tail risk events, CME proposes certain rule changes so that the allocation will be made on the basis of each CDS Clearing Member's potential residual loss (''PRL''). PRL is a stress test of the tail risk CDS Clearing Member portfolios bring to the market.

CME notes that it will also submit the proposed rule changes that are the subject of this filing to its primary regulator, the Commodity Futures Trading Commission (''CFTC''). The text of the CME proposed rule amendments is noted in Section I above, with additions italicized and deletions in brackets.

CME believes the proposed rule changes are consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act. Currently, the only swaps CME clears are CFTC-regulated swaps and therefore the proposed rule changes will only directly affect CME's swaps clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'').[3] CME notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest. CME believes the proposed rule changes accomplish these objectives by more accurately aligning the allocation of its CDS Guaranty Fund to each CDS Clearing Member.

[3] The staff notes that the PRL allocation will apply to any security-based swaps CME may clear in the future.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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.

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–2012–01 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–2012–01. 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 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–2012–01 and should be submitted on or before February 22, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2133 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66252; File No. SR–Phlx–2012–10]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Rebates and Fees for Adding and Removing Liquidity in Select Symbols

January 26, 2012.

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 January 20, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' specifically to remove various Select Symbols.[3]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange's Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' which are subject to the rebates and fees in that section. The Exchange is proposing to delete the following symbols from the list of Select Symbols in Section I of the Fee Schedule: American International Group (''AIG''); The Allstate Corporation (''ALL''); Brocade Communication Systems

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Select Symbols'' refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange's Fee Schedule.

(''BRCD''); DryShips, Inc. (''DRYS''); ProShares Ultra Short Financials (''SKF''); ProShares Ultra Financials (''UYG''); and Xerox Corporation Common Stock (''XRX'') (collectively ''Proposed Deleted Symbols''). These Proposed Deleted Symbols would be subject to the rebates and fees in Section II of the Fee Schedule entitled ''Equity Options Fees.'' [4]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(4) of the Act [6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove the Proposed Deleted Symbols from its list of Select Symbols to attract additional order flow to the Exchange. The Exchange believes that applying the fees in Section II of the Fee Schedule to the Proposed Deleted Symbols, including the opportunity to receive payment for order flow, will attract order flow to the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to remove the Proposed Deleted Symbols because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule, which would not include the Proposed Deleted Symbols. Also, all market participants would be uniformly subject to the fees in Section II, which would include the Proposed Deleted Symbols.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–10 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 No. SR–Phlx–2012–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–10 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2172 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[4] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are Multiply Listed.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66257; File No. SR–Phlx–2012–11]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Regarding Listing and Trading of PHLX FOREX Options™

January 26, 2012.

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 January 23, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II 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

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposal to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

implement new Phlx Rules 1000C (Applicability of Rule 1000C Series—PHLX FOREX Options™) [3]; Rule 1001C (Definitions—PHLX FOREX Options); Rule 1002C (Series of PHLX FOREX Options Open for Trading); Rule 1003C (Obligations and Quote Spread Parameters Applicable to PHLX FOREX Options Specialists and Registered Options Traders); Rule 1004C (Bids And Offers of PHLX FOREX Options); Rule 1005C (Minimum Increments of PHLX FOREX Options); Rule 1006C (Closing Settlement Value of PHLX FOREX Options); Rule 1007C (FLEX—PHLX FOREX Options); [4] Rule 1008C (Position Limits—PHLX FOREX Options); and Rule 1009C (Exercise Limits—PHLX FOREX Options) to: list and trade U.S. dollar-settled foreign currency (''foreign currency'') options known as PHLX FOREX Options on the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro.[5]

The Exchange also proposes to amend Phlx Option Floor Procedure Advices [6] F–6 (Option Quote Parameters) and F–15 (Minor Infractions of Position/Exercise Limits and Hedge Exemptions) to properly harmonize Exchange Advices and rules.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[3] PHLX FOREX Options ™ is a trademark of NASDAQ OMX PHLX LLC.

[4] FLEX options are flexible exchange-traded options contracts that overlie index, equity, and currency securities. FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX option trading is generally described in Rule 1079, which along with proposed Rule 1007C, is applicable to PHLX FOREX Options.

[5] The proposed PHLX FOREX Options would be listed on underlying currencies that also underlie foreign currency options (''FCOs,'' also known as World Currency Options or ''WCOs'') currently listed on the Exchange (e.g. the British pound, the Swiss franc, the Canadian dollar, the Australian Dollar, the New Zealand dollar, and the Euro). The product specifications for the current FCOs (WCOs), which are not altered by or as a result of this filing, may be found at *http://www.nasdaqomxtrader.com/wco*.

[6] Options Floor Procedure Advices (''OFPAs'' or Advices''), which may correspond to Exchange rules, contain the Exchange's minor rule plan (''MRP'' or ''Minor Rule Plan'') in respect of options trading. The Minor Rule Plan consists of Advices with preset fines, pursuant to Rule 19d-1(c) under the Act. 17 CFR 240.19d-1(c). The Exchange is not, by this filing, amending the fine schedule for any OFPA.

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

The purpose of the proposed rule change is to establish new Rules 1000C through 1009C that would, in conjunction with current Exchange trading rules, allow listing and trading foreign exchange (also known as ''Forex'' or ''FX'') options on the British Pound, the Swiss Franc, the Canadian Dollar, the Australian Dollar, the New Zealand dollar (''PHLX FOREX Options''). The Exchange is also amending Advices F–6 and F–15 to harmonize Exchange Advices and rules.

The primary difference between current WCOs or FCOs and proposed PHLX FOREX Options will be the pricing convention of PHLX FOREX Options based on the spot market prices for the underlying currencies. The proposed methodology or convention for pricing PHLX FOREX Options [7] resembles the ''spot market pricing'' in use for currency futures and options on currency futures contracts [8] on the same underlying currencies.[9]

Background

The Exchange listed and traded physical delivery FCOs from 1982 through early 2007 through open outcry.[10] In 2004, the Exchange's options trading platform, Phlx XL, was approved for options trading; [11] this allowed options on foreign currencies to be traded electronically as well as manually. In January 2007, the Exchange listed and began trading cash-settled FCOs on the British pound and the Euro.[12] In July 2007, the Exchange listed and began trading FCOs on the Australian dollar, Canadian dollar, Swiss franc, and Japanese yen.[13] In June 2009, the Exchange received approval to list ten additional FCOs (WCOs) and to change their pricing convention so that it was similar to the pricing convention used for index options by adding multipliers to spot currency prices.[14]

The Exchange currently lists eleven FCOs (WCOs).[15] These options trade in the manual auction market as well as electronically.

This proposal allows the Exchange to list and trade PHLX FOREX Options on six of the same foreign currencies that underlie foreign currency options (FCOs or WCOs) that are currently traded on the Exchange, namely the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro. The proposal allows PHLX FOREX Options to be listed and traded in parallel to current FCOs (WCOs) and in a similar manner, by using the proposed PHLX FOREX Option rules in conjunction with existing Exchange rules and processes for foreign currency options (FCOs or WCOs). The proposal does not affect the continued listing and trading

[7] *See* proposed Rule 1001C.

[8] A currency futures contract is a transferable futures contract that specifies the price at which a currency can be bought or sold at a future expiration date.

[9] CME Group Inc. (''CME'') lists and trades futures and options on futures contracts on many of the PHLX FOREX Options that are proposed to be listed and traded by the Exchange including the Australian dollar, the British pound, the Canadian dollar, and the Euro. Examples of settlement (closing) spot prices of futures contracts on these currencies (e.g. 1.0565 for the Euro) can be found at *ftp://ftp.cmegroup.com/pub/settle/stlcur*.

[10] The last physical delivery FCOs that were listed on the Exchange were traded out or expired by March 2007.

[11] *See* Securities Exchange Act Release No. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR–Phlx–2003–59) (approving Phlx XL). *See also* Release No. 59995 (May 28, 2009) SR–Phlx–2009–32 (approving Phlx XL II, the Exchange's new electronic trading platform).

[12] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34). In approving the listing and trading of FCOs on the British pound and the Euro, the approval order stated that the listing and trading of additional FCOs on other foreign currencies will require the Exchange to file additional proposed rule changes on Form 19b–4.

[13] *See* Securities Exchange Act Release No. 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR–Phlx–2007–34).

[14] The ten additional FCOs (WCOs) approved for listing and trading were the Mexican peso, the Brazilian real, the Chinese yuan (also known as the renminbi), the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona *See* Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40) (approval order). This filing also deleted all reference to customized FCOs, which had ceased being traded on the Exchange. *See also supra* note 10.

[15] The currencies underlying these FCOs (WCOs) include: the Australian dollar, the British pound, the Canadian dollar, the Euro, the Japanese yen, the Mexican peso, the New Zealand dollar, the Norwegian krone, the South African rand, the Swedish krona, and the Swiss franc.

of FCOs or WCOs on the Exchange. Moreover, to minimize investor confusion during such time, if any, that PHLX FOREX Options and FCOs (WCOs) are traded on the Exchange in parallel on the same underlying currencies, the Exchange intends to engage in an educational effort to inform potential traders and investors about the differences in the PHLX FOREX Options and FCO (WCO) products.[16]

PHLX FOREX Options listed by the Exchange would, like WCOs or FCOs, be cleared by The Options Clearing Corporation (''OCC'') [17] and would be European style.[18] Upon exercise, holders of options contracts would receive U.S. dollars representing the difference between the exchange rate and the exercise price of the option,[19] which would be multiplied by the units of currency [20] in each PHLX FOREX Option contract. For example, upon exercise of an in-the-money PHLX FOREX Options call option, the holder would receive from OCC U.S. dollars representing the difference between the exercise price and the closing settlement value of the cash-settled option contract multiplied by the units of currency. Upon exercise of an in-the-money PHLX FOREX Options put option, the holder would receive from OCC U.S. dollars representing the excess of the exercise price over the closing settlement value of the cash-settled option contract multiplied by the units of currency. Additionally, PHLX FOREX Options that are in-the-money by any amount on the expiration date would be exercised automatically by OCC, while PHLX FOREX Options that are out-of-the-money on the expiration date would expire worthless.

The Proposal

The changes proposed herein regarding the methodology or convention of pricing PHLX FOREX Options would, as noted, closely resemble the ''spot market pricing'' that has been in use for decades for futures and options on futures contracts on the currencies that underlie PHLX FOREX Options. The Exchange receives spot market prices for currencies underlying the FCOs (WCOs) from a data vendor, which at this time is SIX Telekurs,[21] and converts such spot market prices to Exchange Spot Prices by applying an appropriate multiplier (e.g. 100 or 1000).[22] Currently, the closing settlement value for FCO (WCO) settlement purposes is the Exchange Spot Price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration.[23] The Exchange currently generates a settlement value report for each underlying currency; and publicly disseminates unique FCO (WCO) trading symbols and settlement values in order to differentiate between live underlying markets and 12:00:00 noon FCO (WCO) settlement prices.

For PHLX FOREX Options, however, the Exchange will not use Exchange Spot Prices for settlement (or any other) purpose. Instead, the Exchange will use the spot market prices that it receives from SIX Telekurs or another data vendor at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration to calculate settlement values—but will not apply any multiplier as it does for FCOs (WCOs).[24] These PHLX FOREX Option settlement values will be, similarly to FCOs (WCOs), publicly disseminated with unique trading symbols to differentiate between live underlying markets and 12:00:00 Eastern Time (noon) PHLX FOREX Option settlement prices. Except for applying multipliers for FCO (WCO) settlement values, the settlement value methodologies will largely be similar for PHLX FOREX Options and FCOs (WCOs). As an example, the July 2012 settlement value of a PHLX FOREX Option on the Euro may be $1.4338 based on the spot market price of the underlying currency; whereas the July 2012 settlement value price of a WCO (FCO) on the Euro may be $143.38 based on the application of a 100 multiplier to the similar spot market price.

PHLX FOREX Options will, as discussed, be similar—and in many respects identical—to FCOs (WCOs) and will trade in a like fashion. As such, in the proposed rules the Exchange initially sets forth the principle that its existing rules and procedures would be applicable to PHLX FOREX Options and the proposed PHLX FOREX Options rules would supplement existing rules. Specifically, new Rule 1000C states that unless otherwise specified, the proposed rules in the Rule1000C series of rules (''Rule 1000C Series'') are applicable only to PHLX FOREX Options. Rule 1000C states that except to the extent that specific rules in the Rule 1000C Series govern, or unless the context otherwise requires, the provisions of the Option Rules applicable to foreign currency options [25] and of the By-Laws [26] and all other Rules and Policies of the Board of Directors [27] are applicable to the trading on the Exchange of PHLX FOREX Options.

Definitions

PHLX FOREX Options are defined in Rule 1001C. Specifically, Subsection (a)(1) states that the term ''PHLX FOREX Option'' means: (i) A U.S. dollar-settled foreign currency option contract, (ii) on the standard unit of an underlying currency (discussed below) that is the official medium of exchange of a sovereign government including the United States Government (e.g., the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, or the Euro). This is identical to current WCO or FCO

[16] For example, as discussed in the filing the pricing of PHLX FOREX Options and FCOs (WCOs) would be different in that the pricing of a Euro PHLX FOREX Option would resemble spot market pricing (*e.g.* 1.0031) while the pricing of a Euro FCO (WCO) would resemble index option pricing (*e.g.* 100.31). And, the pricing symbology would be different in that PHLX FOREX Option prices would be reflected to four decimal places and FCOs (WCOs) prices to two places.

[17] *See* Securities Exchange Act Release No. 54935 (December 13, 2006), 71 FR 76417 (December 20, 2006) (SR–OCC–2006–10) (proposing to amend OCC's by-laws and rules to accommodate the clearance and settlement of the Exchange's WCOs or FCOs).

[18] Unlike American style options, European style options may be exercised only on the day that they expire.

[19] Proposed Rule 1006C.

[20] Each PHLX FOREX Option contract for the six currencies discussed in this filing would, like each WCO or FCO contract, have 10,000 units of currency. The product specifications for the new PHLX FOREX Options may be found at *http://www.nasdaqomxtrader.com/wco.*

[21] SIX Telekurs specializes in the procurement, processing and distribution of international financial information for investment advisory services, fund administration, portfolio management, financial analysis and securities administration. SIX Telekurs collects data directly from hundreds of contributors and exchanges as well as more than thirty (30) worldwide contributing banks. This data is, as discussed, the basis for the foreign currency spot market prices that SIX Telekurs provides to the Exchange.

The Exchange notes that spot market prices for currencies underlying PHLX FOREX Options are also calculated by other entities and available to investors from other sources such as market data vendors Bloomberg, Reuters, and Thomson. Investors can also get spot market prices for free from sources such as *http://finance.yahoo.com/* and *http://www.allstocks.com/1bigcharts.htm;* as well as from brokers with whom investors have a trading account.

[22] For a definition of Exchange Spot Price, *see* Rule 1000(b)16.

The International Securities Exchange, LLC (''ISE'') similarly applies multipliers to its cash-settled rate-modified currency options (which are not fungible with Phlx's WCOs or FCOs) so that they tend to look like the prices of index and other options. *See* Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[23] *See* Rule 1057.

[24] Proposed Rule 1006C.

[25] Option Rules 1000 *et seq.* and 1000A *et seq.*

[26] By-Laws Articles I to VII.

[27] Rules of the Exchange Rule 1 *et seq.* and Options Floor Procedure Advices.

options.[28] However, subsection (iii) also states that a PHLX FOREX Option will use the spot market price of the underlying currency for pricing and for settlement. This third characteristic of PHLX FOREX Options represents the crucial difference between PHLX FOREX Options and WCOs or FCOs: The pricing of PHLX FOREX Options (whether intra-day, end of day, or settlement pricing) will be based on the relevant underlying currency and will therefore resemble the spot market pricing of futures on the relevant underlying currency—without application of a multiplier as for WCOs or FCOs. As a result, where the price for Euro PHLX FOREX Options might read 1.4732, the Exchange Spot Market Price for Euro WCOs or FCOs might read 147.32.

The term ''unit of underlying foreign currency'' in respect of PHLX FOREX Options is defined in subsection (a)(2) of Rule 1001C to mean a single unit of the foreign currency. This is identical to the definition of underlying currency for WCOs or FCOs. Thus, a unit of currency underlying a Euro PHLX FOREX Options or a British Pound PHLX FOREX Options would be one Euro or one British pound, respectively.

Opening and Adding New PHLX FOREX Options

The Exchange proposes Rule 1002C regarding the series of underlying PHLX FOREX Options that may be opened for trading after a particular class of PHLX FOREX Option has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes subsection (a)(i) stating that at the commencement of trading on the Exchange of a particular class of PHLX FOREX Options, the Exchange will open a minimum of one expiration month and series for each class of options open for trading on the Exchange.[29] The exercise price of each series of PHLX FOREX Options opened for trading on the Exchange will be fixed in terms of U.S. dollars per unit of the underlying currency at a price per unit which is reasonably close to the current spot market price of the underlying foreign currency in the foreign exchange market at or before the time such series of options is first opened for trading on the Exchange. This is the same as the procedure for opening initial months and series and fixing expiration terms of equity options and index options on the Exchange, and continues the process of harmonizing exchange rules in the listing area.[30]

Regarding additional series of options, proposed subsection (a)(ii) to Rule 1002C states that additional series of PHLX FOREX Options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices.[31] Regarding long-term options, proposed subsection (a)(iii) states that with respect to any class of PHLX FOREX Options series the Exchange may list options having up to thirty-nine months from the time they are listed until expiration (with up to six additional expiration months). Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.

Pricing of PHLX FOREX Options

Proposed subsection (b) of Rule 1002C states that for each expiration of PHLX FOREX Options, the Exchange may initially list exercise strike prices within a 40 percent band around the current spot market price for an underlying currency for a PHLX FOREX Option (known as the ''spot market''). These options could be listed at $.0050 intervals. As the spot market moves, the Exchange may list new strike prices that, at the time of listing, do not exceed the spot market by more than 20 percent and are not less than the spot market by more than 20 percent (commensurate with the 40 percent band). For example, if at the time of initial listing, the spot market of the Euro is at $1.000 the strike prices the Exchange would list for the PHLX FOREX Option will be $.800 to $1.20 in $.0050 intervals. If the spot market then moves to $1.3050, the Exchange may list additional strikes at the following prices in $.0050 intervals: $1.045 to $1.565. The spot market pricing convention is reflected in other proposed rules.

The quote spread parameters (or bid/ask differentials) with respect to PHLX FOREX Options are noted in subsection (a) of Rule 1003C, which is applicable to PHLX FOREX Options specialists and Registered Options Traders (''ROTs''). In subsection (a), the Exchange proposes to use the spot market price convention but move the decimal point two places to the right so that a bid and/or offer differential of $.0025 would be ''expressed as'' $.25 for trading purposes.[32] Regarding electronic quotations, the Exchange proposes to state in subsection (b) to Rule 1003C that PHLX FOREX Options may be quoted electronically with a difference not to exceed $.0500 (expressed as $5.00) between the bid and offer regardless of the price of the bid.[33] The Exchange believes that because such proposed ''expressed as'' price demarcations are similar to how prices are now expressed for equity options, it would be easier for PHLX FOREX Options participants to use the expressed as pricing for trading purposes.[34] ''Expressed as'' pricing is used in several other proposed PHLX FOREX Option rules.

Proposed Rule 1004C regarding bids and offers of PHLX FOREX Options

[28] Rule 1000(b)(13).

[29] The Exchange notes that it currently intends to open two quarterly and two additional near-term months.

[30] For recent proposals harmonizing Exchange rule provisions regarding opening and adding equity and index options, *see* Securities Exchange Act Release Nos. 64741 (June 24, 2011), 76 FR 38444 (June 30, 2011) (SR–Phlx–2011–65) (order approving); 63700 (January 11, 2011), 76 FR 2931 (January 18, 2011) (SR–Phlx–2011–04) (notice of filing and immediate effectiveness; and 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and NASDAQ–2007–080) (order approving). The Exchange notes that the opening of FCOs (WCOs) has not yet been harmonized to the one month one series standard.

[31] Proposed subsection (a)(ii) to Rule 1002C states further: The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of PHLX FOREX Options until five (5) business days prior to expiration.

[32] Proposed subsection (a) to Rule 1003C states in full: With respect to all PHLX FOREX Options, bidding and/or offering so as to create differences of no more than $.0025 (expressed as $.25) between the bid and the offer for each option contract for which the prevailing bid is less than $.0200 (expressed as $2.00); no more than $.0040 (expressed as $.40) where the prevailing bid is $.0200 (expressed as $2.00) or more but less than $.0500 (expressed as $5.00); no more than $.0050 (expressed as $.50) where the prevailing bid is $.0500 (expressed as $5.00) or more but less than $.1000 (expressed as $10.00); no more than $.0080 (expressed as $.80) where the prevailing bid is $.1000 (expressed as $10.00) or more but less than $.2000 (expressed as $20.00); and no more than $.0100 (expressed as $1.00) where the prevailing bid is $.2000 (expressed as $20.00).

Proposed OFPA F–6 is similar.

[33] Proposed subsection (b) to Rule 1003C states further: The bid/ask differentials set forth in this subparagraph (b) only applies to electronic quotations and only following the opening rotation in each security (i.e., the bid/ask differentials specified in sub-paragraph (a) above shall apply during opening rotation). Quotations provided in open outcry may not be made with bid/ask differentials set forth in this subparagraph (b) and instead must comply with the legal bid/ask differential requirements described in sub-paragraph (a) above and not in this sub-paragraph (b).

[34] As an example, it would be unwieldy for a trader in a crowd to have to announce that he is improving a price by .0010 (one tenth of a penny). The ''expressed as'' price would allow the trader to announce that he is improving the price by ten cents or a dime.

states that except as provided in paragraph (b) and (c) of that Rule (contract adjustments and spread type priority),[35] all bids or offers made on the Exchange floor for PHLX FOREX Option contracts shall be expressed in terms of U.S. dollars per unit of the underlying foreign currency. The example given in the rule is that a bid of ''.0325'' (which would be expressed as ''3.25'') for a premium on a $1.70 strike price option on the British pound would represent a bid to pay $325 per option contract.

The minimum trading increment for PHLX FOREX Options is set forth in proposed Rule 1005C. Subsection (a) states that all PHLX FOREX Options where the underlying foreign currency is not the U.S. dollar (unless a PHLX FOREX Options pair) shall have a minimum increment of $.0001 but will be expressed for trading as $.01. Subsection (b) adds that different, higher, minimum increments may, however, be fixed by the Exchange for option contracts of a particular series of PHLX FOREX Options. This information will be posted on the Exchange's Web site.

Position and Exercise Limits for PHLX FOREX Options

Proposed Rule 1008C establishes that the new PHLX FOREX Options, namely the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro, will each have a position limit of 1,200,000 contracts. The proposed position limit for PHLX FOREX Options is identical to the current position limit for FCOs (WCOs) on Euros. The Exchange believes that it is proper to keep the proposed position limit at 1.2 million contracts for each such FX Option overlying a major foreign currency,[36] as this would further the goal of eliminating investor confusion by standardizing proposed PHLX FOREX Options. The proposed rule also establishes that if a PHLX FOREX Option and an FCO (WCO) are listed on the same underlying currency (*e.g.* a Euro PHLX FOREX Option and a Euro FCO (WCO)), then the position for each such option on the same underlying currency will be aggregated for purposes of determining compliance with the position limit established in this rule.

Historically, position and exercise limits have served as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise. Thus, position and exercise limits have been established for FCOs (WCOs) trading on the Exchange; [37] and a 1.2 million contract position and exercise limit has, in particular, been successfully used for trading Euro FCOs (WCOs).[38]

Position limit rules have also, where needed, historically included aggregation of positions among certain products. These include, as an example, options on lower-volume proprietary indexes and the components of such indexes, and full value and reduced value indexes.[39] Aggregation would be applied in such circumstances because of the potential ability to influence price by amassing large positions in such proprietary lower-volume or clearly related products.

The products underlying PHLX FOREX Options, namely foreign currencies, are traded on the global foreign exchange (FX) market that is considered to be one of the largest, most liquid financial markets in the world, with a $4.0 trillion average daily turnover in 2010.[40] The huge foreign exchange trading volume represents the largest asset class in the world and the highest liquidity among investment vehicles. Notwithstanding, based on informal communications with Commission staff, wherein staff expressed a general preference for aggregation, in Rule 1008C the Exchange is proposing aggregation for PHLX FOREX Options and FCOs (WCOs) that are listed on the same underlying currency. For purposes of conformity, in Commentary .05 of Rule 1001 the Exchange is proposing similar aggregation language in respect of foreign currency options (FCOs or WCOs).

Finally, the Exchange notes that the six current FCOs (WCOs) that are based on the currencies that would also underlie PHLX FOREX Options have not experienced problems attributable to position limits.

Proposed Rule 1009C establishes that the exercise limits for options on PHLX FOREX Options will be equivalent to the position limits prescribed in Rule 1008C.

Closing Settlement Value of PHLX FOREX Options

PHLX FOREX Options will use a closing settlement value methodology that is identical to what is currently being used for FCOs (WCOs) with one distinction. Calculating settlement value for PHLX FOREX Options will use the spot market price, whereas WCOs or FCOs currently use the Exchange Spot Price. This is set forth in proposed Rule 1006C, which states that the closing settlement value for PHLX FOREX Options and for FLEX PHLX FOREX Options on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, and the New Zealand dollar shall be the spot market price at 12:00:00 Eastern Time (noon) on the last trading day prior to expiration unless the Exchange determines to

[35] Proposed Rule 1004C subsection (b) states: All bids or offers for an option contract for which the Options Clearing Corporation has established an adjusted unit of trading in accordance with paragraphs (c) and (d) of Section 11 of Article VI of the by-laws of the Options Clearing Corporation shall be expressed in terms of dollars per the appropriate fractional part of the total securities and/or other property constituting such adjusted unit of trading.

Proposed Rule 1004C subsection (c) states: When a member holding a hedge order, as defined in Rule 1066 and bidding or offering on the basis of a total credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a hedge order at the total credit or debit with one other member with priority over either the bid or the offer established in the marketplace that is not better than the bids or offers comprising such total credit or debit, provided that, the member executes at least one option leg at a better price than established bid or offer for that option contract AND no option leg is executed at a price outside of the established bid or offer for that option contract.

[36] The six major foreign currencies that underlie PHLX FOREX Options are all within the top ten most traded foreign currencies in the world, and represent a 72.9% share of the daily market turnover (excluding U.S. dollars). Moreover, these underlying foreign currencies are very liquid, such that in 2010 the British pound, the Swiss franc, the Canadian dollar, the Australian dollar, the New Zealand dollar, and the Euro had an average daily volume, in billions of U.S. dollars, of 360, 168, 182, 249, 4, and 1,101, respectively. Source: Bank for International Settlements (BIS) Triennial Central Bank Survey, Report on Global Foreign Exchange Market Activity in 2010.

[37] Rule 1001 and 1002. These rules also establish limits for equity and ETF options.

[38] *See* Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31789 (July 2, 2009)(SR–Phlx–2009–40)(order approving). Position limits for non-Euro foreign currency options are 600,000 contracts. *See also* Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011)(SR–Phlx–2011–58)(order approving position limit increase for options on Standard and Poor's(R) Depositary Receipts (SPDRs(R)).

[39] *See* Rules 1001A subsection (f) (regarding proprietary Alpha Index aggregation) and subsection (e) (regarding full and reduced-value index aggregation).

[40] It has been observed that the average daily turnover of the FX market is equivalent to: more than 12 times the average daily turnover of global equity markets (about $320 billion—World Federation of Exchanges aggregate 2009); more than 50 times the average daily turnover of the NYSE (about $70 billion—World Federation of Exchanges 2009); more than $500 a day for every man, woman, and child on earth (based on world population of 6.9 billion—US Census Bureau); and an annual turnover more than 10 times world GDP (about $58 trillion—World Bank 2009). Source: Bank for International Settlements (BIS) Triennial Central Bank Survey 2010.

apply an alternative closing settlement value as a result of extraordinary circumstances.[41] The rule states that, like with WCOs and FCOs, PHLX FOREX Options will be settled in U.S. dollars per unit of underlying currency; and that the Exchange will disseminate the closing settlement value through one or more major market data vendors. The rule also indicates that the disclaimer of liability that is applicable to WCOs and FCOs is likewise applicable to PHLX FOREX Options.[42] The Exchange will disseminate PHLX FOREX Option closing settlement values on its Web site.

FLEX—PHLX FOREX Options

Rule 1079 deals with the process of listing and trading FLEX equity, index, and foreign currency options (WCOs and FCOs) on the Exchange. The rule states that FLEX options are available for foreign currency options (FCOs and WCOs) and discusses, among other things: Opening FLEX options trading through the Request-for-Quote (''RFQ'') process; quotes responsive to RFQs; trading parameters and procedures; and position and exercise limits for FLEX options. The Exchange is adding proposed Rule 1007C stating that the FLEX procedures set forth in Rule 1079 in respect of foreign currency options will also be applicable to PHLX FOREX Options.

Systems Capacity and Surveillance

The Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of PHLX FOREX Options on the Exchange. The Exchange represents that it has an adequate surveillance program in place for trading WCOs or FCOs. The Exchange will apply the same surveillance program to PHLX FOREX Options that it uses for WCOs or FCOs.[43] Therefore, the Exchange represents that it has adequate surveillance for PHLX FOREX Options.

Applicability of Rules for Foreign Currency Options

As noted, proposed Rule 1000C establishes the principal that except to the extent that specific rules in the Rule 1000C Series govern, or unless the context otherwise requires, the provisions of Exchange Option Rules applicable to foreign currency options (WCOs or FCOs), Exchange By-Laws, and Rules and Policies of the Board of Directors are applicable to the trading on the Exchange of PHLX FOREX Options.[44] An example of the applicability of an exchange trading rule is Rule 1014, which, among other things, generally discusses obligations and quote spread parameters applicable to foreign currency option and other types of specialists and ROTs. Proposed Rule 1003C supplements Rule 1014 by stating that with respect to classes of option contracts to which a specialist or ROT assignment extends, a specialist and an ROT, whenever the ROT (except a Remote Streaming Quote Trader or RSQT) enters the trading crowd in other than a floor brokerage capacity or is called upon by an Options Exchange Official or a Floor Broker[45] to make a market, the specialist and ROT should exhibit certain behavior. In particular the rule states that the assigned specialist and ROT is expected to engage, to a reasonable degree under the existing circumstances, in dealing for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.

PHLX FOREX Options will follow the rules, some of which are supplemented by this filing, that are currently applicable to foreign currency options (WCOs or FCOs).[46] These include rules that pertain to areas such as, for example, hours of trading, quoting and market making requirements, margin requirements, reporting options positions, filing trade information, and FLEX trading.[47]

Option Floor Procedure Advices

The Exchange proposes to amend Advice F–6 to reflect ''expressed as'' pricing for maximum quotes spread parameters in light of bid and ask differentials. This is done to harmonize Advice F–6 with its corresponding proposed rule 1003C, so that the same pricing is reflected in the rule and the Advice.

The Exchange also proposes to amend Advice F–15, which discusses minor infractions of position/exercise limits and hedge exemptions, to reflect the addition of proposed Rules 1008C and 1009C. This is done to harmonize Advice F–15 with its corresponding proposed Rules 1008C and 1009C, and thereby include minor violations of the proposed rules in the Exchange's Minor Rule Plan as reflected in the Advices.

Conclusion

The Exchange believes that PHLX FOREX Options using a pricing structure that is similar to that of underlying currencies in the interbank currency market represent a leveraged

[41] The expiration date for PHLX FOREX Options would be the Saturday following the third Friday of the expiration month, and the last trading day would be the third Friday of the expiration month. This is similar to WCOs or FCOs.

[42] The disclaimer of liability in proposed Rule 1006C states: Neither the Exchange, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating the current settlement value or the closing settlement value resulting from an act, condition, or cause beyond the reasonable control of the Exchange including but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error, omission, or delay in the reports of transactions in one or more underlying currencies or any error, omission or delay in the reports of the current settlement value or the closing settlement value by the Exchange.

[43] The Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement, which was modernized in 2008, and may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG. The members of the ISG include all of the U.S. registered stock and options markets. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses.

[44] Proposed Rule 1000C is modeled on, and essentially the same as, current Rule 1000A. This is the primary rule in the Exchange's 1000A Series of rules for index options, and has continuously been in use for more than twenty-five years. *See* Securities Exchange Act Release No. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983)(SR–Phlx–83–17)(order approving the 1000A Series of rules). Other securities markets use an analogous approach. *See, for example,* CBOE Chapter XXVIII (regarding corporate debt securities); ISE Rule 2131 (regarding portfolio depository receipts); BATS BZX Exchange Rule 14.11 (regarding managed fund shares); NASDAQ Rule 2841 (regarding warrants); and NOM Rule 2 (regarding rules on NASDAQ Options Market).

[45] For definitions of specialist, RSQT, Options Exchange Official, and Floor Broker, *see* Rules 1020, 1014(b)(ii)(B), 1(w) and 1060, respectively.

[46] *See* proposed Rule 1000C and *infra* note 45.

[47] Rules 101, 1014, 721, 1003, 1053, and 1079, respectively. Other Exchange rules that are applicable to the trading of foreign currency options products include Rules 1006 (Other Restrictions on Exchange Options Transactions and Exercises); 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders); 1022 (Securities Accounts and Orders of Specialists and Registered Options Traders); 1024 (Conduct of Accounts for Options Trading); 1025 (Supervision of Accounts); 1027 (Discretionary Accounts); 1028 (Confirmations); 1039 (Resolution Of Uncompared Trade); 1043 (Allocation of Exercise Notices); 1044 (Delivery and Payment); 1045 (Officers And Employees Restricted); 1047 (Trading Rotations, Halts and Suspensions); 1049 (Communications to Customers); 1063 (Responsibilities of Floor Brokers); 1064 (Crossing, Facilitation and Solicited Orders); 1066 (Certain Types of Orders Defined); 1068 (Execution of Multi-Part Orders); 1080 (Phlx XL and Phlx XL II); 1083 (Order Protection; Locked and Crossed Markets); 1089 (Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options); and 1092 (Obvious Errors and Catastrophic Errors).

derivative instrument that, from a competitive perspective, provides a familiarly-priced leveraged currency product on a regulated listed options market. PHLX FOREX Options should increase product competition, encourage trading, and provide additional investment and hedging opportunities for traders, market participants, and investors (to include retail and public investors).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [48] in general, and furthers the objectives of Section 6(b)(5) of the Act [49] in particular, in that it is designed to promote just and equitable principles of trade, 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 proposal should minimize or eliminate investor confusion by aligning the pricing and trading of PHLX FOREX Options to established methodologies. PHLX FOREX Options would use a pricing structure that is similar to the pricing structure that has been used in the interbank currency market for decades for currencies that underlie PHLX FOREX Options (as well as for other currencies). Traders of PHLX FOREX Options would have the ability, however, to express prices of such options for trading purposes in a familiar style that is used for trading other options on the Exchange.[50]

At the same time, PHLX FOREX Options would be largely similar in structure to foreign currency options listed on the Exchange (FCOs or WCOs), and would trade in a like manner. The process for trading PHLX FOREX Options will be similar to the process that has been used for years, and continues being used, on the Exchange for trading foreign currency options (FCOs and WCOs).[51] The current foreign currency options trading process will be enhanced by the Rule 1000C Series of proposed PHLX FOREX Options rules,[52] which will supplement existing trading rules.

In addition, the Exchange will discuss the proposal in an OTA. In particular, the Exchange intends to educate members about the structure and trading procedure for PHLX FOREX Options as one of two foreign currency products that may be traded in parallel on the Exchange with the approval of this proposal. The Exchange believes that this will serve to minimize investor confusion while promoting investor protection.

The Exchange believes that the proposed PHLX FOREX Options will offer market participants a leveraged derivative foreign currency product that, from a competitive perspective, should increase product competition, encourage trading, and provide additional investment and hedging opportunities for traders, market participants, and investors.

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 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.

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–2012–11 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–2012–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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–2012–11 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2202 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[48] 15 U.S.C. 78f(b).

[49] 15 U.S.C. 78f(b)(5).

[50] As an example, instead of a trader having to indicate that he is improving the price of a Euro PHLX FOREX Option by .0010 (one tenth of a penny), the trader would express that he is improving the price by ten cents or a dime. *See also supra* note 34.

[51] For applicable FCO (WCO) trading rules, *see supra* note 47.

[52] Proposed Rules 1000C through 1009C.

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66253; File No. SR–CHX–2012–04]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Program Relating to Clearly Erroneous Transactions

January 26, 2012.

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 January 23, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6)[3] which is effective upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its rules to extend the pilot program relating to clearly erroneous transactions. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In September, 2010, CHX obtained Commission approval of a filing amending its rules relating to clearly erroneous transactions on a pilot basis until December 10, 2010.[4] This program was subsequently extended until April 11, 2011,[5] extended again until August 11, 2011 [6] and then extended again until January 31, 2011.[7] The proposed rule change merely extends the duration of the pilot program to July 31, 2012. Extending the pilot in this manner will allow the Commission more time to consider the impact of the pilot program.

2. Statutory Basis

Approval of the rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is also designed to support the principles of Section 11A(a)(1) [10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts, including reviews in the context of a Multi-Stock Event involving twenty or more securities and reviews resulting from a Trigger Trade and any executions occurring immediately after a Trigger Trade but before a trading pause is in effect on the Exchange. Further, the Exchange believes that the proposed changes enhance the objectivity of decisions made by the Exchange with respect to clearly erroneous executions.

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 that is 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 34–62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) approving SR–CHX–2010–13.

[5] *See* Securities Exchange Act Release No. 34–63487 (December 9, 2010), 75 FR 78279 (December 15, 2010) regarding SR–CHX–2010–23.

[6] *See* Securities Exchange Act Release No. 64228 (April 7, 2011), 75 FR 20792 (April 13, 2011) regarding SR–CHX–2011–06.

[7] *See* Securities Exchange Act Release No. 65078 (August 9, 2011), 75 FR 50524 (August 15, 2011) regarding SR–CHX–2011–24.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–CHX–2012–04 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 No. SR–CHX–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2012–04 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2201 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66255; File No. SR–ISE–2012–04]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 2128 to Extend the Pilot Program

January 26, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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

The Exchange proposes to amend Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 self-regulatory organization 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend ISE Rule 2128 (Clearly Erroneous Trades) to extend the expiration of the pilot rule. Amendments to ISE Rule 2128 to provide for uniform treatment of certain clearly erroneous execution reviews and transactions that occur before a trading pause is in effect on the Exchange were approved by the Securities and Exchange Commission (''Commission'') on September10, 2010 on a pilot basis to end on April 11, 2011.[3] The Exchange then extended this pilot to expire upon the earlier of August 11, 2011 or the date on which the limit up/limit down mechanism to address extraordinary market volatility applies.[4] The Exchange then extended the pilot to January 31, 2012.[5] The Exchange now proposes to extend the date by which this pilot rule will expire to July 31, 2012. Extending this pilot program will provide the exchanges with a continued opportunity to assess the effect of this rule proposal on the markets.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

[3] *See* Securities Exchange Act Release Nos. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–ISE–2010–62) (Extending the pilot period to December 10, 2010); 63481 (December 9, 2010), 75 FR 78275 (December 15, 2010) (Extending the pilot period to April 11, 2011).

[4] *See* Securities and Exchange Act Release No. 64231 (April 7, 2011), 76 FR 20733 (April 13, 2011) (SR–ISE–2011–19).

[5] *See* Securities and Exchange Act Release No. 65061 (August 9, 2011), 76 FR 50503 (August 15, 2011) (SR–ISE–2011–51).

[6] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions relating to clearly erroneous trades in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–ISE–2012–04 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 No. SR–ISE–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2012–04 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2173 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66251; File No. SR–Phlx–2012–09]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Document Removal Fee

January 26, 2012.

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 January 20, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee of $250 per box to ship documents stored by members or member organizations on the trading floor to the member or member organization's address of record. While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on February 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to charge member organizations a fee of $250 per box containing documents belonging to the member or member organization which the Exchange removes from Exchange space on the trading floor.[3] The Exchange is instituting a policy on February 1, 2012, pursuant to which the Exchange will remove any documents, including storage boxes containing documents, in Exchange space on the trading floor and ship them to the address of record of the member or member organization whose name appears on the documents in question. The Exchange will charge the member organization a $250 per box Document Removal Fee which will cover staff time, postage and handling.[4] Removal of documents from Exchange space may be necessary to ensure that the Exchange complies with its obligations under its lease and the Philadelphia Fire Code. Documents which are stored in compliant space which has been authorized by the Exchange for use by the member or member organization will not be removed by the Exchange and therefore will not be subject to the fee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Document Removal Fee is reasonable because it allows the Exchange to recoup costs associated with the administrative burden of removing documents that are stored by members and member organizations without authorization in Exchange space on the trading floor. It is equitable and not unfairly discriminatory because it is uniformly applied to all members and member organizations that store documents in Exchange space without authorization. The Exchange believes that this is fair since members and member organizations should not be permitted to use Exchange space for their own storage needs.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[5] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2012–09 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 No. SR–Phlx–2012–09. 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

[3] The Exchange will use standard 1.2 square feet storage boxes to ship documents left on the trading floor to the member or member organization's address of record.

[4] The Exchange estimates that $250 per box will be the average administrative cost to the Exchange of removing and shipping the documents. The Exchange does not view this fee as a potential source of revenue to the Exchange.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2012–09 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2171 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66254; File No. SR–FINRA–2012–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to FINRA Rule 11892 Governing Clearly Erroneous Transactions

January 26, 2012.

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 January 24, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) to extend the effective date of the pilot, which is currently scheduled to expire on January 31, 2012, until July 31, 2012.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes to amend FINRA Rule 11892.02 to extend the effective date of the amendments set forth in File No. SR–FINRA–2010–032 (the ''pilot''), which are currently scheduled to expire on January 31, 2012,[4] until July 31, 2012.

The pilot was drafted in consultation with other self-regulatory organizations (''SROs'') and Commission staff to provide for uniform treatment: (1) Of clearly erroneous execution reviews in Multi-Stock Events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect for transactions otherwise than on an exchange.[5] FINRA also implemented additional changes to the Rule as part of the pilot that reduce the ability of FINRA to deviate from the objective standards set forth in the Rule.[6]

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA, the other SROs and the Commission further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the clearly erroneous rules of other SROs and will promote the goal of transparency and uniformity across markets concerning reviews of potentially clearly erroneous executions in various contexts.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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.

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

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 65075 (August 9, 2011), 76 FR 50528 (August 15, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–037).

[5] *See* Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (''Order Approving File No. SR–FINRA–2010–032''). *See also* Securities Exchange Act Release No. 65101 (August 11, 2011), 76 FR 51097 (August 17, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2011–039).

[6] *See* Order Approving File No. SR–FINRA–2010–032.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–FINRA–2012–005 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 No. SR–FINRA–2012–005. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2012–005 and should be submitted on or before February 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2157 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission written notice of the self-regulatory organization's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66256; File No. SR–NASDAQ–2012–012]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fee for a Written Interpretation of the Nasdaq Listing Rules

January 26, 2012.

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 January 13, 2012, The NASDAQ Stock Market LLC (''Nasdaq'') 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 Nasdaq. 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 proposes to modify the fee for a written interpretation of the Nasdaq listing rules. Nasdaq will implement the proposed rule change immediately.

(a) The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[3]

* * * * *

5602. Written Interpretations of Nasdaq Listing Rules

(a) A Company listed on the Nasdaq Capital Market or the Nasdaq Global Market may request from Nasdaq a written interpretation of the Rules contained in the Rule 5000 through 5900 Series. In connection with such a request, the Company must submit to Nasdaq a non-refundable fee of [$15,000]*$5,000.*[(b)] A response to *such* a request[for a written interpretation] generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request [, although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and Nasdaq will attempt to respond by that date].

(b) Notwithstanding paragraph (a), a Company may request a written interpretation of the Rules contained in the 5000 through 5900 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.cchwallstreet.com.*

request. In connection with such a request for an expedited response, the Company must submit to Nasdaq a non-refundable fee of $15,000.

(c)–(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 rules allow a company to request from Nasdaq a written interpretation on the application of the Nasdaq listing rules, contained in the Rule 5000 through 5900 Series. Nasdaq proposes to modify the fee in connection with such a request. Today, a company is required to submit a non-refundable fee of $15,000,[4] and Nasdaq generally provides a response to the request within four weeks from the date Nasdaq receives all information necessary to respond to the request, although if a company requires a response by a specific date, Nasdaq will attempt to respond by that date.[5]

Previously, Nasdaq rules provided for two tiers of fees for a written interpretation of the Nasdaq listing rules, depending on the urgency of the request. Nasdaq eliminated that two-tier structure because few companies took advantage of the lower fee alternative.[6] However, Nasdaq has received feedback from listed companies and their counsel that the option to submit a non-expedited request for a lower fee is an important alternative. Accordingly, Nasdaq proposes to revert to the prior version of the rules,[7] under which a company could submit a non-refundable fee of $5,000 for a regular request, to which Nasdaq generally will provide a response within four weeks from the date Nasdaq receives all information necessary to respond to the request. As under the current rule, a company may, alternatively, submit a non-refundable fee of $15,000 for an expedited request, in which the company requests a response by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all necessary information.

Under the proposal, companies would have the option to choose an expedited or non-expedited track for their request, and no company will pay a higher fee for a written interpretation of the Nasdaq listing rules than is currently charged. Nasdaq will continue to endeavor to respond to all requests as quickly as possible, while making appropriate decisions as to the application of the Nasdaq rules. Nasdaq also will continue not to charge companies for oral guidance on the Nasdaq rules.[8]

Finally, the proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its other regulatory programs, and the proposed change is not expected to meaningfully impact Nasdaq's revenue from its listing program.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[10] in particular. The proposed rule change is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Under the proposed rule change, issuers that do not need an expedited request could pay a lower fee. Nasdaq believes that the availability of a lower priced alternative for non-expedited interpretation requests is an equitable allocation of Nasdaq's fees. The proposed rule change also is consistent with Section 6(b)(5) in that it does not unfairly discriminate between issuers in that issuers that do not need an expedited interpretation will have the lower-priced alternative available to them.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NASDAQ–2012–012 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–2012–012. 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

[4] *See* Nasdaq Listing Rule 5602(a).

[5] *See* Nasdaq Listing Rule 5602(b).

[6] *See* Securities Exchange Act Release No. 34–61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (approving SR–NASDAQ–2009–081).

[7] *Id.*

[8] The Commission notes that Nasdaq informed Commission staff in connection with a previous rule proposal that Nasdaq does not charge companies for oral interpretation requests of their rules. *See supra* note 6, 75 FR at 11959 n. 17.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4) and (b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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–NASDAQ–2012–012 and should be submitted on or beforeFebruary 22, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–2134 Filed 1–31–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–48]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 21, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–1233 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Staples, (202) 267–4058, Keira Jones, (202) 267–4025, or Tyneka L. Thomas, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 26, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

PETITION FOR EXEMPTION

Docket No.: FAA–2011–1233
Petitioner: PHI Air Medical, LLC
Section of 14 CFR Affected:
14 CFR §§ 135.293, 135.297, 135.299, and 135.343
Description of Relief Sought: PHI Air Medical, LLC requests an exemption to permit Air Medical to use pilots previously qualified under PHI, Inc.'s part 119 air carrier certificate number HEEA617E to serve as pilots operating under Air Medical's certificate.

[FR Doc. 2012–2180 Filed 1–31–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Intent To Prepare an Environmental Impact Statement; USH 51, IH 39/90 East of Stoughton to USH 12/18 (Madison South Beltline Highway) North of McFarland; Dane County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed transportation improvements in the United States Highway (US) 51 corridor in Dane County, Wisconsin generally between Interstate 39/90 east of the City of Stoughton and US 12/18 (Madison South Beltline Highway). The EIS is being prepared in conformance with 40 CFR 1500, 223 CFR 771, and FHWA polices.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an Environmental Impact Statement (EIS) on proposed improvements to address safety, operational, and capacity concerns on approximately 10-miles of US 51 between Interstate 39/90 east of the City of Stoughton to US 12/18 (Madison South Beltline Highway), north of the Village of McFarland. The study will also examine a bypass in Stoughton, as well as potential operational improvements on existing US 51 in Stoughton. The study will consider improvements on highways other than US 51 that would address the needs of travelers between the southeast portion of Dane County and the Madison Urban area, as alternatives to major capacity improvements on US 51. The objective of this project is to address existing and future transportation demand and safety concerns as identified in the US 51 Needs Assessment Report, and to identify land that may need to be

[13] 17 CFR 200.30–3(a)(12).

preserved for future transportation improvements.

FHWA's decision to prepare a draft EIS is based on the initial environmental assessment which indicates the proposed action is likely to have significant impacts on the environment including wetlands. The draft EIS will evaluate the social, economic, and environmental impacts of the alternatives including No Build, Transportation System Management (Low Build), and Full Build improvements within the existing US 51 highway corridor, and other Full Build improvements on other regional highway corridors.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Native American Tribes, local agencies, private agencies and organizations, and other parties who have expressed or are known to have an interest in this proposal. Opportunities for agencies to become participating and/or cooperating agencies, and to participate in project development activities, has been and will continue to be offered in compliance with 40 CFR 1500 and 23 CFR 771, as well as other FHWA policies.

During the development of the project Needs Assessment, coordination was conducted with State and local agencies, as well as extensive coordination with local officials. A Policy Advisory Committee consisting of local officials also met throughout the Needs Assessment process. A public information meeting was conducted in 2004 to present the findings of the project Needs Assessment. A public workshop was later held in 2005 to solicit ideas from the public about improvements to address the needs identified in the Needs Assessment process.

Between January 2006 and November 2011, several coordination meetings were held with State and Federal resource agencies, and local officials, to discuss Purpose and Need, other highway corridors to be studies, and alternatives to be evaluated. Between May 2006 and April 2011, several public information meetings were held to obtain public feedback on potential alternatives and improvement concepts. WisDOT has used feedback from those meetings and other data to develop proposed improvement concepts which will be incorporated into alternatives for further study.

Continued coordination with local, State, and Federal agencies and officials, including Native American Tribes and other interested parties, is planned throughout the environmental analysis process. The Policy Advisory Committee will continue to meet regularly during the EIS process.

Public information meetings will be held while the draft EIS is being written and a public hearing will follow completion of the draft EIS to address the impacts of each alternative. Public notice will be given of the time and place of the public information meetings and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA or WisDOT at the addresses provided below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

This study shall comply with Title VI of the Civil Rights Act and of Executive Order 12898, which prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. It is also Federal and State policy that no group of people bears the negative consequences of this action in a disproportionately high and adverse manner without adequate mitigation.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny Gerbitz, Field Operations Engineer, Federal Highway Administration, City Center West, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; Telephone: (608) 829–7500. You may also contact Mr. Daniel Scudder, Chief, Environmental Services Section, Bureau of Technical Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin 53707–7965: Telephone: (608) 267–3615.

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 by using a computer, modem and suitable communications software. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Office's database at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 23, 2011.

Johnny M. Gerbitz,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2012–1864 Filed 1–31–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2012–0007]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2012

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2012 so grantees and subgrantees affected by national or regional emergencies may request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. By this notice, FTA is establishing an Emergency Relief Docket for calendar year 2012.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E56–306, Washington, DC, 20590, phone: (202) 366–4011, fax: (202) 366–3809, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to title 49 CFR part 601, subpart D, FTA is establishing the Emergency Relief Docket for calendar year 2012. The docket may be opened at the request of a grantee or subgrantee, or on the Administrator's own initiative. When the Emergency Relief Docket is opened, FTA will post a notice on its Web site, at *www.fta.dot.gov*. In addition, a notice will be posted in the docket.

In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; via telephone, at: (202) 366–4011; via fax, at (202) 366–3472, or via email, to *bonnie.graves@dot.gov*, requesting opening of the Docket for that emergency and including the information set forth below.

All petitions for relief from administrative requirements must be

posted in the docket in order to receive consideration by FTA. The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at *www.regulations.gov*. Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave. SE., Room W12–140, Washington, DC 20590. Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2012–0007. Grantees and subgrantees making submissions to the docket by mail or hand delivery should submit two copies. Grantees and subgrantees are strongly encouraged to contact their FTA regional office and notify FTA of the intent to submit a petition to the docket.

In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

A petition for relief shall:

(a) Identify the grantee or subgrantee and its geographic location;

(b) Identify the policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief;

(c) Specifically address how an FTA requirement in a policy statement, circular, agency guidance or rule will limit a grantee's or subgrantee's ability to respond to an emergency or disaster; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

A petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

Pursuant to section 604.2(f) of FTA's charter rule (73 FR 2325, Jan. 14, 2008), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor, or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days, the grantee or subgrantee shall follow the procedures set out in this notice.

FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision. FTA decision letters, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates.

Issued in Washington, DC, this 26th day of January 2012.

Peter Rogoff,

Administrator.

[FR Doc. 2012–2147 Filed 1–31–12; 8:45 am]

BILLING CODE; P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 26, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 2, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0008.

Type of Review: Extension without change of a currently approved collection.

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

Form: TTB F 5170.7.

Abstract: TTB F 5170.7 is used to document the shipment of taxpaid Puerto Rican Liquors and articles into the U.S. The form is reviewed by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under appropriate bond. This serves as a method of protecting the revenue.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 100.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–2105 Filed 1–31–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Name Change: American Hardware Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570, 2011 Revision, published July 1, 2011, at 76 FR 38892.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given that American Hardware Mutual Insurance Company (NAIC# 13331) has changed its name to Motorists Commercial Mutual Insurance Company, effective April 25, 2011. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2011 Revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 17, 2012.

Laura Carrico,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2012–2127 Filed 1–31–12; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before March 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Application by Voluntary Guardian of Incapacitated Owner of United States Savings Bonds/Notes.

OMB Number: 1535–0036.

Form Number: PD F 2513.

Abstract: The information is requested to establish the right of a voluntary guardian to act on behalf of an incompetent bond owner.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 333.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 25, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–2010 Filed 1–31–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on February 27–28, 2012, at the St. Regis Hotel, 923 16th and K Streets NW., Washington, DC. The sessions will begin at 8:30 a.m. and end at 4 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments on the afternoon of February 28. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Mr. Robert Watkins, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue NW., Washington, DC 20420; or email at *Robert.Watkins2@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Watkins at (202) 461–9214.

Dated: January 26, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–2056 Filed 1–31–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 21 February 1, 2012

Part II

Environmental Protection Agency

Certain New Chemicals; Receipt and Status Information; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0992; FRL–9331–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from November 1, 2011 to December 2, 2011, and provides the required notice and status report, consists of the PMNs and TME, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0992, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; e-mail address: *Mudd.Bernice@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from November 1, 2011 to December 2, 2011, consists of the PMNs and TME, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—43 PMNS RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–12–0040	11/01/2011	01/29/2012	Essential Industries.	(S) A polymer in printing applications; a polymer for pigment and or ink dispersions.	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, diethylamine, 1,2-etahne diamine, 3-hydroxy-2-(hydroxymethyl)-2-methyl propanoic acid and 1,1'-methylenebis[4-isocyanatocyclohexane], compd. with n,n-diethylethanamine
P–12–0041	11/01/2011	01/29/2012	Zydex Industries.	(S) Waterproofing inorganic substrates. trade name zycosil; asphalt binder modifier. Trade name Zycosoil and Nanotac; waterproofing of soil.	(G) Silane quats.
P–12–0042	11/01/2011	01/29/2012	Clariant Corporation.	(G) A component in leather finishing formulations.	(G) Polyurethane aqueous dispersion.
P–12–0043	11/03/2011	01/31/2012	CBI	(G) Additive, open, non-dispersive use.	(G) 2-(dimethylamino)ethyl methyl-2-propanoate, polymer with alkyl-substituted methyl-2-propanoate, salt with mono(alkyl-substituted polyalkoxyether)butanedioates.
P–12–0044	11/04/2011	02/01/2012	CBI	(G) This product has utility as an intermediate for formulation in industrial and manufacturing uses in a wide range of polymers and materials including rubber, thermoplatics, engineered plastics, cement, latexes, ceramics, photovoltaic materials, capacitor materials, battery materials, and electrostatic and heat transfer coatings.	(G) Multi-wall carbon nanotubes.
P–12–0045	11/04/2011	02/01/2012	CBI	(G) Additive, open, non-dispersive use.	(G) Epoxy resin, reaction product with amines.
P–12–0046	11/08/2011	02/05/2012	CBI	(G) Silicone antifoam	(G) Aryl functional silicone.
P–12–0047	11/08/2011	02/05/2012	Eastman Kodak Company.	(S) Use as a chemical intermediate..	(S) Benzoic acid, 4-(1,3-dihydro-1,3-dioxo-2h-isoindol-2-yl)-2-hydroxy-, methyl ester.

TABLE I—43 PMNS RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–12–0048	11/08/2011	02/05/2012	CBI	(S) Additive for electrolyte mixtures for batteries and other electrical and other electronic devices.	(G) Dioxolane fluoropropoxymethyl.
P–12–0049	11/08/2011	02/05/2012	Marshallton Research Laboratories, Inc..	(G) Waste remediation	(G) Alkylcatechol-substituted alkoxy-substituted calixarene.
P–12–0050	11/09/2011	02/06/2012	Indulor America, L.	(G) Optical brightener	(G) Sulfonated stilbene derivative.
P–12–0051	11/10/2011	02/07/2012	CBI	(G) Polymer foam additive	(G) Substituted alkylamide.
P–12–0052	11/10/2011	02/07/2012	CBI	(G) Polymer foam additive	(G) Substituted alkylamide.
P–12–0053	11/10/2011	02/07/2012	CBI	(G) Chemical intermediate	(G) Substituted alkylester.
P–12–0054	11/17/2011	02/14/2012	CBI	(S) Ultraviolet curable polymer for clear coatings for wood, plastic and metal.	(G) Urethane acrylate.
P–12–0055	11/17/2011	02/14/2012	CBI	(G) Foam stabilizer and coating additive.	(G) Partially fluorinated acrylic copolymer.
P–12–0056	11/18/2011	02/15/2012	CBI	(G) Component of coatings	(G) Isocyanate polymer, alcohol-blocked.
P–12–0057	11/18/2011	02/15/2012	CBI	(G) Component of coatings	(G) Hydroxyalkenoate, polymer with isocyanate and diglycol, alcohol-blocked.
P–12–0058	11/18/2011	02/15/2012	Innovative Science Technology.	(S) Placticizer for polyvinyl chloride resin.	(S) Waste plastics, poly(ethylene terephthalate), depolymented with by-products from manuf. of 2-butoxyethanol, and isotridecanol, ethylene glycol-free fraction.
P–12–0059	11/21/2011	02/18/2012	CBI	(S) Binder for metal coatings	(G) Epoxy urethane.
P–12–0060	11/23/2011	02/20/2012	Henkel Corporation.	(S) A polymerizable component in novel adhesive/sealant formulations.	(S) 2-propenoic acid, sodium salt, reaction products with 1,3-bis(1-chloro-1-methylethyl)benzene and butadiene-isobutylene polymer.
P–12–0061	11/23/2011	02/20/2012	CBI	(G) Ink vehicle	(G) Modified acrylic copolymer.
P–12–0062	11/23/2011	02/20/2012	CBI	(G) Sealants and adhesives	(G) Dimethylalkoxylated polydimethylsiloxane and methoxy functional silica.
P–12–0063	11/24/2011	02/21/2012	CBI	(G) Sealants and adhesives	(G) Acryloxy functional siloxane.
P–12–0064	11/23/2011	02/20/2012	CBI	(G) Pmn substance used as an illuminating phosphor.	(G) Green line emitting phosphor.
P–12–0065	11/25/2011	02/22/2012	Western Iowa Energy.	(G) Petrochemical replacement.	(S) Fatty acids, animal, me esters.
P–12–0066	11/25/2011	02/22/2012	Western Iowa Energy.	(G) Petrochemical replacement.	(S) Fatty acids, cooking oil wastes, me esters.
P–12–0067	11/25/2011	02/22/2012	Western Iowa Energy.	(G) Petrochemical replacement.	(S) Fatty acids, poultry, me esters.
P–12–0068	11/28/2011	02/25/2012	CBI	(G) Open, non-dispersive textile finish.	(G) Modified fluorinated urethane.
P–12–0069	11/15/2011	02/12/2012	CBI	(G) Lubricity additive	(G) Fatty acids compounds with cyclohexanamine.
P–12–0070	11/15/2011	02/26/2012	CBI	(G) Lubricity additive	(G) Fatty acids compounds with butanamine.
P–12–0071	11/11/2011	02/08/2012	CBI	(S) Used as a food additive; foaming agent used in the manufacture of plastic parts.	(S) Disphosphoric acid, magnesium salt (1:1).
P–12–0072	11/29/2011	02/26/2012	Corsitech	(G) Clay and shale formation stabilizer in well stimulation and drilling mud formulations.	(G) Quaternary ammonium compound.
P–12–0073	11/29/2011	02/26/2012	H.B. Fuller Company.	(G) Industrial adhesive	(G) Castor oil, polymer with hydrogenated vegetable oil, 1,1'-methylenebis[isocyanatobenzene] and isocynate.
P–12–0074	11/29/2011	02/26/2012	CBI	(G) Intermediate for lubricating oil.	(G) Halogenated substituted alkane, potassium salt.
P–12–0075	11/29/2011	02/26/2012	CBI	(G) Intermediate for lubricating oil.	(G) Halogenated substituted alkane, potassium salt.
P–12–0076	11/29/2011	02/26/2012	CBI	(G) Intermediate for lubricating oil.	(G) Halide salt of alkyl-substituted nitrogen heterocycle.
P–12–0077	11/29/2011	02/26/2012	CBI	(G) Lubricating oil	(G) Salt of alkyl-substituted nitrogen heterocycle.
P–12–0078	11/29/2011	02/26/2012	CBI	(G) Polymer additive	(S) 1-octanesulfonic acid, 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluoro-, barium salt (2:1).

TABLE I—43 PMNS RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/ Importer	Use	Chemical
P–12–0079	11/29/2011	02/26/2012	CBI	(G) Polymerization aid	(S) 1-octanesulfonic acid, 3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluoro-, potassium salt (1:1).
P–12–0080	11/29/2011	02/26/2012	CBI	(S) Paint or coating component.	(G) Fluoroethylene-vinylether copolymer.
P–12–0081	11/29/2011	02/26/2012	Icx Agentase	(G) The PMN substance is used in liquid and polymer-based sensors that change color in the presence of hazardous chemical contamination (chemical weapons).	(G) Aromatic substituted isobenzofuranone.
P–12–0082	11/30/2011	02/27/2012	Tk Holdings, Inc..	(S) Fuel for gas generant in automotive air bag inflators.	(S) Benzoic acid, 2-hydroxy-3,5-dinitro-, ammonium salt (1:1).

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II–1—TME RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
T–12–0003	11/18/2011	01/01/2012	Innovative science technology.	(S) Plasticizer for polyvinyl chloride resin.	(S) Carboxylic acids. di-, c4–6, polymers with ethylene glycol and 2-(2-phenoxyethoxy) ethanol

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—37 NOCS RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011

Case No.	Received date	Commencement notice end date	Chemical
P–95–1949	11/01/2011	06/27/1997	(G) Aromatic dianhydride and aliphatic esters, compound with aromatic diamines.
P–07–0554	11/10/2011	10/18/2011	(G) Fatty acid ester, alcohol alkoxylate.
P–10–0273	11/02/2011	09/30/2011	(G) Perfluoroalkylethyl methacrylate copolymer.
P–10–0290	11/29/2011	10/17/2011	(G) Methacrylate terminated polyester.
P–10–0464	11/04/2011	11/01/2011	(S) 9-octadecenoic acid, 2-ethylhexyl ester, (9e).
P–10–0465	11/04/2011	11/01/2011	(S) 9-octadecenoic acid (9z)-, dimer, 2-ethylhexyl ester, isomerized.
P–10–0466	11/04/2011	11/01/2011	(S) 9-octadecenoic acid (9z)-, homopolymer, 2-ethylhexyl ester, isomerized.
P–10–0566	11/17/2011	10/26/2011	(S) Benzoic acid, 2-hydroxy-, reaction products with triethylenetetramine.
P–11–0033	11/17/2011	10/26/2011	(S) Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol, reactions products with 1-piperazineethanamine.
P–11–0034	11/17/2011	10/26/2011	(S) Formaldehyde, polymer with .alpha.-(2-aminomethylethyl)-.omega.-(2-aminomethylethoxy]poly[oxy(methyl-1,2-ethandiyl)] and 4-(1,1-dimethylethyl)phenol.
P–11–0042	11/17/2011	10/26/2011	(S) 1,2-ethanediamine, N1,N2-bis(2-aminoethyl)-, reaction products with bu glycidyl ether.
P–11–0050	11/23/2011	11/01/2011	(G) Organic-n,p-compound.
P–11–0059	11/09/2011	11/01/2011	(G) Trialkylsilyl acrylate copolymer.
P–11–0174	11/28/2011	11/03/2011	(G) Polyurethane dispersion in water.
P–11–0201	11/04/2011	11/01/2011	(S) Fatty acids, $C_{8–18}$ and C_{18}-unsaturated., reaction products with isomerized oleic acid homopolymer.
P–11–0202	11/04/2011	11/01/2011	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer.
P–11–0208	11/04/2011	11/01/2011	(S) Fatty acids, $C_{8–18}$ and C_{18}-unsaturated., reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester.
P–11–0209	11/04/2011	11/01/2011	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester.
P–11–0210	11/04/2011	11/01/2011	(S) Fatty acids, $C_{8–18}$ and C_{18}-unsaturated., reaction products with isomerized oleic acid dimer 2-ethylhexyl ester.

TABLE III—37 NOCS RECEIVED FROM NOVEMBER 1, 2011 TO DECEMBER 2, 2011—Continued

Case No.	Received date	Commencement notice end date	Chemical
P–11–0211	11/04/2011	11/01/2011	(S) Fatty acids, coco, reaction products with isomerized oleic acid dimer 2-ethylhexyl ester.
P–11–0212	11/04/2011	11/01/2011	(S) 9-octadecenoic acid (9z)-, homopolymer, isomerized.
P–11–0234	11/21/2011	11/09/2011	(G) Oligmeric phenolic ether.
P–11–0316	11/29/2011	11/28/2011	(S) Cyclohexane, oxidized, by-products from, distillation residues.
P–11–0333	11/03/2011	10/06/2011	(G) Phosphated polyester.
P–11–0340	11/17/2011	10/26/2011	(G) Formaldehyde polymer with reaction products of alkylated phenol and polyalkyltriamine.
P–11–0360	11/03/2011	10/23/2011	(G) Quaternized polyvinylimidazole.
P–11–0383	11/29/2011	11/24/2011	(G) Calcium alkyl salicylate.
P–11–0415	11/21/2011	10/28/2011	(G) Hydrogenated tallow alkyl amine polymer with substituted siloxanes and substituted glycol ether salt.
P–11–0445	11/02/2011	10/17/2011	(G) Polyalkyacrylate copolymer.
P–11–0468	11/08/2011	11/03/2011	(G) Polyether amine derivative.
P–11–0473	11/07/2011	11/02/2011	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) and 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxetane.
P–11–0475	11/15/2011	10/14/2011	(G) Alkylidene bisphenol, polymer with 2-(chloromethyl)oxirane, alkyl-oxo-2-propen-1-yl)oxy]alkyl 4-cycloalkene-1,2-dicarboxylate.
P–11–0477	11/01/2011	10/17/2011	(G) Dicarboxylic acid, compd. with 1,6-hexanediamine alkyldioate, homopolymer.
P–11–0504	11/25/2011	11/11/2011	(G) Ultra violet curable polyurethane acrylate.
P–11–0564	11/16/2011	11/14/2011	(S) D-glucopyranose, oligomeric, c10–16-alkyl decyl octyl glycosides, 3-[(carboxymethyl)bis(2-hydroxyethyl)ammonio]-2-hydroxypropyl ethers, inner salts, polymers with 1,3-dichloro-2-propanol.
P–11–0572	11/21/2011	11/15/2011	(S) 1,4-cyclohexanedimethanol, polymer with 2-hydroxymethylethyl-terminated polybutadiene and 1,1′-methylenebis[4-isocyanatobenzene], C>14 alcs.-blocked.
P–11–0596	11/22/2011	11/21/2011	(G) Hexanedioic acid, compd. with polyalkylenepolyamine.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: January 3, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–1922 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0993; FRL–9334–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from December 6, 2011 to December 16, 2011, and provides the required notice and status report, consists of the PMNs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0993, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *Mudd.Bernice@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from December 6, 2011 to December 16, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—22 PMNS RECEIVED FROM 12/06/11 TO 12/16/11

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
P–12–0083	12/02/2011	02/29/2012	Georgia-Pacific Chemicals LLC.	(G) Ore beneficiation	(G) Amides, fatty acids, acetates.
P–12–0086	12/02/2011	02/29/2012	3M Company	(S) Moisture curing hot melt adhesive.	(G) Polyurethane prepolymer.
P–12–0087	12/06/2011	03/04/2012	Arkema Inc	(S) Used as a viscosity modifier/flow enhancer for crude oil; used in boiler fuels as a burn promoter and for fuel value.	(G) Acrylate manufacture byproduct distillation residues.
P–12–0088	12/06/2011	03/04/2012	CBI	(G) Polymer for use in producing packaging films.	(G) Polylactide.
P–12–0089	12/06/2011	03/04/2012	Brueggemann Chemical U.S., Inc.	(G) Zinc is a natural, essential element, which is needed for the optimal growth and development of all living organisms, including man. All living organisms have homeostasis mechanisms that actively regulate zinc uptake and absorption/excretion from the body; due to this regulations, zinc and zinc compounds do not bioaccumulate or biomagnify. Most common technical function of substance (what it does): food/feedstuff additive.	(S) Process regulators other than polymerisation or vulcanisation processes lubricants and lubricant additives, laboratory chemicals, ph-regulating agents.
P–12–0090	12/07/2011	03/05/2012	3M Company	(G) Textile treatment additive.	(G) Hydrocarbon urethane.
P–12–0091	12/08/2011	03/06/2012	BASF Corporation	(G) Scale inhibitor	(G) Alkylacrylic acid telomer with carboxylic acid, bisulfite, ester with .alpha.-alkyl-.omega.-hydroxypoly (oxyalkanediyl), alkali metal salt.
P–12–0092	12/08/2011	03/06/2012	CBI	(G) Paint	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, styrene and alkyl acid, peroxide-initiated.
P–12–0093	12/09/2011	03/07/2012	CBI	(G) Component of resin in two-part epoxy adhesive.	(G) Modified epoxy resin.
P–12–0094	12/09/2011	03/07/2012	CBI	(G) Destructive use	(G) Polyether polyurethane dispersion.
P–12–0095	12/09/2011	03/07/2012	CBI	(G) Open, non-dispersive use.	(G) Polyacrylate.
P–12–0096	12/09/2011	03/07/2012	3M Company	(G) Protective treatment	(G) Blocked polyarylfluorinated polyacrylate urethane copolymer.
P–12–0097	12/12/2011	03/10/2012	CBI	(G) Intermediate for coatings.	(G) Amidoalkoxysilane.
P–12–0098	12/13/2011	03/11/2012	CBI	(G) Component of resin in a two-part epoxy adhesive.	(G) Modified epoxy resin.
P–12–0099	12/13/2011	03/11/2012	CBI	(G) Component resin in a two-part epoxy adhesive.	(G) Modified epoxy resin.
P–12–0100	12/14/2011	03/12/2012	CBI	(S) Polymer modifier	(G) Fatty acids, diesters with dihydroxy bicyclic diether.

TABLE I—22 PMNS RECEIVED FROM 12/06/11 TO 12/16/11—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ Importer	Use	Chemical
P–12–0101	12/15/2011	03/13/2012	CBI	(G) Lens material for use in electronic applications.	(G) Substituted carbomonocyclic dicarboxylic acid, polymer with 1,2-ethanediol and 2,2′-[9h-fluoren-9-ylidenebis(4,1-phenyleneoxy)] bis[ethanol].
P–12–0102	12/15/2011	03/13/2012	CBI	(G) Lens material for use in electronic applications.	(G) Substituted carbomonocyclic dicarboxylic acid, dialkyl ester polymer with 1,2-ethanediol and 2,2′-[9h-fluoren-9-ylidenebis(4,1-phenyleneoxy)] bis[ethanol].
P–12–0103	12/15/2011	03/13/2012	CBI	(S) Ultraviolet light stabilizer for use in polymers; flame retardant material for use in polymers..	(G) Alkene-substituted fatty acid methyl ester polymer
P–12–0104	12/14/2011	03/12/2012	CBI	(G) The product can be used as a dye for papers, wood.	(G) Mixture of isomers of condensation products of substituted diazotized aminoanilines.
P–12–0105	12/15/2011	03/13/2012	Nanotech Industries, Inc	(S) Flooring; paints; top coating.	(S) Carbamic acid, *N*-[3-[(carboxyamino)methyl]-3,5,5-trimethylcyclohexyl]-, ester with 1,2-propanediol (1:2).
P–12–0106	12/15/2011	03/13/2012	BASF Corporation	(G) Paint	(G) Alkyl acrylate polymer with styrene, triol, benzenedicarboxylic acid anhydride and alkyl methacrylates, trialkylalkanoate, peroxide-initiated.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—26 NOCS RECEIVED FROM 12/05/11 TO 12/16/11

Case No.	Received date	Commencement notice end date	Chemical
P–04–0563	12/13/2011	11/18/2011	(G) Alkylated aryloxyaniline thiourea
P–04–0810	12/13/2011	11/27/2011	(G) Alkylated aromatic isothiocyanate
P–09–0509	12/06/2011	10/17/2011	(G) Aliphatic polyurethane dispersion
P–09–0517	12/06/2011	10/13/2011	(G) Aliphatic polyurethane dispersion
P–10–0425	12/02/2011	11/04/2011	(G) Silicon derivative
P–10–0556	12/13/2011	11/20/2011	(S) Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene]amino]methylethyl]-.omega.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene]amino]methylethoxy]-
P–11–0049	12/06/2011	12/01/2011	(G) Organic-*N,P*-compound
P–11–0090	12/14/2011	12/01/2011	(G) Heteroaromatic compound
P–11–0128	12/06/2011	11/11/2011	(S) *3H*-indolium, 2-[2-[3-[2-(1,3-dihydro-1,3,3-trimethyl-2h-indol-2-ylidene)ethylidene]-2-[(1-phenyl-1*H*-tetrazol-5-yl)thio]-1-cyclohexen-1-yl]ethenyl]-1,3,3-trimethyl-, chloride (1:1)
P–11–0190	12/14/2011	12/01/2011	(G) Dialdehyde, reaction products with hydrolyzed *N*-vinylamide homopolymer hydrohalides
P–11–0230	12/15/2011	11/19/2011	(G) Alkyl amine salt
P–11–0264	12/09/2011	11/22/2011	(G) Brominated aromatic oligomer
P–11–0342	12/08/2011	11/07/2011	(G) Polyacrylate oligomer
P–11–0400	12/09/2011	11/17/2011	(S) Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxotetradecyl)-.omega.-methoxy-
P–11–0476	12/12/2011	11/14/2011	(G) Dicarboxylic acid, compd. with 1,6-hexanediamine alkyldioate, homopolymer

TABLE II—26 NOCS RECEIVED FROM 12/05/11 TO 12/16/11—Continued

Case No.	Received date	Commencement notice end date	Chemical
P–11–0499	12/14/2011	11/14/2011	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, *N*1,*N*2-bis(2-aminoethyl)-1,2-ethanediamine, 2-(chloromethyl) oxirane, .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 2,2′-[(1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane] and .alpha.-(2-oxiranylmethyl)-.omega.-(2-oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)], reaction products with 2-[[4-(1,1-dimethylethyl)phenoxy]methyl]oxira acetates (salts)"
P–11–0537	12/12/2011	12/01/2011	(G) Pyrazole azo thiadiazole derivative
P–11–0539	12/12/2011	12/09/2011	(G) Mixture of: Acrylic polymer with polymerized organic acid, compound with 2-aminoethanol and organic acid, 2-aminoethanol salt
P–11–0544	12/08/2011	12/01/2011	(G) Diazopyridine derivative
P–11–0554	12/08/2011	11/11/2011	(G) Petroleum distillate lights
P–11–0578	12/02/2011	11/10/2011	(S) Benzoic acid, 4-(1,1-dimethylethyl)-, hydrazide
P–11–0579	12/02/2011	11/16/2011	(S) 1*H*–1,2,4-triazole-3-acetic acid, 5-[4-(1,1-dimethylethyl)phenyl]-
P–11–0580	12/02/2011	11/28/2011	(S) Cyclohexanol, 2,6-bis(1,1-dimethylethyl)-4-methyl-
P–11–0584	12/07/2011	12/01/2011	(G) Isocyanate crosslinker
P–11–0591	12/02/2011	11/23/2011	(G) Ipdi modified polyester resin
P–11–0622	12/16/2011	12/14/2011	(S) 4,5,6,7-tetrahydro-isobenzofuran-1,3-dione

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: January 18, 2012.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–1923 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0015; FRL–9334–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from December 19, 2011 to December 30, 2011, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 2, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0015, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although

listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *Mudd.Bernice@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through regulations.gov or 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 EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm*. Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://ww.epa.gov/opt/newchems*.

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from December 19, 2011 to December 30, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—19 PMNS RECEIVED FROM 12/19/11 TO 12/30/11

Case No.	Received date	Projected notice end date	Manufacturer /importer	Use	Chemical
P–12–0111	12/19/2011	03/17/2012	CBI	(G) Specialty additive	(G) Polyamine derivative

TABLE I—19 PMNS RECEIVED FROM 12/19/11 TO 12/30/11—Continued

Case No.	Received date	Projected notice end date	Manufacturer /importer	Use	Chemical
P–12–0112	12/21/2011	03/19/2012	CBI	(G) Sizing for glass fibre	(G) Carboxylic acid, polymer with .alpha.-hydro-.omega.-hydroxypoly(oxy-1,2-ethanediyl) and 2,2′-oxybis [ethanol]
P–12–0113	12/21/2011	3/19/2012	CBI	(G) Reactive dyestuff for the coloration of cellulosic substrates..	(G) Substituted bis)phenylazo) naphthalenesulfonic acid, sodium salts
P–12–0114	12/21/2011	3/19/2012	CBI	(G) Sealants and adhesives.	(G) Acryloxy functional siloxane
P–12–0115	12/22/2011	3/20/2012	Huntsman Corporation	(S) Interfacial tension reducer for enhanced oil recovery. pmn substance one.; interfacial tension reducer for enhanced oil recovery, pmn substance two.	(G) Alkylbenzene sulfonic acid
P–12–0116	12/22/2011	3/20/2012	Huntsman Corporation	(S) Interfacial tension reducer for enhanced oill recovery. pmn substance one.; interfacial tension reducer for enhanced oil recovery, pmn substance two.	(G) Alkylbenzene sulfonate sodium salt
P–12–0117	12/22/2011	3/20/2012	CBI	(G) Corrosion inhibitor component.	(G) Substituted pyridinium salt
P–12–0118	12/22/2011	3/20/2012	CBI	(G) Corrosion inhibitor component.	(G) Substituted pyridinium salt
P–12–0119	12/22/2011	3/20/2012	CBI	(G) Additive for water soluble ink.	(G) Dodeca(lithium, sodium)-2-({4-[4-(4-{bis[alkyl-(sulfonatoalkoxy)-4-({sulfonato-[(sulfonato-[(substituted-phenyl)diazenyl] phenyl}diazenyl)anilino]-triazin-yl}-6-[alkyl-(sulfonatoalkoxy)-4-({sulfonato-4-[(substituted-phenyl)diazenyl]phenyl) diazenyl)anilino]piperazin-yl) -triazin-ylamino]-alkyl-(sulfonatoalkoxy) phenyl}diazenyl)-5-[(sulfonatophenyl)diazenyl] benzenesulfonate
P–12–0120	12/22/2011	03/20/2012	CBI	(G) Additive for water soluble ink.	(G) Pentasodium 2-(bis(substituted-(substituted-sulfonatophenyl)diazenyl-2-(sulfonatoalkoxy)anilino] triazin-ylamino) alkanesulfonate
P–12–0121	12/27/2011	03/25/2012	Solvay Chemicals, Inc	(G) Cleansing component	(G) Organic peroxide derivative
P–12–0122	12/30/2011	03/28/2012	CBI	(S) Catalyst component for olefin polymerization.	(S) Rac-1,2-ethylen-bis (tetrahydroindenyl)zirconium dichloride
P–12–0123	12/28/2011	03/26/2012	CBI	(S) Enchancing the intensity and luster of candles.	(G) 1-alkenes copolymer
P–12–0124	12/28/2011	03/26/2012	CBI	(G) Polymer adjuvant present at a concerntration of 10% w/w in a product called mh-catalyst.	(G) 1,2-aliphatic dicarboxylic acid, 1,2-bis(2-methylpropyl) ester
P–12–0125	12/29/2011	03/27/2012	CBI	(G) Petroleum feedstock	(G) Thermolyzed waste plastic
P–12–0126	12/30/2011	03/28/2012	Wacker Chemical Corporation.	(S) Additive for moulding	(G) Styrene vinyl acetate alkyl (meth)acrylate copolymer
P–12–0127	12/30/2011	03/28/2012	CBI	(S) Anti-oxidant	(G) Benzoic acid, bis(alkyl)-hydroxy-substituted phenyl ester

TABLE I—19 PMNS RECEIVED FROM 12/19/11 TO 12/30/11—Continued

Case No.	Received date	Projected notice end date	Manufacturer /importer	Use	Chemical
P–12–0128	12/30/2011	03/28/2012	CBI	(G) Additive for water soluble ink.	(G) Reaction product of {mixture of [polysubstituted-sulfonylphthalocyaninato-*N*(29), *N*(30), *N*(31), *N*(32)] copper(ii) and [polysubstituted-sulfonyl (tribenzo-[b,g,l] pyrido[2,3-q]-tetraazaporphyrinato-*N*(21), *N*(22), *N*(23), *N*(24))]copper(ii) and [polysubstituted-sulfonyl(dibenzo-[b,g,(or b,l)]dipyrido[2,3 (or 3,2)-l,q(or g,q)]-tetraazaporphyrinato-*N*(21), *N*(22), *N*(23), *N*(24))]copper(ii) and [substituted-sulfonyl(benzo-[b]
P–12–0129	12/30/2011	3/28/2012	CBI	(G) Additive for water soluble ink.	(G) Hexa(sodium, lithium)-4-{[substituted-hydroxy-({4-[alkoxy-sulfonatobenzothiazolyl) diazenyl]-alkyl-2-(sulfonatoalkoxy) phenyl}diazenyl)naphthalene-yl] diazenyl}-substituted-(sulfonatophenyl) pyrazole-3-carboxylate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—2 TMES RECEIVED FROM 12/19/11 TO 12/30/11

Case No.	Received date	Projected notice end date	Manufacturer /importer	Use	Chemical
T–12–0004	12/22/2011	02/04/2012	CBI	(G) Corrosion inhibitor component.	(G) Substituted pyridinium salt
T–12–0005	12/22/2011	02/04/2012	CBI	(G) Corrosion inhibitor component.	(G) Substituted pyridinium salt

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—3 NOCS RECEIVED FROM 12/19/11 TO 12/30/11

Case No.	Received date	Commencement notice end date	Chemical
P–10–0400	12/22/2011	12/16/2011	(G) 2-(dimethylamino)ethyl methyl-2-propenoate, polymer with alkyl-substituted methyl-2-propenoate and akyl-substituted-2-propenoate, salt with mono(alkyl-substituted polyalkoxy)butanedione
P–11–0317	12/22/2011	12/21/2011	(G) Formaldehyde, reaction products with ethylene-maleic anhydride-propene polymer, aryl amine and succinic anhydride monopolyisobutylene derivates
P–11–0443	12/22/2011	11/28/2011	(G) Modified starch acrylate polymer

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice

of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: January 18, 2012.

Chandler Sirmons,

Acting Director, Information Management Office of Pollution Prevention and Toxics.

[FR Doc. 2012–1924 Filed 1–31–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 21 February 1, 2012

Part III

Department of Justice

Drug Enforcement Administration

Randall L. Wolff, M.D.; Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–20]

Randall L. Wolff, M.D.; Decision and Order

On July 25, 2011, Administrative Law Judge (ALJ) Timothy D. Wing issued the attached recommended decision (also cited as ALJ). Respondent filed Exceptions to the ALJ's decision.

Having considered the record in its entirety, as well as Respondent's Exceptions, I have decided to adopt the ALJ's recommended ruling, findings of fact and conclusions of law with respect to each of the five public interest factors excepted as discussed below. While I reject some of the ALJ's findings of fact and legal conclusions, I conclude that the record as a whole supports the ALJ's ultimate conclusion that Respondent's continued registration would be inconsistent with the public interest and thus will adopt his recommendation that Respondent's registrations be revoked and that any pending applications be denied.

The ALJ made extensive findings of fact and legal conclusions with respect to Respondent's prescribing of controlled substances to eleven undercover officers (UCs); Respondent saw three of the UCs at a clinic known as Commercial Medical Group (CMG) and the remaining eight at a clinic known as Coast to Coast Healthcare Management (CCHM). *See* ALJ at 10–38; 44–93. With respect to the undercover officers Respondent saw at Commercial Medical Group, the ALJ found that the Government had not proved by substantial evidence that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing oxycodone to Agents Miller and McClairie; with respect to Agent Bazile, the ALJ found that the Government had not proved that Respondent's prescription for oxycodone lacked a legitimate medical purpose but that a prescription he issued for Xanax did. *Id.* at 92.

With respect to the undercover officers Respondent saw at CCHM, the ALJ found that the Government had proved by substantial evidence that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing oxycodone to Agents Marshall, O'Neil, Doklean, Brigantty, Priymak, Zdrojewski, and Ryckeley. *See id.* at 44–92 (citing 21 CFR 1306.04(a)). Moreover, the ALJ also found that Respondent had violated various provisions of the State of Florida's Standards for the Use of Controlled Substances for the Treatment of Pain, Fla. Admin Code 64B8–9.013, in prescribing controlled substances to each of the aforementioned UCs. *See* ALJ at 44–92. However, with respect to Agent Saenz, the ALJ found that while the Government had proved that Respondent kept inaccurate records in violation of Florida's regulations, it had not proved that Respondent lacked a legitimate medical purpose in prescribing controlled substances to her.

Respondent filed Exceptions, most of which are variations on the same theme—that the ALJ erred in finding that he lacked a legitimate medical purpose and acted outside of the usual course of professional practice. He argues that each of the UCs presented as being ''[r]eal patients,'' who ''[c]omplain[ed] of chronic real pain,'' which was ''[b]ased on articulable causation.'' Exceptions at 6. According to Respondent, the ALJ ''fail[ed] to appropriately recognize or acknowledge that each of the [UCs] presented themselves with valid Florida driver's licenses, as well as authentic and verified MRI reports that articulated an objective finding that supported the claim of pain.'' *Id.* at 6–7 (citing various portions of transcript). Respondent also maintains that he ''believed that each [UC] was being truthful in their claim of real pain,'' ''that the Government failed to offer any evidence to rebut [his] testimony * * * concerning [his] basis for writing each of the prescriptions,'' that he ''exercised his good faith medical judgment that the prescriptions * * * were appropriate'' and that ''although presented as 'credibility' findings[,] the [ALJ's decision] merely disagrees with his professional judgments [and] crosses outside of the boundary that limits DEA from substituting its judgment for that of a physician.'' *Id.* at 7–9.[1] Having considered the exceptions, I reject them for the reasons explained below in my discussion of the evidence pertaining to the various undercover patients.

The CCHM UC Patients

SA Marshall was seen by Respondent on two occasions: On April 7 and May 4, 2010. However, Respondent refused to prescribe to him on the first occasion, when Marshall stated that he was homeless and lived on the street, said his pain was ''sometimes it's like a three or four * * * How does it need [to] be?'' and added that a person in the lobby had filled out his intake forms. ALJ at 48 (citing GX 6, at 19–20; Tr. Vol. 4, at 62). Respondent asked ''is this a test?'' and stated that he thought it ''must be''; he then asked Marshall what being homeless had to do with needing pain medicine. GX 6, at 19–20. Respondent then escorted Marshall to the reception area, maintaining that ''we don't participate in such * * * folly'' and told a staff member to discharge Marshall. *Id.* at 23. However, the staff member told Marshall that she would alter his chart and reschedule him to see another doctor the next day. *Id.* at 25–26. The staff member further told Marshall to ''never, never say that you sell this, that, that on the street, ever. Because they think that you're an undercover, okay. And that you're trying to bust his nuts.'' GX 6, at 26. Marshall returned the next day and obtained controlled substances from another doctor. *Id.*

On May 4, 2010, Marshall made another visit to CCHM and saw Respondent. The interaction lasted less than three minutes. GX 6 (audio and DVD recordings). After asking Marshall about his age and birthdate, Respondent questioned him as to how everything was working out for him, whether he was working, whether the medicine was helping, whether he was having any complications, whether he was smoking, and if he was doing any exercises and staying limber; Marshall answered ''no'' to each question. GX 6, at 39–40. Respondent then listened to his breathing and asked him to place his hands out with his palms up, after which Respondent asked Marshall if he had any back pain. *Id.* at 40. When Marshall answered ''no,'' Respondent asked ''Mostly in the Neck?'' to which Marshall said ''yes.'' *Id.* Respondent then asked: ''But overall you are doing

[1] Respondent also contends that the Government's Expert ''lacked qualifications or expertise and displayed a profound lack of knowledge concerning applicable Florida medical regulations, state and federal law, as well as the applicable standard of care.'' *Id.* at 3. It is acknowledged that both the Expert report and testimony contained several factual inaccuracies and misstated the law and state standards on several issues.

The record shows that the Government's Expert is a Diplomate of both the American Board of Anesthesiology and the American Academy of Pain Management and has twenty years of experience in practicing pain management. Tr. Vol. 7, at 12. The ALJ thus properly held that he was qualified to testify as an expert. *Id.* at 41. I further conclude that the ALJ properly evaluated the Expert's testimony and report declining to give weight to both the testimony and the report when it was factually inaccurate; however, with respect to Agent Saenz, I conclude that notwithstanding the Expert's factual errors, other credible testimony supports the conclusion that Respondent violated 21 CFR 1306.04(a) when he prescribed Roxicodone and Xanax to her. In the individual patient findings I discuss in more detail those areas in which the ALJ erred in relying on the Expert's testimony regarding the requirements of federal and state rules.

okay?''; Marshall answered: ''Yeah.'' *Id.* at 41. Respondent replied: ''That's great,'' and after apparently asking Marshall to confirm his date of birth (notwithstanding that he had already asked it), stated: ''Alright, we got you all set.'' *Id.* Respondent then issued Marshall a prescription for 120 dosage units of Roxicodone (oxycodone) 30mg, a schedule II controlled substance (for a daily dose of 120 mg), and 30 Xanax (alprazolam) 2mg, a schedule IV controlled substance.

It is true that the ALJ credited Respondent's testimony that he did not recognize Marshall notwithstanding the incident one month earlier. However, this provides no comfort to Respondent as there is ample evidence establishing that the prescriptions he issued lacked a legitimate medical purpose. For example, on the progress note for the May 4 visit, Respondent noted Marshall's pain level as a ''5'' with medication and apparently a ''9'' without it. GX 21, at 2. Yet there is no evidence that Respondent, during the brief encounter he had with Marshall, asked him to rate his pain either with or without medication.

Likewise, on the medical history form, Marshall checked ''Yes'' for whether he had emphysema/asthma, bipolar disorder, and recent depression. *Id.* 21, at 10. Yet Respondent did not ask Marshall any questions about these conditions and the chart contained no evidence of a psychiatric consultation. Tr. Vol. 4, at 37; Vol. 7, at 67. As the Government's Expert explained: ''It's very dangerous to treat people with depression or bipolar disorder with a combination of [an] opioid and [a] benzodiazepine, because they potentiate each other, and you could end up having a patient very, very depressed or even suicidal or even die accidentally from that combination.'' *Id.* at 180.

The Government's Expert further noted that Marshall's file contained an MRI from two days before his first visit at the CCHM, yet there was no indication as to which physician had ordered it. *Id.* at 64; *see also* GX 21, at 27. Moreover, CCHM's Pain Assessment Form asked: ''What *Current* medications have you been PRESCRIBED to help your pain?'' GX 21, at 12. Marshall wrote that he was taking Roxicodone (oxycodone) 30mg, eight times a day; oxycodone 15mg, three times a day; and Xanax 2mg, two times a day. *Id.* However, nothing in the file indicates who had previously prescribed these drugs to Marshall nor documents how long he had been taking these drugs.

In addition, the Government's Expert noted that although the records for Marshall's first visit indicated that his cervical spine was ''mildly painful to touch,'' he was assessed as having ''chronic severe back pain.'' *Id.* at 6–7; *see also* Tr. Vo. 7, at 64. Moreover, with respect to Marshall's April 8 visit, the Expert observed that the progress note indicated ''yes'' for whether his pain was ''under control,'' yet also included the notation that ''pain was not well controlled [on] present regimen.'' Tr. Vol. 7, at 69–70; GX 21, at 4. The Expert further explained that ''there were no objective findings * * * to really substantiate the level of pain'' and that there was ''also no mention about the activities that the patient is being precluded from doing.'' Tr. Vo. 7, at 70.

According to the Government's Expert, ''there is no legitimate reason[] why a physician would choose to treat a patient with such large doses of narcotics without going through other channels first, which would include the review of his prior medical records from wherever he was treated to other diagnostic tests that may have been performed to finding out what other drugs had been tried in the past and mentioning in the history of present illness how they were effective or not effective in treating this pain'' and ''getting more in the way of diagnostics such as x-rays, nerve conduction studies'' and an orthopedic consult. *Id.* at 116. The Expert further explained that ''[t]here [wa]s nothing * * * that warrants going to the 'big guns' of narcotics so aggressively and bypassing the conservative treatment that is recommended in the majority of the places [that] practice safe medicine.'' [2] *Id.*

Based on the above, I agree with the ALJ's conclusion that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing oxycodone and Xanax to Agent Marshall. ALJ at 51–52. However, because there is no evidence that Respondent (as opposed to the doctors Marshall saw on his previous visits) completed the form (GX 21, at 8) in which various discussion items were checked off but which is neither dated nor signed, I reject the ALJ's finding that Respondent violated Fla. Admin Code r. 64B8–9.013(3) by failing to maintain accurate records.

Agent Saenz also visited CCHM on multiple occasions including twice on March 10, as well as on April 8 and May 4, 2010. GX 24. However, Agent Saenz did not see Respondent until May 4, 2010. *Id.* Agent Saenz testified that she first saw Dr. L.C. on March 10, but he declined to prescribe to her because ''he didn't want [her] to be a drug addict'' and ''didn't think [she] needed it.'' Tr. Vol. 2, at 300. However, her patient file contains no documentation of Dr. L.C.'s findings. *See* GX 24.

At her March 10 visit, Agent Saenz presented an MRI which showed that two posterior discs were bulging and that there was bilateral neural foraminal narrowing. *Id.* at 28–29. She also completed a medical history form in which she checked the ''yes'' box for whether she had recent depression, *id.* at 11; on a pain assessment form she submitted, Saenz wrote, with the coaching of a CCHM employee (Tr. Vol. 2, at 271), that her pain was a ''9'' on a scale of 0 to 10, and that she was currently being prescribed 240 tablets of Roxicodone 30mg (8 tablets per day), 40 tablets of oxycodone 15mg (3 tablets per day), and 60 tablets of Zanax[sic] 2mg (2 tablets a day). *Id.* at 13. However, the note for Saenz's second visit on March 10, which was with Dr. R.C., indicates that her pain did not ''irradiate'' [sic], that it did not interfere with her daily activities, that she did not need medication to function or work, and that her pain was in control. *Id.* at 6. In addition, the form noted the intensity of her ''pain without meds'' as a ''3,'' but that the intensity of her pain ''arter[sic] taken meds'' was ''5–6.'' *Id.* Finally, the note documents that Agent Saenz had not been taking opioids and ''[n]o drugs'' under toxic habits. At this visit, Dr. R.C. issued her prescriptions for 90 tablets of Vicodin 5/500mg, a schedule III control substance which combines hydrocodone and acetaminophen, and a 21-tablet Medrol dose pack (a non-controlled steroid) based on a diagnosis of LBP (lower back pain).

As the Government's Expert testified, the information in her file was ''very inconsistent'' and this is ''a tip-off to a pain specialist that the patient isn't being forthright and may not be a suitable candidate for controlled substance prescriptions.'' Tr. Vol. 7, at 133–34. The Expert further explained that ''[w]hen somebody is changing their story, whatever it is, medication,

[2] It is noted that Respondent issued the same prescriptions as had Dr. C.N. on April 8, 2010, and that Dr. L.C. (another CCHM doctor) had prescribed 120 Oxycodone 15mg and 30 Xanax 2mg. The fact that these two physicians also prescribed both oxycodone and Xanax does not aid Respondent. As the Government's Expert testified, ''it was incumbent upon [Respondent] to do his own assessment * * * and not just perpetuate narcotic prescriptions where there may have been other treatments that may have been warranted or may have actually diminished the patient's need for narcotics.'' Tr. Vol. 9, at 93. The Government's Expert further explained it ''would not be within the standard of care in Florida'' for a physician to ''perpetuate[] the issuance of controlled substances ordered by another doctor without first establishing his own valid doctor-patient relationship.'' *Id.* at 135.

how much they're in pain, whether or not it affects them a certain way, it really * * * shows that they are not a reliable person, and they're not being truthful with their physician.'' *Id.* at 134. According to the Expert, this ''would make them a poor candidate to receive * * * controlled medication prescriptions.'' *Id.*

On April 8, Agent Saenz returned to CCHM and saw Dr. N., who noted that she was ''still having moderate amount of lumbar pain'' but with ''no radiation.'' GX 24, at 4; Tr. Vol. 2, at 283. Dr. N. also noted that Saenz had said that the Vicodin ''didn't do 'much for her.' '' GX 24, at 4. Dr. N. prescribed 90 oxycodone 30mg (one tablet every six hours as needed for a pain) and added 30 Xanax 2mg. *Id.* However, the note for the visit contains no indication as to Dr. N.'s justification for prescribing the Xanax. *See id.*

On May 4, Agent Saenz returned to CCHM and saw Respondent. Agent Saenz testified that her entire encounter with Respondent lasted ''no more than ten minutes,'' during which Respondent asked her twice how she was doing (with Saenz responding that she was doing ''fine''), what was bothering her, whether her current medications were helping, and whether she had a job.[3] Tr. Vol. 2, at 242, 244. Saenz replied that she worked at a day care center and that the prescriptions were helping; she then asked if she could take one more oxycodone 30mg pill a day which Respondent agreed to. *Id.* at 242–43. Respondent's physical examination was limited to listening to Saenz's heart with his stethoscope; he did not palpate her spine or require her to perform any movements. *Id.* at 245. Also, Respondent did not discuss Saenz's need for Xanax. *Id.* at 245–46. Respondent then issued Saenz prescriptions for 30 Xanax 2mg, indicating on the prescription that it was ''for sleep,'' and 120 Roxicodone 30mg ''for pain.'' GX 24, at 24.

In the record for this visit, Respondent wrote that Saenz's pain level was a ''7'' out of 10 ''with medication'' and a ''9'' out of 10 ''without medication.'' GX 24, at 2. He also noted that the ''Meds helping but not yet relieved @ present dose'' and that Saenz was ''sleeping better [on] Xanax.'' *Id.* The ALJ did not specifically address whether Respondent's notations as to Saenz's pain level with and without medication and whether she was sleeping better were accurate representations of what occurred during the encounter.[4] Based on the testimony of Agent Saenz, which the ALJ found to be ''fully credible,'' ALJ at 9, I find that Respondent falsified the May 4 visit note with respect to the pain levels he documented and whether the Xanax was helping her sleep better.

While Respondent testified that Saenz had been seen previously by two other doctors who had prescribed medication without obtaining relief and had an MRI which showed abnormalities in her lower back, unlike the ALJ, I find that substantial evidence supports the conclusion that he acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing Roxicodone and Xanax to her. As the Government's Expert testified with respect to Agent Marshall, it ''would not be within the standard of care in Florida'' for a physician to ''perpetuate[] the issuance of controlled substances ordered by another doctor without first establishing his own valid doctor-patient relationship.'' Tr. Vol. 9, at 135. Thus, I find unavailing Respondent's attempt to justify his prescribing on the ground that he simply replicated what Dr. N. had prescribed to Agent Saenz. *See* Tr. Vol. 10, at 180. While it is true that Government's Expert misstated the evidence in attributing the April 8 prescriptions issued by Dr. N. to Respondent and by misreading a urine drug test as confirming the presence of various drugs when, in fact, they were not tested for, *see* ALJ at 21, this does not undermine the validity of the Expert's testimony regarding the obligation of a physician to establish ''his own valid doctor-patient relationship'' before prescribing large doses of narcotics. Tr. Vol. 9, at 135. In addition, the Expert explained that it was ''below the standard of care to treat a patient with her pathologic findings on her MRI and her symptoms primarily only with narcotics and escalating narcotics and [to] not treat [her] with more conservative therapy [such as] physical therapy, anesthesia for nerve block treatments, * * * some other non-habituating medications, [and] behavior modification.'' Tr. Vol. 7, at 143.

Also unavailing is Respondent's testimony that he relied on the truthfulness of the information contained in Saenz's patient file, and that if he had been aware of her misrepresentations, he would not have prescribed to her. Tr. Vol. 10, at 180. Given that Saenz's patient file contained numerous material inconsistencies, Respondent's testimony begs the question of which information he believed was truthful. For example, on the Pain Assessment Form, Saenz wrote that her pain was a ''9'' on a ''0'' to ''10'' scale and that she was currently being prescribed 240 Roxicodone 30mg (a daily dose of eight tablets or 240mg), along with 40 tablets of oxycodone 15mg (for a daily dose of 3 tablets), and 60 Xanax 2mg, with a daily dose of two tablets a day. GX 24, at 13. Yet there was no indication in the file of which physician was prescribing these drugs to her and the note for her first visit indicated that she had not seen another doctor, that she had not been taking opioids, and listed her pain levels as a ''3'' without meds and ''5–6'' with meds. *Id.* at 6. As found above, Respondent did not question Agent Saenz about any of these inconsistencies and falsified the record he created for the May 4 visit. Thus, I do not find credible Respondent's testimony that he believed Saenz to be a legitimate patient.[5]

Agent O'Neil also visited CCHM on three occasions (March 10, April 7, and May 4, 2010), meeting with Respondent only at the last visit. GX 23. At the first visit, O'Neil wrote on the Pain Assessment Form that his ''tummy'' was the location of his pain and circled all of the numbers from 0 to 10 for his pain rating; he also wrote that OxyContin 30mg was being currently prescribed to him. GX 23, at 13. Yet the patient record for O'Neil's first visit documents that he complained of having low back pain for twelve years and that Respondent found that he had mild tenderness in his lumbosacral spine and that his right elbow was tender to palpation. *Id.* at 6–7. In addition, the record states that O'Neil was not seeing another doctor, that he drank six beers a day, that he had been taking opioids for twelve years and that it had been two weeks since his

[3] Agent Saenz testified that while she was equipped with an audio recording device, the device failed to record the encounter. Tr. Vol. 2, at 231.

[4] The ALJ did, however, find that Respondent had documented having discussed various matters such an anti-inflammatory diet, yoga/stretching exercise, the use of fish oil/omega-3, and glucosamine/chondroitin even though Agent Saenz testified that no such discussion occurred. The ALJ found that Respondent violated the State's regulation by failing to maintain accurate records. ALJ at 54 (citing Fla. Admin. Code Ann. R. 64B8–9.013(3)(f)). However, because the evidence shows that Saenz saw other doctors at CCHM and the form on which the ALJ's finding was based on is neither signed, nor dated, and no other evidence establishes that he (as opposed to the other doctors) completed the form, once again, I reject his conclusion as not supported by substantial evidence.

[5] The ALJ also noted Respondent's testimony that the two strengths of oxycodone which Saenz listed on her Pain Assessment Form ''might reasonably be prescribed together'' for ''breakthrough pain.'' ALJ at 54–55. That may be true, yet as found above, Saenz's patient file contains no indication of who might have prescribed this to her and the note for her first visit indicates that she had not previously seen a doctor or taken opioids.

last dose. *Id.* at 6. A urine test given on that date reported the presence of benzodiazepines. *Id.* at 27. The attending physician diagnosed O'Neil as having ''severe'' low back pain, as well ''opiate tolerance'' and ''dependence.'' [6]

At the May 4 visit, Agent O'Neil arrived with three Agents and asked if they could be seen together. Tr. Vol. 3, at 305. During the triage procedure, a clinic employee asked him if he took the pills. GX 14, at 24. O'Neil answered ''Nah,'' to which the employee laughed and replied: ''I know you don't take them.'' *Id.* at 25. O'Neil asked: ''How can you tell?'' and the employee answered: ''What you mean how can I tell? I'm stupid?'' [7] *Id.*

Later, O'Neil was seen by Respondent and was asked how it was going, his age and birthdate, and ''what have we got you on here today?'' *Id.* at 26. O'Neil replied that he took the thirties; that he usually took about 180 fifteens, but the prescription was written ''too low last time''; as well as Xanax 2mg ''and sometimes Soma.'' *Id.* Respondent stated: ''Okay, last time he wrote you one-twenty thirties,'' to which O'Neil interrupted him, stating: ''Yeah, it was too low.'' *Id.* at 26–27. Respondent continued to note the other drugs (oxycodone 15mg and Xanax 2mg) that had been prescribed at O'Neil's previous visit and asked if he was ''[t]aking a blood pressure medicine?'' *Id.* at 27. O'Neil answered ''No,'' and when asked ''why,'' said he ''just never filled it.'' *Id.* Respondent noted that O'Neil's blood pressure was ''up again.'' *Id.*

Respondent then asked O'Neil if he had ''been on medicine for a while?''; O'Neil stated: ''Yeah.'' *Id.* Respondent then asked what O'Neil had been ''on when you got here?'' *Id.* O'Neil stated 210 thirties and 180 fifteens. *Id.* O'Neil replied that Dr. C. (who had written O'Neil's previous prescriptions at his April visit) had said the day before: ''start, and you can go up each time,'' and that while Dr. C. only worked Wednesdays, ''he said you'd gonna increase it.'' *Id.* Respondent then asked how O'Neil was ''doing on the present dose''; O'Neil said ''[f]ine.'' *Id.* Respondent followed by asking ''so you're doing okay?'' *Id.* at 28. O'Neil then stated: ''No, no. I need more. But I don't need any less. The present dose is not * * * it would be better if it was more. It's not, you know, not making me feel worse.'' *Id.* Respondent stated that he understood and added: ''You ran out, or it wasn't enough?'' *Id.* O'Neil answered: ''Yeah, I ran out.'' *Id.*

After O'Neil and Respondent discussed the former's employment status, Respondent asked: ''Where is most of your pain?''; O'Neil replied: ''Lower back.'' *Id.* at 29. Respondent asked ''what happened?''; O'Neil said ''[i]t was from football,'' that he had had back pain since ''98'' and that Dr. C. ''had it in my chart.'' *Id.* After the two discussed whether O'Neil could see Respondent or Dr. C., Respondent conducted a physical exam. *Id.*

During the exam, which lasted thirty-two seconds,[8] Respondent told O'Neil to take a deep breath and then breathe normally, to hold his arms up with his palms up and then put them down, and then had him raise each leg straight up. *Id.; see also* GX 14 (DVD, Excerpt 2). Upon completing the exam, Respondent stated that he could bump up O'Neil's medicine ''a little'' but rejected his request to give him 210 tablets, stating that he might do it ''eventually'' but could not do it ''now.'' GX 14, at 29–30 and DVD Excerpt 2. Of further note, at no point during the exam did O'Neil complain of pain.

O'Neil then told Respondent that he was also taking ''the liquid drops,'' a reference to a liquid form of OxyContin, which he had obtained from a friend. GX 14, at 30, Tr. Vol. 3, at 312. Respondent replied, ''Don't even tell me that,'' [9] and told him that it was ''high abuse,'' that it could be deadly, and ''don't take it.'' *Id.* Respondent further told O'Neil to take the oxycodone ''just as it says on the bottle'' and not to ''take anyone else's medicine,'' or to sell it or share it, noting that ''[t]his is serious medicine'' and was ''not for experimentation.'' *Id.* at 31. After a further discussion of the risks of taking someone else's medicine, Respondent added that when ''[m]ost pain clinics * * * find out that * * * patients [are] taking other people's stuff,'' they ''instantly'' discharge them. *Id.* at 32. Following a short discussion of the weather, O'Neil asked Respondent if he should just make his next appointment with Respondent, who replied ''I'm here for you.'' *Id.* at 33. O'Neill thanked Respondent, who replied: ''Yeah. We got a bond now'' and added that ''the goal is not to get up to the highest number possible'' but ''to get pain relief.'' *Id.*

During the above conversation, Respondent printed out and signed prescriptions for 150 Roxicodone 30mg, 90 Roxicodone 15mg, and 30 Xanax 2mg, which he gave to O'Neil, notwithstanding the latter's statement about using liquid oxycodone which he had obtained from a friend. *See* GX 14, at 54. Moreover, as the ALJ found, Respondent noted on the record for this visit that there was ''[n]o indication of substance abuse or diversion.'' GX 23, at 2. In addition, Respondent noted on the chart that O'Neil's ''pain level with medication [was] 7/10'' and ''without medication 9/10.'' *Id.* at 4. Here again, this was a blatant falsification of O'Neil's record as there is no evidence that Respondent asked O'Neil either to rate his pain numerically or had any discussion regarding the intensity of his pain and whether it was affecting his ability to function.

Based on O'Neil's statement that he had been using liquid OxyContin which he obtained from a friend, and Respondent's response to it, the ALJ concluded that ''Respondent's failure to reject SA O'Neil as a patient and his decision to issue him controlled substance[] prescriptions is inconsistent with state and federal law.'' ALJ at 59 (citing and quoting Fla. Admin Code Ann. r. 64B8–9.013(1)(d) (''Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.'') and 21 CFR 1306.04(a)). As further support for his conclusion, the ALJ also cited Respondent's statement that ''most pain clinics'' would discharge a patient when they found out they were ''taking other people's stuff'' and reasoned that this ''demonstrate[d] [his] awareness of the impropriety in the medical community about prescribing to a patient known to be diverting or abusing controlled substances.'' *Id.*

[6] The chart also records that O'Neil had ''HTN,'' GX 23, at 8; an abbreviation for hypertension.

[7] As the ALJ explained, ''[t]his conversation constitutes evidence that Respondent's staff in this instance possessed actual knowledge of diversion by patients. The staff's open indifference, if not encouragement, of patients seeking controlled substances for no legitimate medical purpose is inconsistent with Respondent's claim that he was unaware of the problems plaguing CCHM.'' ALJ at 56. As the ALJ explained, ''[e]pisodes such as this, while perhaps not on their own dispositive as to Respondent's specific knowledge of staff misconduct, * * * in the aggregate'' support a finding that he was ''willfully blind to the flagrant indications of diversion and abuse at'' CCHM. *Id.* at 57.

I agree with the ALJ that while this incident by itself would not establish knowledge on the part of Respondent that the CCHM employees were facilitating diversion, the record here contains evidence establishing multiple incidents where employees knew that the undercover patients were seeking drugs either to abuse or sell. To make clear, where, such incidents are as pervasive as they were at CCHM, a registrant cannot reasonably claim ignorance of them.

[8] This was from the moment Respondent got out of his chair (prior to asking O'Neil to breathe deeply) until he returned to it. The DVD also shows that Respondent had turned around and was returning to his chair when he told O'Neil to raise his other leg up. *See* GX 14 (DVD Excerpt 2).

[9] At the hearing, Respondent testified that he had made this statement, because he ''was very disturbed that he would do such a thing'' and what he meant was that ''it hurt me to hear that because I don't like to hear patients using that because I think it's a dangerous product.'' Tr. Vol. 10, at 155. The ALJ did not find Respondent's explanation credible. ALJ at 59. I agree with the ALJ's finding.

While I agree with the ALJ's ultimate conclusion that Respondent violated 21 CFR 1306.04(a) in prescribing to Agent O'Neil, I conclude that it is unnecessary to wade into the controversy within the medical community as to the propriety of prescribing controlled substances to a person who reports having obtained them illicitly. Instead, I conclude that the entire body of the evidence with respect to Agent O'Neil's prescriptions establishes that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing to him. 21 CFR 1306.04(a).

As previously held, Respondent is not excused from the obligation of establishing a valid doctor-patient relationship because O'Neil had previously received prescriptions from another doctor at the same clinic. As the Government's Expert testified, it ''would not be within the standard of care in Florida'' for a physician to ''perpetuate[] the issuance of controlled substances ordered by another doctor without first establishing his own valid doctor-patient relationship.'' Tr. Vol. 9, at 135. Notably, while O'Neil's record documented that he had been taking opioids for twelve years and had done so as recently as two weeks before his first visit to CCHM, there was no further documentation of how O'Neil had obtained the drugs, nor any history documenting any prior treatments for his injury and treating physicians. Moreover, more than two months had passed since O'Neil's initial visit to CCHM and yet none of O'Neil's medical records had been obtained.

Finally, as the Expert noted, during O'Neil's visit with Respondent, he did not complain of any pain or symptoms, Tr. Vol. 7, at 120; and Respondent neither asked O'Neil to rate his pain numerically nor questioned him regarding the nature and intensity of his pain. Nonetheless, Respondent falsified O'Neil's medical record by noting that his pain level was a ''7/10'' with medication and a ''9/10'' without medication. Similarly, as found above, Respondent's physical exam took all of thirty-two seconds during which O'Neil did not complain of any pain. Indeed, Respondent had already turned around and was in the process of returning to his chair when he told O'Neil to raise his other leg.[10] Given the totality of the evidence, it is clear that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing oxycodone and Xanax to Agent O'Neil.[11] 21 CFR 1306.04(a).

Agent Priymak was also among the Agents who also visited CCHM on April 7, 2010 and May 4, 2010. Upon his arrival, Priymak presented his undercover driver's license and an MRI, paid for the visit and was given several forms to fill out. Tr. Vol. 2, at 319. On the Pain Assessment Form, Priymak did not circle any word to describe his pain and drew two circles around the numbers 2 and 3, and 3 and 4, on the pain scales. GX 22, at 10. Priymak also wrote that his pain was ''between'' being ''occasional'' and ''continuous'' and listed his current prescriptions as OxyContin 40mg, four times a day; Xanax, 2 times a day; and Soma, once per day. *Id.* He also circled ''Yes'' for whether he was having side effects from the medications and explained that ''It Feels Good!'' *Id.* On his Medical History Form, Priymak drew a squiggly line, which for the most part ran through the various ''no'' boxes for the listed conditions. *Id.* at 8. However, Priymak clearly checked the ''yes'' box for whether he drank alcohol and again listed his current medications as OxyContin, Soma, Xanax, and another drug which is indecipherable. *Id.* at 9. However, below this listing, Priymak did not check either the ''yes'' or ''no'' box for the questions: ''Are all meds prescribed by a physician?'' *Id.*

Agent Priymak's file also contains a Drug Screen Result Form with the date of his first visit. GX 22, at 25. While this form indicates that opiates, oxycodone, and benzodiazepines were present in his urine specimen, *see id.,* Priymak testified that he was not taking these drugs and did not ''recall taking a drug test.'' Tr. Vol. 3, at 33–34, 37–38. Priymak did, however, recall that while being seen in the ''triage room, the staff member checked something in his file and ''indicate[d] that 'Yes, you have drugs in your system.''' Tr. Vol. 3, at 37–38. I agree with the ALJ's finding that Respondent's staff falsified Agent Priymak's Drug Screen to document that he was taking drugs when he was not. ALJ at 75.

Priymak was called by Respondent who asked him if it was his first visit; Priymak said it was. GX 5, at 34. Respondent then stated ''Let's see. We gonna help with your pain in your neck.'' *Id.* Priymak replied ''[y]eap'' and then complained that his shoulder was ''kind [of] tight'' and that the pain had been going on ''like * * * since 2001.'' *Id.*

After discussing Priymak's age and employment status (he was between jobs), Respondent asked him how he hurt his neck. *Id.* at 35. Priymak explained that he had ''tweak[ed]'' his neck ''playing basketball,'' and that ''since then [he had] tightness in [his] neck.'' *Id.* Priymak further stated that his pain was in the middle of his neck and when asked how bad it was, replied: ''[w]ell[,] [i]t depends.'' *Id.* Upon further questioning by Respondent, Priymak stated that his pain was a ''two or three'' if he did not take medication and that he currently was not taking any drugs. *Id.*

Respondent then commented that Priymak's pain level didn't ''sound too bad.'' *Id.* at 36. Priymak replied that ''for the last ten years or so,'' he had been ''taking medication on and off'' because his shoulder got tight. *Id.* Respondent then asked Priymak what medicines he had ''been taking.'' *Id.* Priymak replied that he had been taking oxycodone 40mg, prompting Respondent to state: ''for mild pain.'' *Id.*

Respondent and Priymak then discussed the location of the latter's condition. *Id.* Priymak stated that ''it gives me like tightness between my shoulder blades and then goes to my shoulder'' and complained that when he played basketball his shoulder got ''really tight.'' *Id.* Respondent then asked if Priymak's condition ''mostly * * * affect[ed]'' him when he was ''playing basketball?'' *Id.* Priymak stated that he also did construction, suggesting that his shoulder bothered him when he ''lift[ed] it'' and added that he was also ''taking some Somas,'' a non-controlled drug, but this drug was ''not helping.'' *Id.* at 37.

Respondent then stated ''maybe we're not communicating,'' emphasizing that Priymak had stated that his pain was ''mild about two or three and mostly you * * * when you play basketball. Is that right?'' *Id.* Priymak answered ''yes,'' and Respondent stated: ''otherwise you're okay, I mean * * * otherwise you do pretty good?'' *Id.* Priymak then stated: ''No. I just * * * I need that * * * to get through the day.'' *Id.* Respondent asked ''why?'' and Priymak answered, ''because of the pain,'' which prompted Respondent to ask: ''I mean how bad is the pain?'' *Id.* Priymak

[10] As the Government's Expert also testified, it is ''definitely below the standard of care to leave out a history and physical in a first-time patient that you're prescribing large doses of narcotics [to]. To not have a history and physical on the chart is absolutely below the standard of care.'' Tr. Vol. 7, at 117.

[11] Here again, the ALJ found that Respondent violated Florida's regulation requiring the maintenance of accurate records by checking off the boxes of a form which contain various discussion items. *See* ALJ at 60 & n. 62 (discussing GX 23, at 9). Once again, the form is neither signed, nor dated, and given that O'Neil had previously seen other doctors at the clinic, there is an insufficient basis to conclude that Respondent completed the form. However, it is clear that Respondent violated the regulation by falsely documenting O'Neil's pain levels on the record for the latter's May 4 visit.

answered: ''[I]t depends. It comes, it comes and goes. Goes up and down.'' *Id.* Respondent then asked: ''from what to what? Two or three, maybe?'' *Id.* Priymak answered that it ''must be higher than that.'' *Id.* Respondent replied: ''I don't know. You tell me, I'm listening.'' *Id.* Priymak stated: ''Ah * * * five.'' *Id.*

Respondent then asked Priymak if he was ''sleeping [o]kay?'' *Id.* Priymak said ''[n]o'' and explained that he was waking up three or four times a night and that he had been taking between one half to two bars of Xanax. *Id.* However, at no point in the visit did Respondent ask how Priymak was getting the Xanax.

Respondent then questioned Priymak regarding various medical issues including whether he had ''used intravenous drugs.'' *Id.* at 38. Priymak stated he had ''a long time ago,'' and upon being asked how long ago, stated ''like five or six years ago.'' *Id.* Respondent then asked: ''Is there any history of drug abuse or drug dependence?'' *Id.* Priymak answered that he had been ''taking Oxies for * * * a while.'' *Id.* Respondent then asked how much oxycodone Priymak was taking; Priymak stated that it depended, that the drugs were ''kind of expensive,'' that he bought the forties and that he was taking up to four pills a day. *Id.* at 39; *see also* GX 5 (DVD). Respondent asked if Priymak had seen a doctor ''lately?'' GX 5, at 39. Priymak said ''no,'' and acknowledged that he was getting the drugs off the street. *Id.* Priymak also admitted that he drank three or four beers, three times a week, and emphasized that he was doing so because he did not have a job. *Id.*

Respondent then asked Priymak what other drugs he was taking; Priymak said he was ''taking Xanax and Soma sometimes to like relax me,'' but added that he did not think it was helping him. *Id.* Respondent and Priymak discussed how much of each drug he was taking and why he was taking Xanax; Priymak said he was taking one half to one and a half Xanax and doing so ''to sleep.'' *Id.* at 40.

Respondent then conducted a physical exam, which lasted approximately one minute, during which he listened to Priymak breathe in and out, had him do several motions with his arms and turn his neck. *Id.* During the exam, Respondent asked him what drug he took intravenously (which Priymak did not answer) and whether he still played basketball (with Priymak saying that it was hard for him because his shoulder got tight). *Id.*

Upon conclusion of the exam, Respondent told Priymak that he thought Priymak was ''taking a lot of medicine for mild pain.'' *Id.* Priymak asserted that he was big and that taking one pill did not ''help'' him. *Id.* Respondent replied that ''we don't write OxyContin'' and that ''we write * * * what's appropriate.'' *Id.* at 41. Respondent then added: ''And sounds to me like your requirements for medication are way out of proportion for the degree of pain you have. I don't think I'm going to be able to help you.'' *Id.*

Priymak replied: ''Are you serious Doc?'' GX 5 (DVD).[12] Respondent answered: ''Yeah. Your pain is way less than what would be indicated to be on what you're on. Does that make sense to you?'' GX 5 (Tr. at 41). After Priymak answered ''No,'' Respondent explained that ''somebody who has pain two or three doesn't need to be on one hundred and sixty milligrams of OxyContin. It's just way out of proportion.'' *Id.* Priymak asked why it was ''way out of proportion,'' prompting Respondent to answer: ''Because in my judgment it is.'' Respondent then explained: ''You're on way too much and I, I can't imagine that * * * I wouldn't even write anything for somebody who has pain at a two or three.'' *Id.* Priymak reminded Respondent that they had talked about his ''pain as five.'' *Id.* Respondent replied: ''Yeah, whatever it is. I just think that this is too many problems here * * * too many bottles of beer and * * * a history of * * * drug abuse.'' *Id.*

Priymak asked ''what do you mean?'' *Id.* Respondent answered: ''I just don't think that I'm gonna be able to help you.'' *Id.* at 42. Priymak then asked: ''Can you help me with something less than that amount?'' *Id.; see also* GX 5 (DVD). Respondent asked ''Like?'' and Priymak replied: ''I won't be able to function, like thirties, like twenties.'' *Id.* Respondent advised that ''thirties is all we write,'' and Priymak asked for thirties. *Id.* Respondent then stated: ''I just don't see it for * * * what you have.'' *Id.* Priymak asked: ''Can you give me fifteens?'' and Respondent stated: ''You know, maybe I'll give you some fifteens.'' *Id.* Priymak then thanked Respondent. *Id.*

Next, Respondent told Priymak that he should go ''to some sort of rehab facility and get on Suboxone.'' *Id.* Priymak then maintained that he needed the drugs ''to get through the day and work.'' *Id.* Respondent stated that he understood but that it was still his ''suggestion'' that Priymak go to rehab. *Id.* However, Respondent then asked Priymak if he ''want[ed] some Xanax?'' *Id.* Priymak answered ''yeah,'' Respondent said ''okay,'' and then asked Priymak if he was ''allergic to anything.''[13] *Id.*

On the History and Physical Examination on which Respondent checked his diagnosis and plan, Respondent wrote that ''PT has been on OxyContin 40 4x/day which is out of proportion to amt of pain. Will give Pt Rx for oxycodone 15 # 150 and refer to rehab. Rec. pt see MD for Suboxone.'' GX 22, at 6. However, as found above, while Respondent did suggest that Priymak go to rehab, he did not refer him to any rehab center or a physician who is authorized to prescribe Suboxone to treat addiction. Instead, Respondent issued Priymak prescriptions for both 150 tablets of Roxicodone (oxycodone) 15mg and 30 Xanax 2mg. GX 22, at 24.

On May 4, 2010, Agent Priymak returned to CCHM and again saw Respondent. Tr. Vol. 2, at 237; GX 22, at 22. After paying for the visit and completing the triage procedure, Respondent called Priymak's name and the two went to the former's office. Tr. Vol. 2, at 328. According to Agent Priymak, ''[i]t was a very short visit'' during which Respondent asked him how he was, if he had any problems or complications, if the medication was helping, and if he was smoking. *Id.* at 328–29; GX 5, at 54–56.

Respondent then asked Priymak ''[w]here is most of your pain?'' GX 5, at 56. Priymak answered that it was on the ''right side'' of his ''neck,'' but that it was ''going on and off[,] [k]ind of between my shoulders. *Id.* Respondent then asked: ''Before you were having back[,] uh, neck pain?'' *Id.* Priymak stated that back in 2000, 2001, he had ''kind of like tweaked my neck roll.'' *Id.* Respondent stated ''yeah,'' instructed Priymak to ''take some breaths in and out,'' had him do something with arms and hands,'' *id.* at 56; and then ''move [his] head from left to right.'' Tr. Vol. 2, at 329–30. Priymak testified that he

[12] Having reviewed both the transcript and the DVD of this visit, I find that Priymak made this statement.

[13] Respondent and Priymak also discussed the latter's use of Soma (carisoprodol), a drug which is currently not controlled under federal law. GX 5, at 43. However, Respondent did not prescribe this drug.

Priymak also sought some Viagra, stating that he wanted to try it because he was going to a party and would like to try it. ALJ at 76 (discussing GX 5, at 43–44). Respondent asked Priymak if he had ''some problems'' for which the drug would be prescribed and whether it was ''just for the party.'' *Id.* at 44. After Priymak acknowledged that it was, Respondent said ''good try'' and did not prescribe the drug. Because Viagra is not a controlled substance and DEA is not a medical board, I do not adopt the ALJ discussion regarding the propriety of Respondent's decision. *See* ALJ at 77.

completed the movements without showing pain, *id.* at 330, and the rest of the visit was spent discussing where Priymak was from (the Ukraine), the city of Kiev, and the time it took to travel to Kiev and Moscow. GX 5, at 57–58.

Respondent did not ask Priymak to rate his pain even though he documented on the form for the visit that Priymak's pain was a ''5/10'' with medication and ''9/10'' without it. GX 22, at 22. He also checked the box indicating that there was ''[n]o indication of substance abuse or diversion,'' notwithstanding the information he had obtained and documented at the first visit. *Id.* Moreover, Respondent did not engage in any further discussion with Priymak regarding the latter's entering rehab. Nonetheless, Respondent issued Priymak two more prescriptions for 150 tablets of Roxicodone 15mg and 30 tablets of Xanax 2mg. *Id.* at 338; *see also* GX 22, at 21.

Regarding the April prescriptions, Respondent testified that he had prescribed less than half the dosage of oxycodone that Priymak had told him he had been taking and that he made a ''medical judgment based on [his] interpretation and assessment'' as to the degree of pain Priymak had and that ''he tr[ied] to correlate that with a commiserate[sic] dose of medication'' which would be ''more appropriate.'' Tr. Vol. 10, at 108. Respondent further maintained that Priymak was ''convinc[ing] and represented that he had significant pain.'' *Id.* He also asserted that there had been a ''considerable period of time'' since Priymak had stated that he had used intravenous drugs, *id.* at 113, and that he ''didn't want to totally cut [Priymak] off of medication and have him go into withdrawal, but thought it would be more appropriate that he be on a lower dose, something that I thought [was] more reasonable.'' *Id.* at 128. Respondent also asserted that Priymak's MRI shows ''a lot of changes * * * that would be consistent with a patient having significant neck pain.'' *Id.* at 138.

With respect to Priymak's second visit, Respondent testified that ''there was no immediate reason to refer him to rehab'' or to even discuss the issue because Priymak ''made no representation * * * that he had any withdrawal problems or that his pain was not sufficiently addressed by the dose'' he had prescribed. *Id.* at 140–41. Respondent further justified his prescribing, stating that Priymak ''was no longer having to get his medicine on the street'' and that ''he was in a more controlled environment'' because he was being ''taken care of by a doctor.'' *Id.* at 141.

The ALJ addressed the credibility of only a part of Respondent's testimony, apparently finding credible that he prescribed at the first visit because did not want SA Priymak to suffer from withdrawal symptoms, while finding not credible his testimony regarding why, at the second visit, he did not discuss Priymak's entering rehab. ALJ at 77. While I agree with the ALJ's finding as to Respondent's testimony regarding the second visit, I do not find credible his testimony regarding his prescribing at the first visit because the transcript and recording of that visit make clear—in Respondent's own words—that Priymak complained only of ''mild pain,'' notwithstanding Respondent's successful efforts to coach him to eventually provide a higher pain level, and that Priymak's ''requirements for medication [were] way out of proportion for the degree of pain'' Priymak had. As Respondent further stated during the visit, ''I wouldn't write anything for somebody who has pain at a two or three.'' Thus, Respondent's own statements during Agent Priymak's visit manifest that his testimony—that he believed that Priymak ''had significant pain'' and made a medical judgment to prescribe something more appropriate to Priymak's pain level—is patently disingenuous. As for Respondent's testimony that he did not ''want to totally cut [Priymak] off of medication and have him go into withdrawal,'' even if this is credible, it provides no comfort to Respondent because federal law clearly prohibits prescribing a schedule II narcotic drug for this purpose. *See* 21 CFR 1306.07.[14]

Given the evidence of the undercover visits, expert testimony is hardly necessary to conclude that Respondent lacked a legitimate medical purpose in prescribing controlled substances to Agent Priymak. Nonetheless, it is further noted that the Government's Expert testified that Respondent's prescriptions to Priymak were not ''warranted as [a] first-line, first-day treatment with this particular patient, who gave a history of being an intravenous drug abuser and purchasing drugs illicitly on the street.'' Tr. Vol. 7, at 92. The Expert further explained that there were other forms of treatment including ''physical therapy,'' a ''short course'' of ''anti-inflammatory medications,'' and possibly ''injection therapy'' which were never discussed. *Id.* Finally, the Expert observed that there was no significant information documented in Priymak's patient file for his second visit to justify the additional prescriptions. I therefore conclude that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing controlled substances to Agent Priymak at both visits.[15] 21 CFR 1306.04(a).

On July 23, 2010, Agent Doklean, along with nine other Agents, went as part of a ''crew'' to CCHM for the purpose of obtaining controlled substances. Tr. Vol. 1, at 179. Upon her arrival, Doklean paid a clinic employee $300 for the office visit and gave her an MRI report (of her lumbar spine) and her undercover driver's license. *Id.* at 186. Several minutes later, another Agent, who posed as the crew's ringleader and sponsor, discussed with a clinic employee what the charge would be to obtain expedited or VIP service; the Agent then told the other Agents to pay the clinic employee an additional $200 for VIP service. *Id.* at 187.

Agent Doklean testified that she had intentionally left blank various questions on the patient forms she had been given, and that subsequently, another clinic employee told her that she ''needed to fill everything out.'' *Id.* This employee also gave Doklean ''examples of words to put on'' the form. *Id.* Doklean also testified that following her visit with Respondent, she had a conversation with another CCHM employee, R.M. *Id.* at 188. R.M. related to Doklean that Respondent ''had concern over the fact that we * * * were not putting the proper things [on] our paperwork, that we needed to say that we were in pain on the paperwork and that any other undercover that had not been seen yet * * * needed to make sure that they put on the paper work and * * * needed to tell the doctors

[14] To make clear, Respondent was not registered to provide maintenance or detoxification treatment under 21 U.S.C. 823(g). Under federal law, a practitioner who lacks such a registration is authorized only to administer (and not prescribe) a schedule II narcotic drug ''to a person for the purpose of relieving acute withdrawal symptoms when necessary while arrangements are being made for referral to treatment'' and may administer no more than one day's dose of medication ''at one time,'' and do so for no more than three days. *See* 21 CFR 1306.07(b).

[15] I also do not adopt the ALJ's rumination that ''Respondent's testimony that he didn't want SA Priymak to suffer from withdrawal symptoms and the fact that Respondent's prescription of oxycodone was less than half of the dosage that SA Priymak represented he was previously taking perhaps mitigate[s] in Respondent's favor.'' ALJ at 77. As explained above, Priymak never complained of anything more than mild pain, which Respondent recognized did not warrant oxycodone, and clearly presented as a drug abuser. Thus, Respondent cannot credibly claim to have been duped by Priymak. In short, this was a blatant drug deal.

that they were in pain even if they were not.'' *Id.*

On her pain assessment form, Agent Doklean wrote that her pain was located in her ''neck'' and circled the words: ''Tiring,'' ''Evening/Night,'' and ''Occasional.'' GX 25, at 9. Doklean did not circle any number on the pain scale and wrote that she was not on any current medications. *Id.* On a separate medical history form, Doklean again noted her pain was located in her ''Neck'' and checked ''Yes'' for whether she drank alcohol and had ''ever been treated for addiction.'' *Id.* at 7–8.

Upon meeting Agent Doklean, Respondent asked her ''what is your pain that we're going to help you with today?''; she answered: ''over my neck.'' GX 4, at 31. Respondent asked how long the pain had been going on; Doklean replied ''six months.'' *Id.* Respondent then asked if she had hurt herself; Doklean replied ''No. I don't know where it came from.'' *Id.* After again confirming with Doklean that she was having neck pain, Respondent asked, ''what are we doing with an MRI of your back?'' *Id.* Doklean answered: ''That's what the other * * * you know, what a doctor prescribed for. So * * * that's what I went for.'' *Id.* Respondent noted: ''But your pain is in your neck.'' *Id.* Doklean replied ''Well, I mean it, it, it starts in the neck and towards the end of the day * * * it moves.'' *Id.* Referring to her MRI, Doklean then asked: ''Well, I mean, I don't know how to read that, what does that say?'' *Id.* Respondent replied that ''this just has to do with your back'' and explained that the MRI was of Doklean's lower back. *Id.* at 31–32. Notably, Respondent did not ask for the name of the doctor who had ordered the MRI.

After taking a phone call, Respondent again asked Doklean if she had neck pain, and after she said ''yes,'' Respondent told her: ''I guess I'm confused. You have pain in your neck but you have an MRI of your back.'' *Id.* at 32. Doklean interrupted Respondent saying that she thought the pain ''kind of radiates''; Respondent explained that there was a ''disconnect'' and that ''we need to get an MRI of your neck.'' *Id.* at 32–33. Doklean then explained that ''[b]y the end of the night it goes up and down'' and that ''sometimes it goes all the way through'' and she felt ''stiffness * * * down at the bottom.'' *Id.* at 33.

After asking Doklean about her employment status (she was unemployed), Respondent then confirmed that there was no trauma, with Doklean explaining that: ''maybe, running after the kids'' and that she had ''two small kids.'' *Id.* Respondent then asked her how bad her pain was on a scale of one to ten. *Id.* Doklean answered:

> It fluctuates. Sometime is down, you know like a two or three, sometimes it goes up. I mean, it really depends on the day * * * sometimes I feel more than others if it's a cloudy day or if it's a rainy day it'll go up, if not, I'm running after the kids * * * if out running around, it, it fluctuates. Sometime, you know, it's getting to a point where * * * I can't even. Sometimes even * * * hang out with the kids or like do anything with them.

Id.

Respondent then asked Doklean if she was allergic to any medicines, with Doklean answering ''no,'' and how much she smoked, with Doklean stating that she did not. *Id.* However, upon being asked whether she drank, Doklean stated that she had been in rehab in November of the previous year (eight months earlier) but that she was now clean and sober. *Id.* at 33–34. However, Respondent did not inquire further as to where she had been treated and who were her physicians. *Id.* at 34; *see also* Tr. Vol. 1, at 204.

After a question about her medical history, Respondent asked Doklean if she had been taking medication. GX 4, at 34. Doklean stated that she would ''take some Advils,'' but added that ''every now and then * * * I have a friend who would help me out a little bit with some of the blues'' (a term which is street slang for oxycodone 30 mg, *see* Tr. Vol. 1, at 204) that seemed to help, so she decided to go ''see a pain doctor.'' GX 4, at 34. Respondent then asked Doklean ''how long'' she had ''been taking the blues?'' *Id.* Doklean stated that she had been taking them ''on and off for like six months,'' but it was ''kind of hard'' because ''it's expensive.'' *Id.* Next, Respondent asked Doklean if ''you just take a few of those?'' *Id.* Doklean answered that she did so ''every couple of days, when thing get really bad'' and that they seemed to help her. *Id.*

Respondent then asked Doklean to ''describe the pain.'' *Id.* at 35. Doklean replied: ''It radiates. I mean, sometimes I get like massive headaches * * * and it'll start up in my head and it'll go like from * * * here and towards in here and it'll go back down and then, that's why I say I feel it in the neck and it'll go, it'll shoot down.'' *Id.*

Respondent then proceeded to perform a physical exam (which took fifty seconds); the exam consisted of his placing his stethoscope on her back and instructing her to breathe in and out, as well as several range of motion exercises including having her move her arms, open her fingers and then make a fist, raise each of her legs straight up, then stand up and bend over. *Id.* at 35; GX 4 (recording of visit); Tr. Vol. 1, at 206–08. According to the credited testimony of Agent Doklean, she was able to completely bend over and touch the ground in ''a swift maneuver,'' which prompted Respondent ''to chuckle.'' Tr. Vol. 1, at 206.

Next, Respondent had Doklean turn her head both left and right as well as up and down. GX 4, at 35. Respondent asked if doing this caused her any pain; Doklean stated ''not right now'' and added that ''[t]oday is a good day.'' *Id.* Respondent stated ''[t]hat's good,'' and asked Doklean if she had pain ''in [her] back occasionally?'' *Id.* Doklean replied ''Do I? Yeah, It goes, like I said, it, it radiates. It goes different ways. Sometimes it starts up from * * * I get * * * most I get the headaches and then it, it just goes all the way down.'' *Id.* at 36. Respondent did not, however, palpate either her neck or lower back. Tr. Vol. 1, at 208.

Respondent then asked Doklean if she was ''[t]aking anything now?'' GX 4, at 36. Doklean said ''No'' and Respondent replied ''[w]ell, let's just get you started on some medicine and see if we can't get you some relief'' and instructed her to ''[t]ake the medicine just as it says on the bottle,'' and not to buy, sell or share it. *Id.* Doklean then asked: ''Do I get some of the blues?'' *Id.* Respondent answered: ''Yeah. Let's * * * let me look at your chart, we'll see how we're gonna help you today'' and told her to ''[h]ave a seat out front. We'll * * * see what we can do for you.'' *Id.* Subsequently, Respondent issued Doklean a prescription for 120 tablets of Roxicodone 30mg and a prescription for an MRI of her cervical spine. GX 4, at 59.

On the History and Physical Examination Form, Respondent noted that ''upon questioning,'' Doklean had reported that her pain was an ''8 throughout the day, [with] flareups of * * * 10'' on a scale of 0 to 10. GX 25, at 2. Respondent also put check marks indicating that her pain was ''aggravated by'' ''lifting,'' ''twisting,'' and ''sitting or standing in one position too long.'' *Id.* He also checked the ''yes'' box indicating that ''the pain deplete[d] [her] energy/motivation,'' that she was irritable and moody because of it, that it ''affect[s] [her] relationship,'' and that ''it cause[d] problems at work.'' *Id.* While Respondent noted that Doklean ''has taken Roxi'' and gotten drugs from friends and the street, he also wrote that she was ''off any meds now and having great difficulty.'' *Id.*

As shown by the recording and transcript of her visit, Doklean never complained of having pain at the level Respondent documented and

Respondent never asked whether her pain was aggravated by any of the activities which he checked as doing so. Moreover, Respondent did not question her about whether the pain affected her energy, made her irritable and moody, affected her relationships and caused problems at work. Indeed, Doklean had told him that she was unemployed.

In addition, on pages two and three of the form, Respondent made numerous notations as to his purported findings of his physical examination. GX 25, at 3–4. As the Government's Expert observed, there were ''extremely serious improprieties'' as Respondent fabricated in the medical record ''numerous findings, such as HEENT exam, heart exam, abdominal exam, cervical and lumbar spine exams, range of motion testing, reflex testing, sensory testing, peripheral pulses palpation, neurological testing [and the] presence of muscle spasm.'' GX 32, at 18–19.

In his testimony, the Government's Expert further explained that Doklean ''came in complaining of neck pain but had a lumbar MRI spine report, not a cervical MRI, so [Respondent] really was prescribing her medication prior to a definitive diagnosis of what was going on in her neck.'' Tr. Vol. 7, at 148. Moreover, when Respondent questioned why her MRI was for her lower back and not her neck, the Expert observed that Doklean had ''pointed to her entire spine, in a diffuse manner'' and that ''this is a common maneuver in a malinger patient.'' GX 32, at 14. The Expert also noted ''that while the patient also was complaining of 'massive' headaches, he never performed a cranial evaluation, such as cranial nerve testing.'' *Id.* at 17.

Additionally, the Expert testified that Doklean's ''MRI shows just mild bulging of three disks in her lumbar spine, which is normally treated conservatively with non-steroidal anti-inflammatory medications and physical therapy.'' *Id.* at 148–49. The Expert further observed that Doklean had ''stated that her pain rating was a '2 or 3,' but could increase during the day and vary with the weather. Certainly this pain is not of the severity that usually requires high-dose narcotic therapy.'' GX 32, at 14.

The ALJ found ''dubious'' Respondent's testimony that he interpreted Doklean's pain as actually being higher. ALJ at 63 (citing Tr. Vol. 10, at 190–91 & 201). I go a step further and find that it is not credible. In addition, the ALJ was not impressed by Respondent's testimony that he thought Doklean had gotten ''controlled substances from friends because 'she didn't have the money to see a doctor previously''' and that he would be ''prescrib[ing] medication for her in a controlled way * * * [t]hat prevents diversion and prevents her from continuing to have to get medicine in an illegitimate way.'' *Id.* at 64.

As the ALJ found, after Doklean's meeting with Respondent, R.M., a clinic employee, related that Respondent ''had concern over the fact that we * * * were not putting the proper things [on] our paperwork, that we needed to say that we were in pain on the paperwork and that any other undercover that had not been seen yet * * * needed to make sure that they put on the paper work and * * * needed to tell the doctors that they were in pain even if they were not.'' Tr. Vol. 1, at 188; *see also* ALJ, at 64. As this statement makes plain, Respondent's concern was not with prescribing only for legitimate medical purposes, but rather, with being able to justify illegitimate prescribing. In any event, even were I to give no weight to R.M.'s statement, there is overwhelming evidence that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing to Agent Doklean. 21 CFR 1306.04(a).[16]

Agent Zdrojewski was another member of the ''crew'' which visited CCHM on July 23, 2010. As with the other Agents, Zdrojewski testified that upon his arrival at the clinic he paid $300 for the visit and submitted an MRI and his undercover driver's license, that he received forms to fill out, and that another Agent, who posed as the ringleader, had a discussion with a clinic employee after which the ringleader told the other agents to pay over another $200 for VIP treatment, which Zdrojewski did. Tr. Vol. 3, at 72. Zdrojewski testified that after the Agents paid the additional fee for VIP treatment they joked around and made comments in front of clinic employees that they were not going to make any money off of the visit. *Id.* at 73. Agent Zdrojewski further testified that he was required to provide a urine sample, but was not supervised in doing so, and that when he turned over his sample, he told clinic employees that he had put water in his sample and was laughing about it, but that none of the employees said anything to him about this. *Id.* at 78–79.

On the pain assessment form, Agent Zdrojewski wrote that his head was the location of the pain and that his pain was ''bothersome''; while he also circled that his pain was ''Occasional,'' he did not circle any of the other descriptors printed on the form. GX 28, at 9. On the numeric pain scale, Zdrojewski drew a single circle around the numbers ''O'' and ''1'' and wrote that ''offshore boating'' made his pain worse. *Id.* Zdrojewski listed his current medications as 90 OxyContin 80mg, 240 oxycodone 30mg, and Xanax, and indicated that he was not having any side effects from the medications. *Id.*

Agent Zdrojewski also completed a medical history form. On this form, Zdrojewski checked the ''yes'' box indicating that he had high blood pressure, bipolar disorder,[17] and headaches. GX 28, at 7.

Upon meeting Respondent, Zdrojewski was asked if it was his first visit; Zdrojewski said it was and that he had gone to Tampa Bay Wellness, a clinic which was now closed. GX 8, at 11. Respondent then asked Zdrojewski where his pain was and how long it had been ongoing; Zdrojewski replied that he had ''neck'' pain and that it had been probably going on for ''a year and a half.'' *Id.* Respondent asked Zdrojewski about his employment status; the latter said he worked as a ''charter captain.'' *Id.*

Next, Respondent asked Zdrojewski how he had hurt his neck. *Id.* Zdrojewski replied that he did not know and that ''it just * * * over time * * * There's a bump here and its kind [of] in here and it goes up.'' *Id.* at 12. Zdrojewski further explained ''that this comes on. It's like, it doesn't always * * * If it moves a certain way it gets better.'' *Id.* After stating that he had ''gone through chiropractor stuff and traction,'' Zdrojewski explained that ''[t]he last doctor was giving me crazy amounts but I didn't even fill [all those]. Dude was giving me ninety count eighties.'' Respondent confirmed with Zdrojewski that he had gotten eighties, with the latter adding that the clinic was ''closed now. So, I put down on the sheet what I was getting. They were giving me sixty-two milligrams Xanax[,] and two hundred forty Thirties[,] and then ninety count eight[ies].'' *Id.* Zdrojewski added that he didn't ''need all that.'' *Id.*

Respondent then asked Zdrojewski to describe his pain; Zdrojewski replied that it ''comes and goes'' and was ''intermittent'' but ''the word wasn't on there.'' *Id.* Respondent then asked

[16] I also adopt the ALJ's finding that Respondent violated Florida's regulation by failing to maintain accurate records regarding Agent Doklean. *See* ALJ at 65. In addition, while the ALJ found that Respondent violated 21 CFR 1306.04(a) in prescribing to Agent Doklean, he also opined that the prescription ''was not wholly without some indicia of medical purpose.'' ALJ at 66. Because the ALJ provided no further explanation as to the meaning of this statement, and the basis for it, I do not adopt it.

[17] Zdrowjeski checked both the ''yes'' and ''no'' boxes for bipolar disorder. GX 28, at 7.

Zdrojewski how his pain was on a one to ten scale with ten being severe, and added: ''You got zero to one, is that right?'' *Id.* Zdrojewski said ''Oh,'' and Respondent said ''that means * * * you don't have pain.'' *Id.* According to the credited testimony of Agent Zdrojewski, he then told Respondent to ''top it'' and Respondent circled the numbers 8 through 10 on the pain assessment form. Tr. Vol. 3, at 97.

Respondent then asked: ''So the pain's been pretty bad?,'' to which Zdrojewski said ''[it] can be.'' GX 8, at 12. Respondent asked if ''it pretty much stays there on the neck?'' *Id.* at 13. Zdrojewski said: ''You can say stay.'' *Id.* Upon further questioning, Zdrojewski stated that the pain did not go into his arms. *Id.* Respondent then asked how the pain affected his life, work and home. *Id.* Zdrowjewski stated that he ''control[ed] it'' and that he had ''to function, so I function * * * I'm just not gonna sit around.'' *Id.*

Next, Respondent asked: ''what makes you want to be on pain medicine?'' *Id.* Zdrojewski answered that it ''makes me feel better. It's not illegal like weed or something like that.'' *Id.* Respondent then asked if when he took it before, it allowed him to function; Zdrojewski answered ''Yeap.'' *Id.* Respondent then said: ''Meaning that without it you have difficulty functioning?'' *Id.* Zdrojewski replied: ''Without it, I've got pain.'' *Id.*

Upon questioning by Respondent, Zdrowjeski stated that he did not know of any allergies to medicines and that he had quit smoking six years earlier. *Id.* However, upon Respondent's questioning him about his use of alcohol, Zdrojewski said that on weekends, he drank a case of beer but that he was ''trying to stay off the hard liquor.'' *Id.* at 14. Respondent then asked him if he had ''any medical problem'' such as high blood pressure or diabetes and whether he had had any surgeries. *Id.* Zdrojewski stated that he had high blood pressure and was taking a drug for that; he also stated that he had had knee surgery and eye surgery when he ''was a kid.'' *Id.*

Respondent then asked Zdrojewski if he used any recreational or IV drugs and if he had ever had any drug abuse or dependence problems. *Id.* Zdrojewski asked if ''it's between us?'' and when Respondent said ''yeah,'' stated that he used ''marijuana.'' *Id.* at 14–15. Respondent then asked him where had been going for his pain medicine, when he had last been there, and ''[h]ow long were you over there?'' *Id.* at 15. Zdrojewski again said that he had gone to Tampa Bay Wellness, that he had gone there for three or four months and that he had last been there ''maybe'' ''two months ago.'' *Id.* Respondent again asked what drugs they (Tampa Bay Wellness) had him on; Zdrojewski again said 90 count of 80 milligrams, 240 count of thirty milligrams, and 60 count of Xanax two milligrams. *Id.*

Respondent then asked: ''And you're not taking anything now?'' *Id.* Zdrojewski replied that he did not ''have anything,'' and Respondent asked: ''Then, how are you doing?'' *Id.* Zdrojewski answered that he was ''self-medicating,'' and when asked what ''with,'' Zdrojewski asked if we can ''wait till there is nobody in here?'' *Id.* Respondent said ''yeah,'' and eventually, Zdrojewski again said marijuana. *Id.*

Respondent then conducted a physical exam, which involved his listening to Zdrojewski's breathing, followed by various movements of his arms, legs, and fingers. *Id.* at 16. The exam lasted a total of 38 seconds. GX 8 (recording of visit). During the exam, Zdrojewski did not complain that any of the movements caused him pain. *Id.* at 16.

After the exam, Respondent asked Zdrojewski if anyone had ever reviewed his MRI with him; Zdrowjeski said ''No.'' Respondent then explained:

> You've got a little inflammation going on in the joints between your vertebrae and your neck but it's very minimal. That they described it as trace. * * * [T]hat's what your MRI says. Other than that it's normal. There's no disc herniations, everything else is in place. So that's good. That there's nothing else going on.

Id . at 16.

Zdrojewski then asked what was causing his headaches. *Id.* Respondent stated: ''Oh, my God, there's nothing. I * * * I don't know. There's nothing around here that * * * explains that.'' *Id.* Zdrojewski stated that ''the last doctor said it radiated up and can cause it.'' *Id.* Respondent stated: ''[Y]es if you have significant problems in your neck, it then * * * it could do that, but I'm just saying, you[r] MRI doesn't show that.'' *Id.* Respondent then asked Zdrojewski to stand up and apparently to bend over, but Zdrojewski stated that he could not do so. *Id.*

Respondent then said: ''Well * * * we have a little issue here. First of all your MRI doesn't show much of anything and secondly, drinking a case of beer is not compatible with taking a strong medicine like this.'' *Id.* at 17. Zdrojewski asserted that he could ''pull that off.'' *Id.* Respondent then stated he was ''not sure how you lived through all of this Oxy,'' and Zdrojewski replied: ''I told you I didn't take, I didn't take all of that.'' *Id.*

Respondent explained that he ''would feel very uncomfortable prescribing all this strong medicine * * * when I have knowledge that beer is being consumed.'' *Id.* Continuing, Respondent stated that beer ''has alcohol and that coupled with OxyContin and oxycodone and Xanax is being [a] very bad combination, as in you need to worry about death.'' *Id.* After Zdrojewski said ''okay,'' Respondent explained that he had some people who told him that they ''drink three or drink four cans of beer and I say, 'Listen, you need [to] drink or you take medicine.' They say, 'Fine, I, I won't drink but it's going to be hard for me to give up a case of beer a weekend.' That's some serious drinking.'' *Id.* After Zdrojewski said: ''Well to make the headaches go away,'' Respondent asked: ''You understand what I'm saying?'' *Id.* Zdrojewski said, ''I get it'' and that he would ''stop drinking.'' *Id.*

Respondent then asked Zdrojewski: ''So you rather take the medicine than to be drinking, is that right?'' *Id.* Zdrojewski said ''yup,'' and Respondent said: ''let me look at your chart to see what we can do to help you.'' *Id.* Respondent then asked Zdrojewski what he was ''taking the Xanax for?'' *Id.* Zdrojewski answered: ''they just gave them to me.'' *Id.* Respondent then said: ''You don't really need them,'' to which Zdrojewski replied: ''I'll take them.'' *Id.* Respondent then said that if ''you're not * * * riddled with anxiety and you're not having a * * * large amount of sleep problems, then we don't want to give you medicine you don't need.'' *Id.* Zdrojewski replied: That'll work with me doc,'' and Respondent stated ''I just don't give you medicine just to write a prescription. So * * * so let me look at this.'' *Id.* After Respondent told Zdrojewski to lock up his medicine in a safe place, the latter thanked him and the visit concluded. *Id.* Respondent then issued Zdrojewski a prescription for 150 tablets of Roxicodone 30mg. GX 28, at 19.

On the history and physical examination form documenting the visit, Respondent wrote that on a zero to ten scale, Zdrojewski's pain was an ''8 throughout the day,'' with ''flare-ups of * * * 9–10.'' *Id.* at 2. Respondent also wrote that Zdrojewski ''was confused by pain scale on assessment form'' and indicated that his pain was ''aggravated by'' lifting, bending and twisting. *Id.* Respondent also wrote that Zdrowjeski had ''severe pain in neck'' and that ''at times pain [is] so severe he is unable to do his work'' and that his pain was ''sharp.'' *Id.* Respondent also documented that he noted a muscle spasm in Zdrojewski's cervical area;

however, Zdrowjeski testified that Respondent never touched his neck. Tr. Vol. 3, at 107.

Under his treatment plan, Respondent wrote:

> When pt returns pt will need to have seen NSG who will need to have concurred that pain meds are justified. During this visit pt expresses that pain was severe, so I Rx'ed meds sufficient to control his pain. He previously was on a much higher dose including OC. But in light of the MRI findings, I would not expect that pt would have such severe * * * therefore, must obtain referral [with] NSG and probably refer to bd cert pain mgmt before continuing care. Most likely will be D/C if * * * he doesn't follow above plan.

Id. at 6.

In his testimony, Respondent explained that his plan was that ''when patient returns, patient will need to have seen or will need to have seen neurosurgery who will need to have concurred that pain medicines are justified. So my plan was to send him to neurosurgery.'' [18] There is, however, no evidence that Respondent even discussed with Agent Zdrojewski that he needed to be evaluated by a neurosurgeon, let alone referred him to one. *See* GX 8; *see also* Tr. Vol. 3, at 102.

The Government's Expert observed that it was significant that Agent Zdrojewski represented that he smoked marijuana and engaged in ''excessive alcohol use'' and ''was bipolar.'' The Expert further testified that prescribing Roxicodone 30mg to someone who admitted to marijuana use was not an appropriate ''first-line treatment'' and was not within the standard of care in Florida. Tr. Vol. 7, at 176.

Notwithstanding that Respondent did not prescribe Xanax to Agent Zdrojewski, I conclude that the evidence as a whole supports a finding that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice in prescribing Roxicodone to him. 21 CFR 1306.04(a). More specifically, Zdrojewski presented with vague complaints, completely altered his pain rating from one end of the scale to the other and yet at no point related other symptoms which would be consistent with severe pain, and represented that he abused both marijuana and alcohol. Moreover, Respondent acknowledged that Zdrojewski's MRI was not significant, and while he conducted a physical examination (which lasted all of 38 seconds), Respondent proceeded to falsify the medical record by documenting findings for which he clearly had no basis, as well as a referral which never occurred. Finally, the Expert gave unrebutted testimony (which the ALJ credited) that prescribing Roxicodone 30mg was not within the appropriate first-line treatment under the standard of care. I also adopt the ALJ finding that Respondent failed to maintain accurate records as required by Florida's regulation.[19] *See* ALJ at 84.

Agent Ryckeley was another member of the ''crew'' which visited CCHM on July 23, 2010. Ryckeley likewise testified as to the monetary payments that were made for the office visit and to receive expedited service, and that he was given several forms to complete. Tr. Vol. 3, at 201.

On his pain assessment form, Agent Ryckeley wrote ''back discomfort'' as the location of his pain, put a question mark in the entry for the pain's duration. GX 27, at 9. Ryckeley also indicated that his pain was ''occasional'' and not ''continuous,'' and circled ''2'' on the numeric pain scale. *Id.* Finally, Ryckeley wrote that he was currently on 180 oxycodone 30mg, that he had no side effects, and that ''fishing'' made his pain worse. *Id.*

On the medical history form, Agent Ryckeley did not indicate that he had any of the listed conditions or diseases. *Id.* at 7. However, in the ''location of pain'' block, he wrote ''Back Discomfort''; he also indicated that he was not under the care of a physician for the condition, and that he drank alcohol. *Id.* at 7–8. Moreover, he then listed his current medications as ''None.'' *Id.* at 8.

Upon entering Respondent's office and exchanging pleasantries, Respondent asked Agent Ryckeley if it was his first visit (it was) and where his pain was. GX 7, at 18. Ryckeley said ''back discomfort'' and added: ''I came in with * * * David Hays and all those guys.'' GX 7, at 18. Respondent said ''right,'' and asked: ''How long have you been having back pain?'' *Id.* Ryckeley responded: ''Uh, started in, uh, I got an MRI in May.'' *Id.* Respondent again asked when the pain started; Ryckeley replied: ''Mid May is when the * * * discomfort started'' and added that ''it was just before the date on the MRI.'' *Id.*

Respondent then asked: ''And what have you done to yourself?'' *Id.* Agent Ryckeley stated that he had been on a sport fishing charter and ''caught a decent size albacore'' which he ''was trying to land.'' *Id.* Respondent then asked: ''And after that things started?'' *Id.* Ryckeley stated that ''what would happen after that'' is that his girlfriend danced and ''was taking some thirties,'' and that he ''took some of her thirties and * * * it put me in a state where, where I liked it, it made me feel better.'' *Id.* Continuing, Ryckeley stated: ''So I experimented with that, I know I probably shouldn't have done that * * * but * * * I liked how it made me feel and I said, 'You know, best thing to do is come in and get evaluated by a doctor,' and * * * get your recommendation.'' *Id.* at 20.

Respondent then asked Ryckeley how he would ''describe the pain'' and noted that he needed Ryckeley to fill out the Pain Assessment Form, saying the words ''sharp, shooting, stabbing, throbbing, aching.'' *Id.* Ryckeley stated: ''It aches, I guess,'' and when Respondent asked: ''Anything else?'' answered: ''I'm not good with words.'' *Id.*

Respondent then told Ryckeley to ''stand up, turn around, and show where the pain is.'' *Id.* Ryckeley said ''okay,'' and apparently did not initially comply, as Respondent then said: ''No, show it, I mean can you touch where it hurts?'' *Id.* Ryckeley asked: ''Oh, point?''; Respondent said ''yeah,'' and Ryckeley stated ''it's in * * * my lower back area.'' *Id.* Respondent then asked if ''the pain is there all the time?'' *Id.* Ryckeley replied: ''[I]t comes and goes, mostly comes when I fish.'' *Id.* Respondent then asked if the pain ''stay[s] there or does it travel anywhere?'' *Id.* Ryckeley answered: ''Nope, it stays * * * in my back. Every, occasionally I get * * * headaches and stuff like that.'' *Id.* at 21. Upon a further question by Respondent, Ryckeley stated that the pain did not go into his buttocks and legs.

Respondent then asked Ryckeley ''how bad'' his pain was, apparently noting that the latter had circled the

[18] Based on Respondent's testimony, I conclude that the abbreviation ''NSG'' refers to Neurosurgeon.

[19] The ALJ also found that ''Respondent's failure to refer SA Zdrojewski to rehabilitation for his use of recreational and illicit controlled substances, and what may well have been his excessive use of licit controlled substances, is also inconsistent with Florida standards.'' ALJ at 84–85 (citing Fla. Admin. Code Ann. R. 64B8–9.013(e) (prior to Nov. 28, 2010 amendment) (''The physician should be willing to refer the patient as necessary for additional evaluation and treatment. * * * Special attention should be given to those patients who are at risk for misusing their medications [or] * * * pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.'').

At its text make plain, this version of the rule—which was in effect at the time of the events at issue here—did not make such referrals mandatory. Most significantly, there is no evidence in this record establishing that the standard of care required that a patient presenting in the same manner as did SA Zdrojewski be referred at the first visit. Accordingly, I do not adopt the ALJ's finding.

number 2 ''on a scale of one to ten.'' *Id.* Ryckeley said: ''probably around two.'' *Id.* Respondent asked: ''A two?,'' and Ryckeley said ''Uh-huh.'' *Id.* Respondent then asked Ryckeley if he had ''ever tried anything else other than all of this fancy medicine?''; Ryckeley said ''Oh, I really,'' but did not complete his answer before Respondent noted, ''A two here, here's the pain scale, I'm not sure, you maybe don't understand the pain scale.'' *Id.* Ryckeley said ''okay,'' and Respondent stated: ''a one and two is * * * just sort of * * * a very mild kind * * * of a problem, ten is where you're screaming.'' *Id.* Ryckely replied ''okay,'' and Respondent asked ''would you characterize it as mild? Which is about one or two, or moderate? You know, five or six, or is it pretty severe, like eight or nine or ten.'' *Id.* Ryckeley stated: ''Well, I guess it, it could be moderate, I would imagine * * * middle of the road.'' *Id.* Respondent stated ''see,'' and Ryckeley explained: ''like I said, I took my girl's pills and it made me feel good * * * so I never, I've really never thought about it after that.'' *Id.* at 22. Ryckeley added that he was no longer taking the pills because he was applying for a new job and had to take a urinalysis and that if he was ''taking something, [and] didn't have a prescription,'' he ''might not get the job.'' *Id.* Ryckeley then told Respondent that he had been taking the pills ''about six times a day.'' *Id.*

Respondent asked Ryckeley: ''How's [the pain] affected your life, your work, your home, has it?'' *Id.* Ryckeley stated: ''not, not really no. Especially now since I've been on * * * my girl's medication.'' *Id.* Respondent then asked Ryckeley about when he was not ''on medication.'' *Id.* Ryckeley answered: ''it makes it more difficult to fish.'' *Id.* Respondent laughed and said: ''You're underwhelming me,'' and added ''you're sort of telling me, you do okay.'' *Id.* at 22–23. Respondent then told Ryckeley to ''just listen'' and added:

> If I came to you and I wanted pain medicine right? Cause I have pain. And I told you that, 'Um, it's just like a one or a two and it only bothers me when I fish and it hasn't affected my life.' You think that would be an appropriate patient for pain medicine?

Id. at 23. Ryckeley replied: ''[W]ell, it bothers me.'' *Id.*

Respondent then stated: ''You're, you're like telling me that's there's nothing going on.'' *Id.* Ryckeley attempted to interject, but Respondent continued, stating: ''I'm writing you the strongest medicine available. So I'm like, I'm thinking * * * what are we doing here?'' *Id.* Ryckeley stated ''yea, I think I missed,'' and Respondent replied: ''You're, I think, either I'm missing the point or you're missing the point.'' *Id.*

Ryckeley said: ''I think I'm missing the point.'' *Id.* Respondent then added: ''[B]ut you [are] telling me that the pain is a two and it doesn't affect you very often and you're doing fine.'' *Id.* After Ryckeley interjected that he was ''talking on medication,'' Respondent asked: ''it means to me * * * you know what that means to me?'' *Id.* at 24. Ryckeley replied ''No,'' and Respondent said: ''You should just take Tylenol * * * Because* * * You don't have anything wrong, I don't get it.'' *Id.* Respondent asked: ''What are you doing here?'' and Ryckeley again insisted his pain level was ''a two on the medication.'' *Id.*

Respondent and Ryckeley then discussed the latter's employment as a charter boat captain, followed by how long he had taken his girlfriend's medicine. *Id.* at 24–25. Ryckeley mentioned that he had broken up with his girlfriend and added that ''sometimes people gave me two at the club and stuff like that.'' *Id.* at 25.

Respondent then asked Ryckeley if the pain depleted his energy, with the latter stating that it made him ''less willing to do what I like to do'' because he was ''in discomfort.'' *Id.* Next, Respondent asked Ryckeley if he was ''irritable or moody because of the pain?'' Ryckeley answered: ''Yeah, I guess I would cause I feel a lot better on the pills than I'm at, a lot better mood when I'm not in a discomfort.'' *Id.* Respondent followed this by asking if it affected his relationship in ''any way.'' *Id.* Ryckeley answered: ''I think it makes it better, the medicine.'' *Id.*

Respondent then asked Ryckeley: ''[D]o they cause you problems at work?'' *Id.* Ryckeley said ''Nope,'' prompting Respondent to ask: ''I mean, you're able to work with the pain?'' *Id.* at 26. Ryckeley replied: ''with the medicine, I misunderstood that question. I'm able to work with, * * * with the medicine.'' *Id.* Respondent then asked: ''But you're now without the medicine, are you able to work without the medicine now?'' *Id.* Ryckeley replied: ''It makes it more difficult. Significantly more difficult.'' *Id.*

Respondent then asked Ryckeley whether he was allergic to any medicine (Ryckeley answering that he was not aware of any), whether he smoked (answering ''no''), and whether he drank, with Ryckeley stating he was a social drinker. *Id.* Respondent then discussed with Ryckeley the danger of mixing alcohol with oxycodone, with the former saying ''I'm not sure you yet have * * * an appreciation of how strong this medicine is, but medicine and alcohol, this medicine and alcohol is not to be mixed.'' *Id.* at 27.

Next, Respondent asked Ryckeley if he had any medical problems or surgeries; Ryckeley answered in the negative except for his having broken his nose three times. *Id.* Respondent then asked if he had ever ''seen a doctor for this?'' *Id.* Ryckeley said ''no.''

Respondent then asked: ''But the thirties seem to work good for you?'' *Id.* at 28. Ryckeley answered: ''Yeah, I like them,'' leading Respondent to ask: ''You like them?'' *Id.* Ryckeley stated: ''Well, which I mean, I think they, they work good.'' *Id.*

Respondent replied: ''You know, you're killing me, I can't even believe I'm having this conversation.'' *Id.* Ryckeley maintained that he had ''never been [an] educated man,'' prompting Respondent to state: ''killing me.'' *Id.*

Respondent then proceeded to perform a physical examination, telling Ryckeley to perform various movements including raising his arms and legs, standing up, and walking across the room. *Id.* at 28. He also told Ryckeley to have a seat and to show him where he was sore. *Id.* In total, the exam took less than one minute. *Id.; see also* GX 7 (audio recording).

Respondent again asked Ryckeley whether he was on any medicines ''right now'' and how bad his pain was ''right now.'' GX 7, at 29. Ryckeley now claimed that it was ''a five or seven * * * after you explained the chart to me'' and asserted that there were ''a lot [of] words'' on the forms that he ''didn't understand.'' *Id.* Respondent expressed his understanding, and asked ''[w]hat makes you hurt the most?'' *Id.* Ryckeley replied that in charter fishing there was ''running lines'' and ''a lot of standing out there.'' *Id.*

After a short discussion of sport fishing, Respondent said: ''Alright * * * let's * * * get you started on some medicine, we'll see how you do.'' *Id.* at 30. Respondent then proceeded to discuss Ryckeley's MRI, which showed a bulging disc with ''some inflammation'' at L–3, and another bulging disc between L–5 and S–1. *Id.* at 30–31. Respondent then told Ryckeley not to take the medication other than as it said on the bottle; not to buy, sell or share them; and to keep his medicine locked up. *Id.* at 31. Respondent also said that it was serious medicine, and that ''if you don't need it[,] I don't want you to take it but if your pain is such that * * * you can't function without it then * * * that's a reasonable indication.'' *Id.* at 32. Respondent then asked Ryckeley if his

work was slow, and the visit ended. *Id.* at 32–33.

Regarding the discussion with Respondent as to his pain level, Agent Ryckeley testified that he believed Respondent was coaching him to increase his pain level to justify prescribing oxycodone 30mg. Tr. Vol. 3, at 209, 269. Agent Ryckeley also testified that Respondent ''was a box-checker * * * and he was going through and checking the boxes and making sure [there was] every element to justify writing me * * * one of the strongest pain level—pain medicines available. He wanted to make sure all his Is were dotted and his Ts were crossed.'' *Id.* at 209–10. Respondent maintained, however, that Ryckeley presented as a person who ''was not very educated'' and ''had difficulty in * * * grasping his description of his pain, his degree [of] pain.'' Tr. Vol. 10, at 229. Respondent further testified that he ''spent the time to try to explain to him the pain scale and * * * give[] him an opportunity to express himself fully so that * * * we were communicating.'' *Id.* Respondent further maintained that he ''had every indication he was a real patient with pain.'' *Id.*

Although it is not entirely clear, the ALJ apparently credited Agent Ryckeley's testimony. *See* ALJ at 87. In any event, as ultimate factfinder, I find that the transcript of the visit—in particular Respondent's statements to Ryckeley that the latter was ''underwhelming him,'' his asking Ryckeley ''if I came to you and I wanted pain medicine'' and ''it's just like a one or a two * * * You think that would be an appropriate patient for pain medicine?,'' and his further statements that ''you're like telling me that there's nothing going on'' and ''I think either I'm missing the point or you're missing the point''—fully support Ryckeley's interpretation of the conversation and demonstrates the utter implausibility of Respondent's testimony.

I therefore find that Respondent coached Agent Ryckeley to provide a pain level sufficient to justify prescribing oxycodone. This finding provides reason alone to conclude that Respondent lacked a legitimate medical purpose and acted outside of the usual course of professional practice when he prescribed oxycodone to Agent Ryckeley.[20] 21 CFR 1306.04(a).

[20] As the Government's Expert also testified, Agent Ryckeley ''had stated he had received these drugs from a girlfriend, so he was not receiving them appropriately,'' Tr. Vol. 7, at 166, and told Respondent that the drugs ''put me in a state were, were I liked it, it made me feel better'' and he liked how the drugs made him feel. GX 7, at 19–20. Agent Ryckeley clearly presented as a drug-seeking patient, as Respondent himself recognized in his note for the visit in which he wrote: ''I want to make sure pt is legitimate pain patient with chance of diversion.'' GX 27, at 6.

Moreover, in light of the clear evidence that Respondent coached Ryckeley to justify his prescribing, and the latter's presentation of as a substance abuser, I do not find that Respondent's discussion of the risks of combining alcohol and oxycodone mitigates his misconduct. I do, however, adopt the ALJ's finding that Respondent failed to maintain accurate records as required by State regulations. *See* ALJ at 90.

SA Brigantty also visited CCHM on July 23, 2010. However, in contrast to the other undercover patients, Agent Brigantty's complaint was generally neither vague nor inconsistent and he presented an MRI which reported that he had three bulging disks in his lumbar spine. GX 26, at 22.

Respondent asked Agent Brigantty where his pain was (Brigantty answering ''his lower back''), how long it had been going on (Brigantty answering ''about fifteen years''), how he hurt his back (''lifting heavy objects''), and whether he had been in an accident or fallen off a scaffold (''No''). GX 9, at 35–36. When asked to describe his pain, Brigantty initially complained that his back was ''very stiff,'' but then added that ''right now, it's going down * * * my leg, sometimes in on my [U/I], but for the most part, the left side hurts.'' GX 9, at 36. Upon questioning by Respondent as to whether his pain was ''sharp,'' ''shooting,'' ''aching,'' ''throbbing,'' or stabbing,'' Brigantty answered: ''It depends on what's happening. Most of the time it's sharp.'' *Id.* at 36–37.

Moreover, when asked to rate his pain on the numeric scale, Brigantty stated that with the shooting it was ''about six,'' and that ''[i]f it's the other pain, it's going to debilitate for a little while, it's pretty f---ing bad.'' *Id.* at 37. After being told by Respondent that he would have to figure out what number corresponded to that, Brigantty again related that it could be ''pretty f—ing bad'' and that the pain went down his left leg although it was more like ''on the lower back but towards'' his buttocks. *Id.* Brigantty then related that he felt the pain ''sometimes even in the middle back, [and] you feel like someone just punched you in the stomach and you can't breath for a little while.'' *Id.* After being interrupted by an unidentified female, Respondent then asked Brigantty what the pain felt like when it went down his leg. *Id.* at 38. Brigantty replied ''it feels like electricity, I guess.'' *Id.*

Respondent then asked how the pain interfered with his work and life; Brigantty explained that he did odd jobs and that the pain interfered with his work (''Yeah, of course it does'') and with the kids. *Id.* at 38–39. Respondent then explained that Brigantty had several bulging disks and that ''when the disk is bulging, it means it's pushed back here, pushed back into the nerve,'' and ''[t]hat's what gives you the pain.'' *Id.* at 39.

Agent Brigantty asked Respondent if there was ''anything you can do for that?'' *Id.* Respondent replied that other than surgery, ''there's nothing you can do to push the disk back.'' *Id.* at 40. Brigantty then asked how successful the surgeries are; Respondent answered that ''if you have severe disease that * * * you know, [is] affecting you or giving you severe numbness or not letting you perform your work * * * then they can do the surgery,'' but ''[n]obody will give you a guarantee.'' *Id.* Next, Respondent asked Brigantty if he smoked (with Brigantty answering ''No''), drank (''occasionally''), was using either IV drugs (''No'') or recreational drugs (''No''), as well as whether he had ''any medical problems.'' *Id.* Brigantty said that the ''girl told me my blood pressure was high today.'' *Id.* Respondent then stated that Brigantty's blood pressure was ''very high'' and asked if this was the first time he had been told this. *Id.* at 41. Brigantty answered: ''They mentioned it in the past, but, I feel fine.'' *Id.*

Respondent then asked Brigantty where he had gone previously for pain medicine; Brigantty replied that he went to Jacksonville, but ''didn't like that experience'' and ''for the most part,'' he purchased them on the street. *Id.* When asked what he had been taking and how often, Brigantty said that he took Oxy thirties, but not often because ''they are pretty expensive'' and that someone had given him ''a Xanie bar.'' *Id.* Respondent then asked how long Brigantty had been taking the medicine; Brigantty said for about two to three years. *Id.* at 42. Respondent then asked if the oxycodone seemed to help him; Brigantty replied: ''Yeah, I was feeling good.'' *Id.*

Respondent then told Brigantty that his blood pressure was high and that he needed to get himself re-evaluated. *Id.* Respondent further explained: ''Meaning you need to find a regular medical doctor as soon as possible and have that re-checked.'' *Id.* Brigantty asked, ''Is that bad?''; Respondent said ''yes.'' *Id.* Brigantty then asked if the condition was ''life threatening bad?'' *Id.* Respondent answered: ''It could be if this persists, it can give you a stroke, heart attack, so it must be re-checked, if it remains at this level you probably need to be on medication.'' *Id.* Respondent added that ''[i]t sounds like other people have mentioned it to you

but you haven't taken it too seriously.'' *Id.* Brigantty answered ''yeah'' and Respondent added that ''it's very serious. It's a serious problem.'' *Id.* at 43.

After a further discussion of Agent Brigantty's blood pressure, Respondent performed a physical examination during which he had Brigantty breathe in and out and perform various exercises. *Id.* During the course of the examination, Respondent asked: ''[a]nd the pain * * * just goes down that * * * that left leg?'' *Id.* Brigantty answered: ''Yeap.'' *Id.*

Brigantty then asked if ''[t]his can get worse?'' *Id.* Respondent said it could, and when asked if there were ''things you could do,'' replied that Brigantty ''could do some stretching exercises to try to * * * increase your muscle strength.'' *Id.* at 44. He then added that there was no ''medicine to like move those discs back in place.'' *Id.*

Respondent then asked Brigantty what he had been given in Jacksonville; the latter again said ''Oxy Thirties, a while ago,'' but that the ''place was * * * disgusting.'' *Id.* Respondent asked if Brigantty ''use[sic] to go to American?'' *Id.* Brigantty stated:

> Well they wanted me to * * * they wanted * * * the girls outside told me they want a physician that I was seeing, and I'm like, ''I'm not seeing a physician.'' Then they went, ''You need to write something.'' Someone said American, I was like, ''F—it, I'll put American.'' But I don't see doctors, doc. I can't afford constantly going to the doctor. I barely could come in here today.

Id. Respondent acknowledged this statement, and Brigantty added that ''that's the only reason I put that down, cause * * * I didn't even know that I had high blood pressures. You know?'' *Id.* at 45. Respondent replied that he ''want[ed] to make sure that you get that under control,'' and asked if Brigantty was ''sleeping ok?'' *Id.* Once again, Brigantty represented that he had pain, stating, ''It hurts, you know what I mean?'' *Id.* Respondent replied, ''Right, but if the pain is under control you'd sleep better.'' *Id.* Brigantty said that he thought so and ''absolutely.'' *Id.* Respondent then stated: ''Well, we'll get you started on some medicine and we'll see how you do? You're not on anything now?'' *Id.* Brigantty said he was not. *Id.* Respondent then prepared a prescription for 150 Roxicodone 30mg, which he gave to Brigantty, telling him to take the medicine as it was prescribed and adding: ''Don't buy it, sell it, share it, keep it locked up in a safe place.'' *Id.* at 46; GX 26, at 19.

Citing ''numerous violations of applicable standards and regulations,'' the ALJ concluded that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in issuing the prescription to Agent Brigantty. ALJ at 72–73. More specifically, the ALJ noted that ''[g]iven SA Brigantty's confessed illicit use of controlled substances, Respondent failed to 'refer the patient as necessary for additional evaluation and treatment,' notwithstanding the Florida regulations provided that '[s]pecial attention should be given to those pain patients who are at risk for misusing their medication' or who 'pose a risk for medication misuse or diversion. * * *'' ALJ at 68 (quoting Fla. Admin Code Ann. R. 64B8–9.013(3)(e)).

The ALJ further noted that ''[t]he record reveals interactions between Respondent and SA Brigantty that reflect poorly both as to Respondent's standard of care as a physician and as to Respondent's knowledge of operations at CCHM.'' *Id.* at 68–69. Among other things, the ALJ faulted Respondent because he ''did not offer to prescribe blood pressure medication or perform any diagnostic testing for blood pressure,'' *id.* at 68–69; and ''did not refer SA Brigantty to any particular 'regular doctor,'' which the ALJ concluded ''is inconsistent with the referral standard contained in Fla. Admin Code Ann. R64B8-.013(3).'' *Id.* at 70. The ALJ further found that Respondent gave inconsistent testimony as to why he did not prescribe blood pressure medication, noting that Respondent initially testified he ''didn't want to prescribe medication for people I was only going to see one time,'' ALJ at 69 (citing Tr. Vol. 2, at 169, 214–15), yet later testified that his goal was to put Brigantty ''on a therapeutic trial of'' pain medication, and that ''I was going to see him back in a month'' and see how he did. Tr. Vol. 2, at 177–78; 215 (cited at ALJ 69–70).

As for the ALJ's various criticisms of Respondent's handling of Brigantty's high blood pressure, there is no evidence in this record establishing that prescribing oxycodone is contraindicated for a patient with this condition. Moreover, even if Respondent's failure to treat Brigantty's blood pressure [21] constitutes civil negligence—and there is no evidence that it does—this alone does not establish a violation of the CSA's prescription requirement. *See Laurence T. McKinney,* 73 FR 43260, 43266 (2008) (citing cases). Nor is the ALJ's conclusion that Respondent's failure to refer Brigantty ''to any particular 'regular doctor' * * * is inconsistent with the referral standard'' of the Florida pain regulation, ALJ at 70 (citing Fla. Admin. Code Ann. R.64B8–9.013(3)), supported by either the Expert's testimony or citation to any decision of the Florida courts or Board of Medicine.

To be sure, Respondent's prescribing of oxycodone to a patient who told him he had obtained the drug on the street and whom he did not expect to see again, raises the issue of how he would effectively monitor his patient. However, while the Government's Expert acknowledged on cross-examination that controlled substances can be prescribed to a patient who presents with a history of drug abuse if it is done ''very carefully with proper monitoring in place,'' Tr. Vol. 8, at 68; the Expert did not further explain what measures are required to properly monitor a patient under the standard of professional practice nor testify that it exceeds the bounds of professional practice to a prescribe to a person under these circumstances.

Indeed, with respect to Agent Brigantty (as opposed to the other patients), the testimony of the Government's Expert was not particularly illuminating on the ultimate issue of whether Respondent complied with 21 CFR 1306.04(a) in prescribing Roxicodone to him. *See* Tr. Vol. 7, at 157–162. When asked by Government counsel what information ''was significant in considering whether controlled substances should have been * * * prescribed,'' the Expert noted that Brigantty ''saw [Respondent] complaining of sharp, shooting pain in his lower back with radiation into his left leg and buttock. Pain is severe.'' *Id.* at 157. While the Expert observed that ''the physical exam portion * * * is a lot of check marks involving various portions of the fill-in places for the physical exam,'' the Expert offered no further testimony to the effect that the Respondent's physical exam did not support the findings and diagnosis that were documented. Likewise, the Expert testified that Respondent noted ''bony tenderness being present from L1 to L5 over the entire lumbar spine into the buttock,'' yet offered no testimony that this finding could not have been made based on the physical exam that was performed. *Id.* at 158. Moreover, Agent Brigantty did not remember if

[21] As for the ALJ's criticism that Respondent did not ''perform any diagnostic testing for blood pressure,'' ALJ at 69, here again, the record is devoid of any evidence establishing what tests are required under the standard of care, and in any event, the issue of the adequacy of Respondent's evaluation and treatment of Agent Brigantty's blood pressure is for the state medical board and not this Agency.

Respondent had palpated his back. Tr. Vol. 2, at 41.

Later, Government Counsel asked the Expert ''what, if any, information did [Agent] Brigantty give to [Respondent] that's of significant importance?'' Tr. Vol. 7, at 159–60. The Expert replied:

> Well, he stated he had low back pain for 15 years duration. He wasn't sure of the cause. It may have occurred lifting at work. He noted it shooting down into his leg, into the left leg and buttock, and stated it was severe. He rated the pain as six throughout the day and with flare-ups a ten, aggravated by lifting, bending, twisting, relieved by resting.

Id. at 160.

Subsequently, the Government asked the Expert if he saw in Agent Brigantty's Patient File ''any significant medical information that justifies the issuance of controlled substances prescriptions?'' *Id.* at 162. The Expert answered, ''I do not'' and provided no further explanation as to why the information he had previously related regarding Brigantty's complaint, history and physical exam did not support Respondent's diagnosis and the prescription. *Id.* Indeed, the Expert did not even acknowledge the MRI report Brigantty presented, let alone explain why the MRI's findings combined with the other information, did not justify the diagnosis and the issuance of the prescription.[22] In short, substantial evidence does not support a finding that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose in prescribing to Agent Brigantty.

Accordingly, with the exception of the visit of Agent Brigantty, I reject Respondent's Exceptions to the ALJ's findings that he acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to Agents Marshall, O'Neill, Doklean, Priymak, Zdrojewski and Ryckeley and thus violated both federal and state law. 21 CFR 1306.04(a), 21 U.S.C. 841(a)(1); Fla. Stat. Ann. § 458.331(1)(q). I further find that substantial evidence supports a finding that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed controlled substances to Agent Saenz. *See id; see also* 5 U.S.C. 557(b) (''On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision. * * *''). I also adopt the ALJ's findings and legal conclusions with respect to each of the Agents who saw Respondent at Commercial Medical Group, including his finding that Respondent acted outside of the usual course of professional practice and lacked a legitimate medical purpose when he prescribed Xanax to Agent Bazile. *See* ALJ at 92 (citing 21 CFR 1306.04(a)). In addition, substantial evidence also supports the ALJ's numerous findings that Respondent failed to maintain accurate records in violation of Florida's regulations, *see* ALJ at 93 (citing Fla. Admin. Code r.64B8–9.013(3)(f)), and that he falsified numerous patient records to support the prescribing of controlled substances.[23]

In his Exceptions, Respondent further contends that he ''was denied the opportunity to review and produce files of patients that he had discharged from the clinic'' which ''had been seized by [the Agency] pursuant to a federal search warrant.'' Exceptions at 9–10. Respondent contends that ''[t]he discharge files evidence [his] compliance with Florida Standards of Care, Florida Medical Regulations, as well as state and federal law.'' *Id.* at 10. He further contends that the files ''would also permit [him] to [show his] methodology in determining whether or not to write prescriptions for persons claiming to have pain'' and ''that he would not automatically write prescriptions merely because individuals claimed to be suffering from pain.'' *Id.*

As for the contention that these files would permit him to show his methodology in determining whether to write prescriptions and that he would not automatically write prescriptions merely because a person complained of pain, these files are not relevant in assessing Respondent's compliance with federal and state standards in prescribing to the undercover CCHM patients. With respect to these patients, Respondent had ample opportunity to testify as to his methodology in determining whether to prescribe to the Agents as he was provided with the files of each of the Agents whose prescriptions form the bulk of the Government's case against him.[24]

As for the contention that the discharged patient files would show his compliance with applicable standards, I will credit his testimony that he has discharged hundreds of patients. Tr.

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[22] The ALJ also cited the Government's Expert testimony ''that a patient who is illegally buying drugs on the street, and who requests that the same drug be prescribed, should be precluded from receiving prescriptions for controlled substances.'' ALJ at 72 (citing Tr. Vol. 7, at 161). However, even assuming that the Expert's testimony reflects the accepted standards of professional practice, neither the transcript, nor the DVD of Agent Brigantty's visit, provide evidence that the Agent requested that Respondent prescribe Roxicodone 30mg to him.

The Government and the ALJ also noted that there was no evidence that Respondent discussed the risks and benefits of controlled substances notwithstanding that he documented in the medical record that he did so. While this may constitute a violation of the State's regulations (which require both that he do so and document having done so), as well as some evidence that a practitioner exceeded the bounds of professional practice, by itself it is not conclusive proof that a prescription was issued as part of a drug deal.

Finally, the ALJ found it significant that Respondent prescribed to Agent Brigantty notwithstanding that he had told Respondent that he had falsified his medical record by listing on his history that he had gone to a clinic to which he had not gone. *See* ALJ at 71. According to the ALJ, ''[a]pplicable Florida regulations are clear about the mandatory weight of the recordkeeping guideline: 'The physician is required to keep accurate and complete records' before prescribing controlled substances.''' *Id.* (citing Fla. Admin. Code Ann. r. 64B8–9.013(f)). The ALJ then reasoned that ''Respondent's acquiescence in recordkeeping inaccuracies weighs heavily against [his] continued registration.'' *Id.*

While I agree that there are numerous other apparent violation of the State's regulations (including with respect to Agency Brigantty by documenting having discussed various items which he did not do), *see* ALJ at 71–72, I do not rely on the above discussion. As the evidence shows, on the history and physical examination form, Respondent documented that Brigantty's ''Past history of Pain Management'' included ''Jacksonville and then the street.'' This was an accurate statement of what Agent Brigantty had told Respondent.

[23] In his Exceptions, Respondent argues that ''[t]he Government successfully prevented Dr. Wolff from inquiring whether undercover patients had made subsequent visits to the clinic and whether [they] had been unsuccessful in acquiring controlled substances from Dr. Wolff.'' *Id.* at 12. In his Exceptions, Respondent does not identify which of the Agents the ALJ precluded him from asking whether they had returned to the clinic. Upon reviewing the record, it is noted that while the ALJ sustained the Government's objection to Respondent's asking this question on cross-examination of two of the Agents, he did so on the ground that the question was beyond the scope of the direct examination. *See* Tr. Vol. 3, at 183, 276–77. Respondent does not contend, however, that he sought to subpoena the Agents to ask this question of them. In addition, the patient files contain no evidence that any of the eight Agents made undercover visits after the dates to which they testified as having obtained controlled substances on from Respondent. I thus reject this Exception.

[24] It is acknowledged that the Government did not turn over the patient file for Agent Bazile, who saw Respondent at CMG. However, the ALJ's finding that Respondent violated 21 CFR 1306.04(a) when he prescribed Xanax to her was based on Agent Bazile's credited testimony. More specifically, Agent Bazile testified that she asked Respondent for something to help her sleep. Tr. Vol. 6, at 23. Respondent then asked if she had trouble sleeping, and Agent Bazile replied ''sometimes,'' prompting Respondent to remark that she was ''not very convincing.'' *Id.* at 23–24. At the hearing, Respondent testified that he could not provide the reason he prescribed Xanax to Agent Bazile without having the opportunity to see her patient file. Tr. Vol. 10, at 53. I adopt the ALJ's finding noting that Respondent had ample opportunity to cross-examine her regarding the circumstances surrounding her obtaining of the Xanax prescription and yet did not ask her a single question about this prescription. *See* Tr. Vol. 6, at 30–61. I thus find her testimony credible as did the ALJ. ALJ at 9.

Vol. 9, at 272. Accordingly, the files were not necessary to prove his assertion and Respondent cannot claim prejudice. *Cf.* 5 U.S.C. 706 (''due account shall be taken of the rule of prejudicial error'').

However, that Respondent discharged hundreds of other patients does not render the prescriptions he issued to Agents Marshall, O'Neill, Doklean, Priymak, Zdrojewski, Ryckeley, Saenz and Bazile any less unlawful. *See Dewey C. MacKay,* 75 FR 49956, 49977 (2010) (quoting *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (holding that a physician's lawful ''prescribings to thousands of other patients [does] not * * * render [his] prescribings to undercover officers any less unlawful, or any less acts which 'are inconsistent with the public interest''')). Indeed, with respect to these patients, the evidence is clear that Respondent was not duped and that he intentionally diverted controlled substances.[25] *See* ALJ at 95. Thus, the Government has made out a *prima facie* case that Respondent ''has committed such acts as would render his registration * * * inconsistent with the public interest.''[26] 21 U.S.C. 824(a)(4).

As the ALJ explained, under longstanding Agency precedent, where, as here, ''the Government has proved that a registrant has committed acts inconsistent with the public interest, a registrant must 'present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility carried by such a registration.' '' *Medicine Shoppe,* 73 FR at 387 (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2008) (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination). In addition, DEA has held that a registrant's candor is an important factor in the public interest determination. *See Satinder Dang,* 76 FR 51424 (2011); *Alan H. Olefsky,* 76 FR 20025 (2011); *The Lawsons, Inc.,* 72 FR 74334 (2007). *See also Hoxie,* 419 F.3d at 483.

It is acknowledged that Respondent testified that he had fired several clinic employees after he purchased CCHM and that he brought in a risk manager to assess the clinic's procedures and to create a policy and procedures manual. However, as the ALJ found, ''Respondent's testimony * * * repeatedly demonstrated [his] belief that he had engaged in no past misconduct and was in full compliance with existing laws and regulations,'' as well as ''a remarkable lack of acknowledgment and recognition of the risks of diversion.'' ALJ at 97–98. In addition, the ALJ found that ''Respondent's testimony in numerous instances was not credible and reflected an overall lack of admission of past misconduct, let alone acceptance of responsibility.'' *Id.* at 98. Indeed, much of his testimony regarding the CCHM patients was patently disingenuous. Accordingly, I adopt the ALJ's conclusion that Respondent has ''fail[ed] to accept responsibility for his misconduct and demonstrate that he will not engage in future misconduct,'' ALJ at 98, and therefore hold that he has not rebutted the Government's *prima facie* case. Given the egregiousness of his misconduct, I further adopt the ALJ's recommendation that Respondent's registrations be revoked and that any pending application for renewal or modification of his registrations be denied.

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 Certificates of Registration FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233, and BW0601446, issued to Randall L. Wolff, M.D., be, and they hereby are, revoked. I also order that any pending application of Randall L. Wolff, M.D., to renew or modify these registrations, as well as any pending

[25] As I have previously explained,

Under the CSA, a practitioner is not entitled to a registration unless [he] ''is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because under law, registration is limited to those who have authority to dispense controlled substances in the course of professional practice, and patients with legitimate medical conditions routinely seek treatment from licensed medical professionals, every registrant can undoubtedly point to an extensive body of legitimate prescribing over the course of [his] professional career.

Jayam Krishna-Iyer, 74 FR 459, 463 (2009).

In *Krishna-Iyer,* I further explained that in past cases, this Agency has given no more than nominal weight to a practitioner's evidence that he has dispensed controlled substances to thousands of patients in circumstances which did not involve diversion. *Id. See also MacKay,* 75 FR at 49977; *Paul J. Caragine,* 63 FR 51592, 51599 (1998) (''[T]he Government does not dispute that during Respondent's 20 years in practice he has seen over 15,000 patients. At issue in this proceeding is Respondent's controlled substance prescribing to 18 patients.''); *id.* at 51600 (''[E]ven though the patients at issue are only a small portion of Respondent's patient population, his prescribing of controlled substances to these individuals raises serious concerns regarding [his] ability to responsibly handle controlled substances in the future.'').

While in *Caragine,* my predecessor did consider ''that the patients at issue ma[de] up a very small percentage of Respondent's total patient population,'' he also noted—in contrast to most of the prescriptions at issue here—''that [those] patients had legitimate medical problems that warranted some form of treatment.'' *Id.* at 51601. Moreover, in contrast to this case, in *Caragine,* there was no evidence that the practitioner had intentionally diverted. *Id. See also Medicine Shoppe—Jonesborough,* 73 FR 364, 386 & n.56 (2008) (noting that pharmacy ''had 17,000 patients,'' but that ''[n]o amount of legitimate dispensings can render * * * flagrant violations [acts which are] 'consistent with the public interest.' ''), *aff'd, Medicine Shoppe-Jonesborough* v. *DEA,* 300 Fed. Appx. 409 (6th Cir. 2008).

Indeed, DEA has revoked other practitioners' registrations for committing as few as two acts of diversion, and ''can revoke based on a single act of diversion'' absent a credible showing by the registrant that he accepts responsibility for his misconduct. *MacKay,* 75 FR at 49977. *See also Alan H. Olefsky,* 57 FR 928, 928–29 (1992) (revoking registration based on physician's presentation of two fraudulent prescriptions to pharmacy and noting that the respondent ''refuses to accept responsibility for his actions and does not even acknowledge the criminality of his behavior''); *Sokoloff* v. *Saxbe,* 501 F.2d 571, 576 (2d Cir. 1974) (upholding revocation of practitioner's registration based on *nolo contendere* plea to three counts of unlawful distribution).

Accordingly, evidence that a practitioner has treated thousands of patients does not negate a *prima facie* showing that the practitioner has committed acts inconsistent with the public interest. While such evidence may be of some weight in assessing whether a practitioner has credibly shown that he has reformed his practices, where a practitioner commits intentional acts of diversion and insists he did nothing wrong, such evidence is entitled to no weight. *Krishna-Iyer,* 74 FR at 463.

[26] As the ALJ explained, the public interest factors are ''considered in the disjunctive. [I] may properly rely on any one or a combination of those factors, and give each factor the weight [I] deem appropriate, in determining whether a registration should be revoked or an application for registration should be denied.'' ALJ at 43 (citing cases); *see also Hoxie* v. *DEA,* 419 F.3d, 477, 482 (6th Cir. 2005). Nor am I required to make findings as to all of the factors. *Hoxie,* 419 F.3d at 482. Moreover, whether conduct is considered under factor two—the experience factor, or factor four—the compliance factor, or both factors, is of no legal consequence because the fundamental question is whether the registrant ''has committed such acts as would render [his] registration * * * inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Thus, as both the Agency and various courts of appeals have recognized, findings under a single factor are sufficient to support the revocation of a registration, especially where the proven misconduct involves egregious acts. *See Hoxie,* 419 F.3d at 482; *Morall* v. *DEA,* 412 F.3d 165, 173–74 (DC Cir. 2005); *Krishna-Iyer,* 74 FR at 462.

That said, I have considered the ALJ's findings with respect to each of the factors and adopt them except as noted herein.

application for a new registration, be, and they hereby are denied. This order is effective immediately.[27]

Dated: January 19, 2012.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government

Bruce A. Zimet, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

I. Introduction

A. The Order to Show Cause and Immediate Suspension of Registration

Timothy D. Wing, Administrative Law Judge. This proceeding is an adjudication pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* to determine whether the Drug Enforcement Administration (DEA or Government) should revoke a physician's DEA Certificates of Registration (CORs) as a practitioner pursuant to 21 U.S.C. 824(a)(4) and deny, pursuant to 21 U.S.C. 823(f), any pending applications for renewal or modification thereof and any application for a new COR. Without these registrations, Respondent Randall L. Wolff, M.D. (Respondent), of the State of Florida, would be unable to lawfully prescribe, dispense or otherwise handle controlled substances in the course of his practice.

On December 16, 2010,[1] the Deputy Administrator, DEA, served an Order to Show Cause and Immediate Suspension of Registration (OSC/IS) upon Respondent, dated December 14, 2010. The OSC/IS immediately suspended Respondent's nine (9) DEA CORs as a practitioner, and also provided notice to Respondent of an opportunity to show cause as to why the DEA should not revoke Respondent's CORs, pursuant to 21 U.S.C. 824(a)(4), and deny, pursuant to 21 U.S.C. 823(f), any pending applications for renewal or modification thereof and any applications for a new COR, alleging that Respondent's continued registration is inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f).

The OSC/IS alleges that Respondent is registered as a practitioner in Schedules II through V under DEA registration numbers FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233 and BW0601446, and that on or about August 12, 2010, Respondent submitted an application for registration, assigned Control Number W10053115C, as a practitioner in Schedules II through V. (Administrative Law Judge (ALJ) Ex. 1 at 1–2.)

The OSC/IS further alleges that between approximately March 5, 2010, and July 23, 2010, Respondent distributed controlled substances (to include oxycodone and alprazolam) by issuing prescriptions to at least eleven undercover law enforcement officers for other than a legitimate medical purpose or outside the usual course of professional practice. In particular, the OSC/IS alleges that on March 5, 2010, Respondent distributed to three undercover law enforcement officers various quantities of controlled substances after conducting little or no physical examination, among other deficiencies.

In addition, the OSC/IS alleges that from April 7, 2010, through July 23, 2010, Respondent distributed oxycodone and alprazolam tablets to at least eight undercover law enforcement officers under circumstances similar to those noted above, to include little or no physical examination, no diagnosis warranting the prescription for controlled substances and under circumstances which Respondent knew or should have known that prescribing controlled substances was for other than a legitimate medical purpose.

Finally, the OSC/IS alleges that Respondent's registered location associated with DEA COR FW1453757 is the location of Coast to Coast Healthcare Management Pain Clinic (CCHM) and the location where the vast majority of the undercover activity occurred; that from approximately July 30, 2009, through December 29, 2009, Respondent ordered approximately 249,000 dosage units of oxycodone that were delivered to this location; and that from approximately January 4, 2010, through September 1, 2010, Respondent ordered approximately 267,000 dosage units of oxycodone that were delivered to this location.

In addition to the OSC/IS, the Government also noticed and alleged additional information in its initial and supplemental prehearing statements to include Automation of Reports and Consolidated Orders System (ARCOS) data pertaining to Respondent, along with medical expert opinion regarding Respondent's prescribing and recordkeeping practices.

Following prehearing procedures, a hearing was held in Ft. Lauderdale, Florida between February 15, 2011, and February 18, 2011, and in Miami, Florida between March 8, 2011, and March 17, 2011,[2] with the Government represented by counsel and Respondent represented by counsel. 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.

II. Issue

Whether the record establishes that Respondent's DEA CORs FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233 and BW0601446 as a practitioner should be revoked and any pending applications for renewal or modification thereof and any applications for a new COR, to include application WI0053115C, should be denied, on the grounds that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f).

III. Evidence and Incorporated Findings of Fact[3]

I find, by a preponderance of the evidence, the following facts:

A. Stipulated Facts[4]

1. Respondent is registered with DEA as a practitioner in Schedules II through V under DEA registration numbers FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233 and BW0601446 at 328 East Hillsboro Blvd., Deerfield Beach, Florida 33441; Delray Beach Fire Dept., 501 W. Atlantic Avenue, Delray Beach Florida 33444; Palm Beach Fire Rescue, 300 N. County Road, Palm Beach, Florida 33480; West Palm Beach Fire Dept., 500 North Dixie, West Palm Beach, Florida 33401; Wycliffe Golf & Country Club, 4160 Wycliffe Country Club Drive,

[27] For the same reasons that I ordered the immediate suspension of Respondent's registrations, I conclude that the public interest requires that his order be effective immediately. 21 CFR 1316.67.

[1] The Government's Notice of Service of Order to Show Cause and Immediate Suspension of Registration states that ''Service was completed on December 16, 2010.'' (Notice of Service at 1.) In his hearing request, Respondent states that ''Dr. Wolff was served on December 17, 2010. * * *'' (Hg. Req. at 2.) Respondent subsequently stipulated that service occurred on December 16, 2010.

[2] Hearing was recessed over the weekend of March 12–13, 2011.

[3] In addition to the evidence discussed in this Section, additional evidence and findings of fact are discussed in later Sections of this Recommended Decision.

[4] (*See* ALJ Ex. 8; *see also* Tr. vol. 5, at 4–5.)

Wellington, Florida 33449; Public Safety Fire Department, 560 US Highway 1, North Palm Beach, Florida 33408–4902; Greenacres City Public Safety, 2995 Jog Road, Greenacres City, Florida 33467; 10985 Blue Palm Street, Plantation, Florida 33324–8234 and Lake Worth Fire Dept., 1020 Lucerne Ave., Lake Worth, Florida 33460, respectively.

2. Respondent's DEA registration numbers FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233 and BW0601446 expire by their terms on May 31, 2012, May 31, 2012, May 31, 2013, May 31, 2012, May 31, 2012, May 31, 2013, May 31, 2012, May 31, 2012 and May 31, 2011, respectively.

3. On or about August 12, 2010, Respondent filed an application with DEA for a DEA COR as a practitioner to handle controlled substances in Schedules II through V at 8609 Forest City Road, Orlando, Florida 32809; this application was assigned DEA Control Number W10053115C. Respondent's application is pending.

4. On December 16, 2010, a federal criminal search warrant was executed at 328 East Hillsboro Blvd., Deerfield Beach, Florida 33441, one of Respondent's registered locations. Respondent was simultaneously served with the DEA OSC/IS.

5. Oxycodone is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii).

6. OxyContin is a brand of oxycodone, a Schedule II narcotic controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii).

7. Roxicodone is a brand of oxycodone, a Schedule II narcotic controlled substance pursuant to 21 CFR 1308.12(b)(1)(xiii).

8. Alprazolam is a Schedule IV controlled substance pursuant to 21 CFR 1308.14(c)(1).

9. Xanax is a brand of alprazolam, a Schedule IV narcotic controlled substance pursuant to 21 CFR 1308.14(c)(1).

10. Vicodin is a brand of hydrocodone combination product, a Schedule III narcotic controlled substance pursuant to 21 CFR 1308.13(e)(1)(iv).

11. Soma is a brand of carisoprodol, a non-controlled [5] muscle relaxant.

B. Introduction

Respondent completed his internship and residency in the field of internal medicine in 1980, subsequently working in emergency medicine as well as completing a fellowship in pulmonary/critical care. (Tr. vol. 9, at 211.) Respondent worked in Florida as an emergency department physician at JFK Medical Center beginning in 1982, later becoming Deputy Medical Director, and eventually Medical Director from 1995 to 2001. (Tr. vol. 9, at 214.) Respondent next worked as a regional medical director for three hospitals in California for a little more than a year, before returning to Florida to work in several different emergency departments. (Tr. vol. 9, at 216–17.) Respondent began a clinic in Delray Beach, Florida, and also worked as medical director for various municipal and community fire and emergency departments. (Tr. vol. 9, at 217.)

In July 2009 Respondent accepted a position at Commercial Medical Group (CMG),[6] a pain management clinic in Fort Lauderdale, Florida. Respondent's employment at CMG ended in February or March 2010 due to a conflict between Respondent and the owner, Mr. Vincent Colangelo. (Tr. vol. 9, at 220.)

Respondent next worked for another clinic known as American Pain for approximately one week, before the clinic was closed down.[7] (Tr. vol. 9, at 235.) In April 2010, Respondent began working for another pain clinic, CCHM, initially working there with three or four other doctors until October 2010, when Respondent's role changed from independent contractor to owner of the clinic. (Tr. vol. 9, at 221.) Respondent remained at CCHM as owner and practicing doctor from October 2010 until mid-December 2010, when the clinic was closed by DEA. (Tr. vol. 9, at 222.)

C. Evidence

1. Background

The Government's evidence included testimony from seventeen witnesses, including Respondent and a pain management expert, Dr. Scott A. Berger, M.D. Three witnesses were undercover law enforcement officers who posed as patients and received treatment from Respondent at CMG: DEA Special Agent (SA) Mark McClarie (SA McClarie); SA Rochelle E. Burnett Bazile (SA Bazile); and SA Kirk Miller (SA Miller). Eight witnesses were undercover law enforcement officers who posed as patients and received treatment from Respondent at CCHM: SA Nicholas Priymak (SA Priymak); SA Jeffrey K. O'Neil (SA O'Neil); SA Julia Saenz de Viteri (SA Saenz); SA Marc A. Marshall (SA Marshall); DEA Task Force Officer (TFO) Dana G. Doklean (TFO Doklean); SA Louis J. Ryckeley (SA Ryckeley); SA Brian M. Zdrojewski (SA Zdrojewski); and SA Edwin Brigantty (SA Brigantty). Mr. Kyle J. Wright, Unit Chief, DEA Office of Diversion Control, testified regarding ARCOS data pertaining to Respondent.[8] DEA Diversion Investigator (DI) Barbara Boggess (DI Boggess) testified regarding Respondent's DEA certificates of registration. Finally, the evidence included testimony from DEA TFO Robbie R. Weir (TFO Weir), ''case agent'' for the investigation of CCHM, and SA Joseph Gill (SA Gill), ''case agent'' for the investigation of CMG.

The Government's evidence also included various audio and video recordings of undercover meetings that occurred at CMG and CCHM, along with transcripts of portions of the various recordings.[9] Additionally, the evidence included eight patient files associated with undercover visits to CCHM. No patient files were offered with regard to undercover visits to CMG.

Respondent's evidence included testimony from four witnesses, including Respondent. Three witnesses provided testimony related to three of Respondent's registered locations: Phil Webb, Fire Chief, West Palm Beach Fire Department; Mark Pure, EMS Chief, Greenacres City Department of Public Safety; and David Dyal, Assistant Fire Chief, Stuart, Florida. Respondent testified regarding his education and professional background, as well as his

[5] Although not pertinent to the instant proceeding, I note that because of its potential for abuse, DEA has initiated a proceeding to place carisoprodol into Schedule IV under the Controlled Substances Act. *See* 74 FR 59,108, 59,109 (DEA 2009).

[6] Respondent testified that CMG had previously been called Seaside Pain Management Clinic, but that the name was changed in or about August or September 2009. (Tr. vol. 11, at 95.)

[7] Respondent testified on cross-examination that the only pain clinics he worked at were CMG and CCHM, except that he also worked ''for a brief time in Orlando'' but did not remember the name of the clinic. (Tr. vol. 11, at 76.)

[8] The ARCOS evidence shows trends in Respondent's prescribing of controlled substances over time as well as absolute numbers of dosage units prescribed. (*See* Tr. vol. 1, at 100–169; *see also* Gov't Exs. 13 & 30.) Mr. Wright could not testify as to the causes of the trends other than to identify that the trends existed. (*E.g.,* Tr. vol. 1, at 148.) The Government concedes, correctly, that ''[s]tanding alone this ARCOS data is not persuasive * * *.'' (Gov't Br. at 8.) The Government argues, however, that in conjunction with evidence of Respondent's prescribing practices, the ''ARCOS data * * * reveals * * * the impact that the Respondent's illegal conduct had on the health and safety of the public.'' (Gov't Br. at 8.) To the contrary, in the form it was offered, the ARCOS evidence provides little insight into whether Respondent's conduct was consistent or inconsistent with the public interest. *See Gregg & Son Distribs.,* 74 FR 17,517, 17,517 n.1 (DEA 2009) (''To make clear, it is the Government's obligation as part of its burden of proof and not the ALJ's responsibility to sift through the records and highlight that information which is probative of the issues in the proceeding.'')

[9] No recording was made of the meeting between SA Bazile and Respondent at CMG, or SA Saenz and Respondent at CCHM, due to recording failures.

prescribing practices. Respondent's evidence also included eight patient files associated with undercover visits to CCHM,[10] along with six other patient files reflecting prior treatment by Respondent. (Resp't Exs. 1–8; 11, 13, 15–17 & 19.)

With the exception of Respondent and Dr. Berger, I find all of the witnesses at hearing to be fully credible in that the testimony was generally internally consistent and evidenced a reasonable level of memory for past events. Each witness presented testimony in a professional manner and the material portions of the testimony was consistent with other credible evidence of record. Respondent's testimony was presented in a professional and serious manner, but as more fully explained in the discussion section below, I find it to be only partially credible. Dr. Berger's testimony was generally credible, but was diminished in several respects by various factual errors, as more fully explained below.

2. Expert Testimony and Report

The Government presented the testimony of Dr. Scott A. Berger, M.D., along with a written report prepared by Dr. Berger (Gov't Ex. 32), pertaining to his review of various DEA reports of investigation and eight patient files related to DEA undercover visits to CCHM between April 7, 2010, and July 23, 2010. Dr. Berger did not review or offer any testimony related to three undercover patient visits to CMG.

The Government offered Dr. Berger as an expert in the legitimate and illegitimate use of narcotic controlled substances related to pain management. (Tr. vol. 7, at 38.) Dr. Berger testified that he has over twenty years of experience in treating chronic pain patients and is certified by the American Board of Anesthesiology, as well as the American Academy of Pain Management. (Tr. vol. 7, at 11; *see* Gov't Ex. 20 at 3.) Dr. Berger further testified that the American Academy of Pain Management is not a board, but rather a peer review organization, which predated the American Board of Pain Management. Dr. Berger testified that he is not board certified by the American Board of Pain Management. (Tr. vol. at 7, at 26.) Based on his experience, education, and training, I accepted Dr. Berger as an expert within the field of pain medicine.

Consistent with his testimony, Dr. Berger stated in his report that the patient files for undercover special agents Brigantty, Zdrojewski and Ryckeley reflected ''extremely superficial physical examinations, which were essentially memorialized in the record as a series of checkboxes, which did not truly indicate what was done.'' (Gov't Ex. 32 at 113.) Dr. Berger's report further indicated that the three patient files reflected referrals to a neurosurgeon in two instances, and an interventional anesthesiologist in the third, but ''these were just words, and never actually occurred.'' (Gov't Ex. 32 at 114.)

Dr. Berger opined that with regard to his review of eight undercover patient files, and related information, Respondent ''fell well below the standard of care in many if not all the standards as they relate to the prescribing of controlled substances in the State of Florida.'' (Tr. vol. 7, at 177.) Dr. Berger explained the basis for his opinion to include the fact that evaluations of patients were incomplete, lacked review of prior patient records, and Respondent was ''essentially taking [patients] at their word for a lot of their stories.'' (Tr. vol. 7, at 178.) Dr. Berger further explained that Respondent's treatment plans were just checked boxes, and Respondent had not made actual referrals to other healthcare providers. Dr. Berger also testified that it is very dangerous to treat people with depression or bipolar disorder with a combination of opioids and benzodiazepine. (Tr. vol. 7, at 180.)

3. Commercial Medical Group (CMG)

SA Gill testified in substance to having approximately seven years of law enforcement experience with DEA. SA Gill testified that he was primarily involved in the investigation of CMG, which began in September of 2009. (Tr. vol. 5, at 203.) SA Gill testified that he was the ''case agent'' and learned from a confidential source that a Mr. Vincent Colangelo was the owner of several pain clinics, including CMG. (Tr. vol. 5, at 203.) CMG was determined to be a cash-only business open usually six days per week, with lines of patients outside the door. (Tr. vol. 5, at 205.) SA Gill was also aware that Respondent worked as a physician at CMG. (Tr. vol. 5, at 204.) SA Gill further testified that weekly surveillance which revealed vehicles from the states of Kentucky, Tennessee, the Carolinas and Ohio, among others, raised DEA agents' suspicions. (Tr. vol. 5, at 205.)

SA Gill further testified that based on information from various confidential sources, CMG saw approximately forty to one hundred patients a day. (Tr. vol. 5, at 207–08.) SA Gill testified that Mr. Colangelo had a well-known formula that would generate the most amount of money for the clinic, keep patients happy and generate a lot of money for the pharmacy. (Tr. vol. 5, at 214.) The formula was ''240 oxycodone 30-milligram tablets, 90 oxycodone 15-milligram tablets, and, then, 90 Xanax, 2-milligram bars.'' (Tr. vol. 5, at 214.)

SA Gill testified that as part of the investigation of CMG, three undercover law enforcement officers posing as patients visited CMG in early 2010[11] with the goal of meeting one-on-one with a doctor to determine if there was any level of criminal behavior or if inappropriate prescriptions were being written. (Tr. vol. 5, at 206.) SA Gill further testified on direct examination that in January 2011, he instructed that law enforcement officers go to CMG with release forms and attempt to recover patient files related to three undercover law enforcement visits to CMG in 2010.[12] (Tr. vol. 5, at 215.) SA Gill testified on direct examination that he was unsuccessful in obtaining the undercover patient files from CMG.

On cross-examination, over Government counsel's objection,[13] SA Gill testified that he had recovered the patient files for at least two of the three undercover officers that met with Respondent at CMG. (Tr. vol. 5, at 218.) The files were recovered at a storage warehouse. (Tr. vol. 5, at 219.) SA Gill also testified the ''Colangelo formula'' had been reduced due to law enforcement and media attention, and the formula was not consistent with every patient. (Tr. vol. 5, at 227.) SA Gill further testified on cross-examination that he was aware Respondent had quit CMG, but did not know the reason. (Tr. vol. 5, at 237–38.)

[10] Respondent argued at hearing that use of separate copies of patient files for the eight undercover visits to CCHM was necessary because the source of the files, and arguably content, varied from those presented by the Government. In the absence of an objection by the Government, the patient files, which are substantially identical to those offered by the Government, were admitted. (Tr. vol. 10, at 86–88; Tr. vol. 11, at 46.)

[11] The witness did not recall the exact date, but thought it was ''January or so.'' (Tr. vol. 5, at 205.) The testimony of the undercover officers and other uncontroverted evidence of record places the date at March 5, 2010.

[12] Special Agents Miller, Bazile and McClarie.

[13] As a cautionary note, although Agency precedent relieves the Government of a duty to disclose ''potentially exculpatory information'' to a respondent, there remains, of course, an ongoing duty to ensure that material evidence and argument made to a fact-finder is not knowingly contradicted by other material evidence in the Government's possession, but not otherwise disclosed. *See, e.g., Richard A. Cole, M.D.,* 57 FR 8677, 8677 (DEA 1992) (after hearing, Government filed Request for *In Camera* Inspection of Information advising that one of Government's witnesses at hearing failed to disclose information in response to certain questions asked during cross-examination).

(a) SA Miller, March 5, 2010 Undercover Visit to CMG

SA Miller testified in substance to having approximately fourteen years of law enforcement experience, including an assignment to a DEA Tactical Diversion Squad for the past three years. SA Miller testified that he met Respondent on March 5, 2010, at CMG while working in an undercover capacity and posing as a patient. Upon arriving at CMG he observed the waiting area to be very crowded and disorganized, with a long line of people. (Tr. vol. 5, at 13.) After waiting in line, SA Miller was handed a clipboard with paperwork and told the cost of the visit was $250, for which he gave the receptionist $300.[14] (Tr. vol. 5, at 14.) SA Miller completed the paperwork, noting left knee discomfort and nothing on the pain scale, among other information. (*E.g.,* Tr. vol. 5, at 16.) SA Miller also provided CMG staff a copy of an MRI report which was an actual report of SA Miller's knee using his undercover name. (Tr. vol. 5, at 29; *see* Gov't Ex. 12 at 13.) After returning the forms to the receptionist, SA Miller waited approximately two hours, noticing that other patients arriving after him had already been seen by a doctor. (Tr. vol. 5, at 17.) SA Miller approached the receptionist and gave her a $100 tip to speed things along, and waited another two hours before being called to triage. (Tr. vol. 5, at 17.) In triage, SA Miller's blood pressure was taken and he was asked the purpose of the visit. SA Miller also submitted to a urinalysis test. (Tr. vol. 5, at 18.)

SA Miller next testified that before he went to the triage area, Mr. Vincent Colangelo arrived and appeared agitated, questioning why so many people were waiting, and indicated that the doctor was not then seeing anyone. (Tr. vol. 5, at 20.) After triage, SA Miller overheard Mr. Colangelo speaking on the phone about prices charged for out-of-state patients. (Tr. vol. 5, at 20.)

SA Miller continued to wait, and eventually Respondent called SA Miller to come back and see him. (Tr. vol. 5, at 23.) SA Miller met with Respondent in an examination room, with the visit lasting a total of approximately five minutes. (Tr. vol. 5, at 23.) SA Miller explained his knee issue, noting that he had seen a family practice doctor in Colorado, but had not seen a doctor in approximately one month. (Tr. vol. 5, at 24.) SA Miller also told Respondent he was taking Vicodin. (Tr. vol. 5, at 26.) Upon questioning by Respondent, SA Miller stated his pain was a five on a one-to-ten scale. (Tr. vol. 5, at 24.) Respondent next asked SA Miller to stand, raise his arms, touch his toes, and Respondent also placed a stethoscope on SA Miller's chest and back. (Tr. vol. 5, at 25.) Respondent next issued SA Miller a prescription for 60 Roxicodone 15 mg tablets.[15] (Tr. vol. 5, at 26; Gov't Ex. 12 at 14.)

Respondent testified in substance that review of the patient file for SA Miller, including the MRI report, was critical to his ability to respond to the Government's allegations, and would have assisted him with testimony. (Tr. vol. 10, at 13–16.) Respondent understood SA Miller's representation of pain to be a five located in the knee, with pain lasting for eighteen months. (Tr. vol. 10, at 18.) Respondent further testified to the importance he places on listening to patients with regard to prescribing medication. (Tr. vol. 10, at 22.) Having patients perform range-of-motion exercises included checking for track marks. (Tr. vol. 10, at 23.) Respondent testified he believed SA Miller was being honest, expressing reports of pain that were real and significant. (Tr. vol. 10, at 26–27.)

Respondent also testified that part of his plan in treating SA Miller was to assess in a follow-up appointment whether the medication had relieved the pain. (Tr. vol. 10, at 29.) Respondent testified that he ''would not have prescribed medication unless a patient presents a convincing story of pain and has a legitimate medical purpose for receiving medication.'' (Tr. vol. 10, at 30.)

(b) SA McClarie, March 5, 2010 Undercover Visit to CMG

SA McClarie testified in substance to having approximately thirteen years of law enforcement experience, including an assignment to a DEA Tactical Diversion Group for the past few years. (Tr. vol. 5, at 94–95.) SA McClarie testified to meeting Respondent on March 5, 2010, at CMG while working in an undercover capacity and posing as a patient. (Tr. vol. 5, at 95–96.) SA McClarie testified that upon arriving at approximately 1:30 p.m., he observed approximately fifty people inside the clinic. (Tr. vol. 5, at 97.) While waiting in line, SA McClarie overheard one person state that he was from New York and ''was down here to get prescription medication.'' (Tr. vol. 5, at 98.) SA McClarie further testified to observing a male who appeared to be in the company of four or five people, and the male went to the front desk, paid cash for all of the people with him and obtained clipboards and forms for the group to fill out. (Tr. vol. 5, at 99.)

SA McClarie next testified that when he reached the front counter he was charged $350 for the visit and another $100 for ''VIP'' expedited service, all paid in cash. (Tr. vol. 5, at 111–12.) The receptionist gave SA McClarie forms to fill out including a pain scale, on which he circled all the numbers with one large circle. (Tr. vol. 5, at 112–13.) SA McClarie also informed CMG staff that he had an MRI done but did not have the MRI report with him, to which the staff indicated they would have it faxed over. (Tr. vol. 5, at 113–14.) SA McClarie next completed a triage procedure[16] and after an additional wait, met with Respondent.

SA McClarie testified that Respondent told him that the MRI of his knee was not very impressive. (Tr. vol. 5, at 117 & 119.) SA McClarie also informed Respondent he was having issues with his back. (Tr. vol. 5, at 117.) Respondent asked SA McClarie about his blood pressure and whether he was allergic to anything, listened to SA McClarie's heart with a stethoscope and had SA McClarie perform a series of basic movements such as standing and bending, among others. (Tr. vol. 5, at 121.) SA McClarie completed the range-of-motion test without difficulty. (Tr. vol. 5, at 121.) Respondent asked SA McClarie how the over-the-counter medications were working, to which SA McClarie said they were doing nothing. (Tr. vol. 5, at 122.) Respondent indicated there was no way he could prescribe strong pain medication and SA McClarie said he did not want the strongest and just wanted some help. (Tr. vol. 5, at 122.) Respondent then prescribed 120 Roxicodone 15 mg tablets, noting that this was a ''compromise.'' (Tr. vol. 5, at 122 & 172.)[17]

[14] The receptionist indicated she did not have any change and SA Miller told her to keep the difference, which she did. (Tr. vol. 5, at 14.)

[15] The evidence also included a partial transcript of the undercover meeting. Neither party produced a patient file.

[16] The triage procedure at CMG generally consisted of an inquiry regarding the purpose of the visit, medications, and the measurement of biometric data such as height, weight, blood pressure and urinalysis testing.

[17] The Government offered a transcript of the audio recording of SA McClarie's undercover meeting at CMG (Gov't Ex. 10), but I excluded the transcript for lack of foundation and reliability. (Tr. vol. 5, at 199.) SA McClarie credibly testified that he last listened to the audio recording over a year ago. (Tr. vol. 5, at 133.) SA McClarie further testified that he was certain that portions of the transcript marked as inaudible were in fact audible. (Tr. vol. 5, at 146.) SA McClarie further testified that he was not certain if other portions of the transcript were inaccurate. (Tr. vol. 5, at 147.) The patient file for SA McClarie was not produced at hearing by either party.

Respondent testified in substance that as with SA Miller, his inability to review the patient file for SA McClarie significantly impaired his ability to respond to the Government's allegations. (Tr. vol. 10, at 32.) Respondent testified that he recalls SA McClarie complaining of knee and back pain, but only had an MRI report of the knee. (Tr. vol. 10, at 35.) Respondent further testified that in his experience MRI reports reflecting abnormalities do not always correlate to pain, explaining that there may be patients with significant abnormalities on an MRI report with little or no pain, and other patients with no abnormal findings and significant pain. (Tr. vol. 10, at 36.) Respondent testified that ''[w]e required them to have an MRI'' to provide some basis to support a diagnosis. (Tr. vol. 10, at 37.)

Respondent testified that in prescribing Roxicodone to SA McClarie, his treatment plan was recorded in the patient chart, and believed the treatment plan would have been to lower pain, increase function and improve ability to work, among other goals. (Tr. vol. 10, at 48.) Respondent further testified that it is sometimes more appropriate to address other items in a treatment plan on subsequent visits, because the doctor/patient relationship is more mature, and the patient has already been in the office a long time on the first visit. (Tr. vol. 10, at 49.)

(c) SA Bazile, March 5, 2010 Undercover Visit to CMG

SA Bazile testified in substance that she had approximately ten years of law enforcement experience, having previously worked as a DEA diversion investigator for approximately six years and most recently as a special agent. (Tr. vol. 6, at 10.) SA Bazile testified to meeting Respondent on March 5, 2010, at CMG while working in an undercover capacity and posing as a patient. (Tr. vol. 6, at 11–12.) SA Bazile was in possession of a recording device to record conversations, but it failed to operate during the entire visit including SA Bazile's meeting with Respondent. (Tr. vol. 6, at 28.) SA Bazile noted approximately twenty persons in the waiting room upon arrival. (Tr. vol. 6, at 12.) SA Bazile testified to overhearing a conversation in the waiting area between a CMG employee and a patient. SA Bazile had noticed the patient because he was falling asleep and had slurred speech. (Tr. vol. 6, at 13.) SA Bazile also overheard the patient complain about not being seen by a doctor because of a staff error. (Tr. vol. 6, at 14.) The patient stated to a CMG employee that he had paid the staff member ''$40 to pass a dirty urine'' and the staff member acknowledged that but was explaining to the patient that the reason he could not be seen was due to his appointment being too early. (Tr. vol. 6, at 14.) SA Bazile noted the patient remained in the waiting room for some time, but was unsure if he had been seen by a doctor. (Tr. vol. 6, at 15.)

SA Bazile next testified that upon contact with the CMG receptionist, she was charged $350 for the office visit and was told by the receptionist that for an additional $100 she could be placed on the ''VIP'' list. (Tr. vol. 6, at 15.) SA Bazile agreed and paid a total of $450 cash. (Tr. vol. 6, at 16.) SA Bazile filled out various forms including a pain scale of one to ten, on which she circled five. (Tr. vol. 6, at 17.) SA Bazile testified that in advance of the office visit she had obtained an actual MRI of her shoulder using her undercover name, which she believed was faxed to CMG from the MRI facility. (Tr. vol. 6, at 26.) After completion of the paperwork, and a short triage procedure, SA Bazile waited approximately one hour before seeing Respondent. (Tr. vol. 6, at 19–20.) Respondent asked SA Bazile questions about her pain and when the injury to her left shoulder occurred, to which SA Bazile stated ''about a year ago,'' referring to the pain as ''stiffness.'' Respondent also reviewed SA Bazile's MRI during the visit, noting that there were no particular findings. Respondent had SA Bazile stand, lift her arms up, and touch her toes, remarking that she had good range of motion. (Tr. vol. 6, at 21.)

SA Bazile testified that after completing the range-of-motion exam she sat down and asked Respondent what he would prescribe, stating in substance that she likes ''blues'' [18] and shares them with a friend. Respondent did not directly respond to the statement about sharing ''blues'' but asked why SA Bazile wanted them, noting they are for patients with debilitating illnesses. (Tr. vol. 6, at 22–23.) Respondent also indicated in substance that he was aware from news stories that DEA was ''targeting doctors like him.'' (Tr. vol. 6, at 23.) Respondent then prescribed SA Bazile 90 Roxicodone 15 mg tablets. SA Bazile then asked Respondent for something to help her sleep to which Respondent inquired if she had trouble sleeping. SA Bazile stated ''sometimes'' and Respondent replied that she was not very convincing, but prescribed 30 Xanax 1 mg tablets. (Tr. vol. 6, at 23–24.)

Respondent testified in substance that he believed SA Bazile had been a patient truthfully seeking relief from pain, and relied on the MRI report and SA Bazile's statements in issuing a prescription for Roxicodone. (Tr. vol. 10, at 52.) Respondent testified that Xanax is used to assist patients with sleep problems, which some people taking Roxicodone may experience, but could not provide the reasons for prescribing Xanax to SA Bazile without having the opportunity to see her patient file. (Tr. vol. 10, at 53.)

4. Coast to Coast Healthcare Management (CCHM)

TFO Weir testified in substance to having approximately ten years of law enforcement experience, and to becoming involved in the investigation of CCHM as case agent. TFO Weir testified that he was involved in redacting information from various patient files, and explained the substance of the information redacted from Government Exhibits 21–28. (Tr. vol. 5, at 266–305.)

(a) SA Marshall, April 7 and May 4, 2010 Undercover Visits to CCHM

SA Marshall testified in substance to having seven years of law enforcement experience, of which the last five were with DEA. (Tr. vol. 4, at 6.) SA Marshall participated in an investigation of Respondent on April 7 and May 4, 2010. (Tr. vol. 4, at 10 & 11.) SA Marshall had visited CCHM in an undercover role as a first-time patient on March 3, 2010, but had seen a doctor other than Respondent. (Tr. vol. 4, at 9.) SA Marshall testified that as he filled out paperwork in the waiting area during the March 3, 2010 visit a person unknown to him, but who appeared friendly with CCHM staff, provided him advice on filling out the paperwork. (Tr. vol. 4, at 14.) SA Marshall informed the person that he was concerned that his urinalysis would not be ''dirty'' and the person informed SA Marshall that SA Marshall could give the ''girl'' some money and she could ''dirty'' up the urine. (Tr. vol. 4, at 14.) SA Marshall further testified that during the triage process, he informed the female staff member about the conversation in the waiting area, and gave the staff member $50 in cash, which she accepted. (Tr. vol. 4, at 15.) SA Marshall then observed the staff member indicate on the urinalysis paperwork the presence of opiates, but had never tested his urine. (Tr. vol. 4, at 15.)

SA Marshall testified that on April 7, 2010, he again travelled to CCHM acting

[18] SA Bazile further explained that ''Blues'' are the street name for oxycodone 30 mg tablets. (Tr. vol. 6, at 22.)

in the undercover role of a patient, carrying a concealed recorder, and met with Respondent. (Tr. vol. 4, at 11.) After completing a triage procedure, and a short wait, SA Marshall met with Respondent in a patient examination room. During the encounter SA Marshall stated in substance to Respondent that he was homeless and needed oxycodone, and upon questioning by Respondent provided information on the street value of the medication. (Gov't Ex. 6 at 18–19, 21–22.) SA Marshall further testified that Respondent then informed him that ''we don't participate in such folly'' and walked him to a nurse's station. (Tr. vol. 4, at 25.) SA Marshall testified that Respondent walked up to a nurse but ''that was in a back room, and I couldn't hear what they were saying'' and waited. (Tr. vol. 4, at 25.) SA Marshall waited and observed Respondent call another patient.

SA Marshall testified that he then met privately with a staff member named Cindy Mesa, who chastised SA Marshall for informing Respondent that he was living on the street and selling the ''stuff,'' because she would have to erase the information and call him back the next day to see a different doctor. (Tr. vol. 4, at 26; Gov't Ex. 6 at 9.) SA Marshall further testified that Ms. Mesa stated that Respondent thought SA Marshall was an ''undercover'' and trying to ''bust'' Respondent. (Tr. vol. 4, at 26.) SA Marshall further testified that he returned the next day, April 8, 2010, was seen by a different doctor and was prescribed the following controlled substances: 120 oxycodone 30 mg and 30 Xanax 2 mg tablets. (Tr. vol. 4, at 27; Gov't Ex. 21 at 24.)

SA Marshall next testified that he returned to CCHM on May 4, 2010, for a follow-up visit, and met with Respondent. (Tr. vol. 4, at 29.) SA Marshall understood from other agents posing as patients that they had already established a ''relationship'' with staff and had front-of-the-line privileges. (Tr. vol. 4, at 29.) SA Marshall testified that he paid $200 cash for the visit and met with a female staff member in triage who was the same person he had met on his three previous visits to CCHM. (Tr. vol. 4, at 29.) SA Marshall informed the staff member that he had been kicked out by Respondent on a prior visit because he had told Respondent he was living on the street and selling the drugs, at which point both SA Marshall and the staff member laughed. (Tr. vol. 4, at 30.) Following the triage encounter, SA Marshall waited to be called by Respondent.

SA Marshall further testified that he met with Respondent for a brief visit lasting approximately three minutes, with questions relating to how he was doing and if the medications were working. Respondent checked SA Marshall with a stethoscope and had him perform some body movements, and then issued prescriptions. (Tr. vol. 4, at 31.) Respondent prescribed SA Marshall 120 oxycodone 30 mg and 30 Xanax 2 mg tablets. (Gov't Ex. 6 at 45.)

Respondent testified in substance that information relating to the April 7, 2010 meeting with SA Marshall was missing from the patient file. (Tr. vol. 10, at 59; Resp't Ex. 1.) Respondent further testified that he recalled how SA Marshall looked on April 7, 2010, noting some type of gel in his hair, which was pointing up. Respondent testified that he became concerned during the visit with SA Marshall on April 7, 2010, concluding that SA Marshall was not in need of medication, ''but instead was diverting.'' (Tr. vol. 10, at 61.) Respondent testified that after he discharged SA Marshall, he did not know that SA Marshall had returned the next day and was seen by a different doctor, or that the patient file had been destroyed by CCHM staff. (Tr. vol. 10, at 66.)

With regard to the May 4, 2010 follow-up visit, Respondent testified that he recalls SA Marshall's appearance as being different in that he was wearing a hat, but did not recognize him to be the same person he had discharged on April 7, 2010. (Tr. vol. 10, at 69.) Respondent testified that in making his medical assessment of SA Marshall on May 4, 2010, he reviewed the notes of two other CCHM doctors in the patient file. (Tr. vol. 10, at 75–76.) Respondent testified that in issuing the May 4, 2010 prescription he believed SA Marshall had real pain and the medication was helping. (Tr. vol. 10, at 85–86.)

Dr. Berger testified in substance that the medical file for SA Marshall contained numerous inconsistencies, to include no obvious physical examination on the first visit, an MRI report issued two days before the first visit with no prescribing or ordering physician noted on the MRI report. (Tr. vol. 10, at 63–64; Gov't Ex. 21 at 8.) Dr. Berger further testified that he found the patient file was ''very unusual'' in that it reflected prescriptions in a ''polypharmacy fashion,'' meaning the use of both benzodiazepines with an opiate, for a patient who had a bipolar disorder with expressions of ''severe recent depression,'' yet no psychiatric consultation in the chart. (Tr. vol. 10, at 64–65.)

(b) SA Saenz May 4, 2010 Undercover Visit to CCHM

SA Saenz testified in substance to having eight years of law enforcement experience with DEA and to participating in an investigation of Respondent on May 4, 2010. (Tr. vol. 2, at 229–31.) SA Saenz testified that on the morning of May 4, 2010, she travelled to CCHM, acting in the undercover role of a patient, with a concealed recorder,[19] and met with Respondent. (Tr. vol. 2, at 231.) This was SA Saenz's first time meeting with Respondent at CCHM but she had been there on two prior occasions in an undercover patient role, and met with different doctors on each visit.[20] (Tr. vol. 2, at 231.) SA Saenz also testified that on a March 10, 2010 visit to CCHM she had listed her pain level as nine, further describing it as sharp, shooting and unbearable. (Tr. vol. 2, at 271.) SA Saenz testified that in filling out the pain assessment forms on March 10, 2010, she was coached by a CCHM employee. (Tr. vol. 2, at 271.) SA Saenz testified that her undercover role was that of a patient in pain that needed medication, but during the March 10, 2010 visit told the doctor that her pain was a level three or four on a pain scale of one to ten. (*See generally* Tr. vol. 2, at 272–73.)

SA Saenz further testified that during the May 4, 2010 visit to CCHM she was in the company of two other DEA undercover agents, and understood that ''one of the undercovers'' had negotiated the cost of the visit with CCHM staff. (Tr. vol. 2, 233.) The cost of the office visit was $150 and SA Saenz paid $200, but was not given any change. SA Saenz completed one form and after completing a triage procedure[21] met with Respondent.

SA Saenz testified that upon meeting Respondent, Respondent asked her about current medications, work and whether the medications were helping. (Tr. vol. 2, at 242, 275.) SA Saenz indicated she worked in daycare and needed one more pill per day to increase her current prescription from ninety to 120 pills, and Respondent indicated that he could give her an extra pill a day. (Tr. vol. 2, at 242–43.) SA Saenz testified her medication from a previous visit to CCHM was Roxicodone 30 milligrams. (Tr. vol. 2, at 243.) Respondent checked SA Saenz's heart

[19] The recording equipment failed to record the meeting. (Tr. vol. 2, at 231.)

[20] March and April of 2010. (Tr. vol. 2, at 238.) A different CCHM doctor issued SA Saenz's prescriptions for 90 oxycodone 30 mg and 30 Xanax 2mg tablets on April 8, 2010. (Resp't Ex. 4 at 24.)

[21] At triage, staff measured her blood pressure, height, weight and temperature. (Tr. vol. 2, at 241.)

rate with a stethoscope and asked where the pain was located. Respondent printed the prescriptions and advised SA Saenz not to share or sell the medication. Respondent did not discuss prior CCHM visits with SA Saenz, nor did he discuss a treatment plan, objectives, goals, risks, benefits or alternative medications. (Tr. vol. 2, at 249–51.)

Respondent issued SA Saenz prescriptions for 120 Roxicodone 30 mg and 30 Xanax 2 mg tablets on May 4, 2010. (Tr. vol. 2, at 245; Gov't Ex. 15 at 1–2.)

Respondent testified in substance that when he met with SA Saenz on May 4, 2010, he was aware from the patient file that she had two prior visits to CCHM, and was seen by two different physicians with initial complaints of back pain. (Tr. vol. 10, at 173–75.) Respondent testified that the initial treatment regimen was Motrin, a Medrol dose pack and Vicodin, which was changed on the second visit to oxycodone 30 mg three times per day, as well as Xanax for sleep. (Tr. vol. 10, at 175; Resp't Ex. 4 at 24–25.) Respondent further testified that his thought process on the May 4, 2010 visit was to try and ''dial in the right dose'' based in part on information contained in the file, and information learned from the patient. (Tr. vol. 10, at 176–80.) Respondent also testified that SA Saenz had convinced him that her pain was still significant, and he relied upon the truthfulness of the information provided by SA Saenz to increase the dose by one tablet per day. (Tr. vol. 10, at 177 & 180.)

Dr. Berger testified in substance and in error that Respondent had treated SA Saenz on April 8, 2010.[22] (Tr. vol. 7, at 129, 135 & 137; Tr. vol. 8, at 206.) Dr. Berger also erroneously stated in his report: ''On 4–8–10. Dr. Wolff sees the patient for a second time * * *'' (Gov't Ex. 32 at 78; Tr. vol. 8, at 207.) Dr. Berger further stated in his report the belief that the April 8, 2010 patient chart had a signature that appeared to belong to Respondent, which was also erroneous. (Gov't Ex. 32 at 80; Tr. vol. 8, at 199–207.) Dr. Berger also erroneously concluded in his written report that a urinalysis report dated March 10, 2010, was ''positive for Phencylidine, [a]nti-depressants, amphetamine, clearly making her a potential dangerous patient to prescribe narcotics to.'' (Gov't Ex. 32 at 82; Tr. vol. 8, at 190–202.)

(c) SA O'Neil, May 4, 2010 Undercover Visit to CCHM

SA O'Neil testified in substance that he had five years of law enforcement experience with DEA and participated in an investigation of Respondent on May 4, 2010. (Tr. vol. 3, at 301.) SA O'Neil testified that on May 4, 2010, he travelled to CCHM acting in the undercover role of a patient, with a concealed recorder, and met with Respondent. (Tr. vol. 3, at 302, 308.) This was SA O'Neil's first time meeting with Respondent at CCHM but he had been there on two prior occasions in an undercover patient role.[23] SA O'Neil further testified that he was in the company of other undercover DEA agents. He paid $200 cash for the visit costing $150, letting a CCHM staff member ''keep the change.'' (Tr. vol. 3, at 305.) SA O'Neil informed a female staff member that he was with three other ''patients,'' two with him and one on the way, but they ''were all together,'' and asked her to put their charts in a stack, which she did. (Tr. vol. 3, at 305.)

SA O'Neil next testified that when called to the triage area, he stated to a female staff member ''the fact that there was going to be four of us and I'd be quadrupling my money.'' (Tr. vol. 3, at 306.) In response, the staff member shook her head. SA O'Neil later stated to the same staff member during triage that he did not take the medication, to which the staff member indicated: ''I know you don't take them,'' implying that she was not ''stupid.'' (Gov't Ex. 14 at 25.)

SA O'Neil testified that after waiting for a period of time following triage he was called and met with Respondent. During the meeting SA O'Neil requested an increase in medication, noting at one point that he had run out of the previous prescription and needed more. (Tr. vol. 3, at 340.) SA O'Neil specifically asked if Respondent could increase the Roxicodone dosage from 120 to 210 tablets, to which Respondent replied: ''I mean maybe, maybe eventually, but * * *.'' and concluded by stating he absolutely could not double the medication now. (Tr. vol. 3, at 312; Gov't Ex. 14 at 30.) SA O'Neil also informed Respondent that he had taken liquid oxycodone from a friend, prompting Respondent to reply: ''Don't even tell me that.'' (Gov't Ex. 14 at 30.) Respondent counseled SA O'Neil about the dangers of taking liquid oxycodone and informed SA O'Neil that talking about using another patient's medication in a pain clinic could result in getting discharged. (Tr. vol. 3, at 313, 354; Gov't Ex. 14 at 31–32.) Respondent asked SA O'Neil to lift his upper and lower extremities and had him breathe in and out. SA O'Neil testified that Respondent discussed how he was doing on the medication and counseled him on stretching exercises. (Tr. vol. 3, at 313–14, 361.) Respondent counseled SA O'Neil on safekeeping and use of medication. (Tr. vol. 3, at 351.)

On May 4, 2010, Respondent issued SA O'Neil prescriptions for 150 Roxicodone 30 mg, 90 Roxicodone 15 mg and 30 Xanax 2 mg tablets. (Gov't Ex. 14 at 53–54.) On April 7, 2010, Dr. [L.C.] issued SA O'Neil prescriptions for 120 oxycodone 30 mg, 90 oxycodone 15 mg, 30 Xanax 2 mg and 30 Lisinopril[24] 20 mg tablets. (Tr. vol. 10, at 151; Resp't Ex. 3 at 24.) On March 10, 2010, Dr. [L.C.] issued SA O'Neil prescriptions for 120 oxycodone 15 mg and 30 Xanax 2 mg tablets. (Tr. vol. 10, at 150–51; Resp't Ex. 3 at 24–25.)

Respondent testified in substance that another CCHM doctor had treated and prescribed medication to SA O'Neil on the April 7 and March 10, 2010 visits. Upon inquiry, Respondent learned from SA O'Neil that SA O'Neil had not filled the blood pressure medication prescription. (Tr. vol. 10, at 152.) Respondent further testified that in talking with SA O'Neil Respondent understood most of the pain to be in the lower back, and the present dose was insufficient. (Tr. vol. 10, at 152–53.) With regard to SA O'Neil's statement that he had used liquid oxycodone, Respondent testified that his statement ''Don't even tell me that,'' was not meant to ignore the issue but rather indicated Respondent's being ''disturbed'' and ''hurt'' to hear of patients using a dangerous product. (Tr. vol. 10, at 155.) Respondent testified that he explained at length the dangers of using liquid oxycodone, to include death, and believed at the end of his comments that SA O'Neil accepted the rules and guidelines. (Tr. vol. 10, at 159.) Respondent also testified that he told SA O'Neil about Williams stretching exercises, and to look them up on the computer.[25]

[22] This error was compounded by Government counsel's questions on direct examination, which misstated the evidence, given that SA Saenz had previously testified during the hearing that she first met Respondent at CCHM on May 4, 2010. (*Compare* Tr. vol. 7, at 137, *with* Tr. vol. 2, at 231.)

[23] March and April, 2010. (Tr. vol. 3, at 301–02.)

[24] Lisinopril is a blood pressure medication. (Tr. vol. 10, at 151.)

[25] The undercover transcript (Gov't Ex. 14 at 34) reflects in relevant part:

WOLFF: Maybe the person that gave you the, uh * * *

UC1: [LAUGHS]

WOLFF: Oxy [U/I]

UC1: Yeah

WOLFF: let you use the computer, in light [PH] of the fact that they're trying to murder you.

Dr. Berger testified in substance that the medical file for SA O'Neil had several blank pages, including the history and physical examination forms, as well as several forms that had dates inconsistent with the office visit in March 2010. (Gov't Ex. 23, at 10, 12–13; Tr. vol. 7, at 108–09.) Dr. Berger testified that the existence of blank forms in a medical file is significant because it goes to the ''degree of caution in the practice.'' (Tr. vol. 7, at 117.) Not having a history and physical in the chart is ''absolutely below the standard of care.'' (Tr. vol. 7, at 117.)

Dr. Berger further testified that the patient file reflected a drug screen dated March 10, 2010, which was positive for benzodiazepines only, but contained no indication of a test for alcohol. (Tr. vol. 7, at 113; Gov't Ex. 23 at 27.) Dr. Berger testified that in his opinion, there was no legitimate basis to treat SA O'Neil with ''such large doses of narcotics without going through other channels first,'' to mean such things as a review of prior medical records, other diagnostic tests, medications, x-rays, nerve conduction studies and an orthopedist consultation. (Tr. vol. 7, at 116.) Dr. Berger further testified that SA O'Neil's mention of using liquid oxycodone shows the patient has a tendency to receive medications illegally through diversion, which makes them ''a very unlikely candidate to receive further narcotic prescriptions * * *.'' (Tr. vol. 7, at 125–26.)

(d) TFO Doklean, July 23, 2010 Undercover Visit to CCHM

TFO Doklean testified in substance that she had approximately fourteen years of law enforcement experience, most recently working in a Tactical Diversion Squad, and participated in an investigation of Respondent on July 23, 2010. (Tr. vol. 1, at 176, 178–79.) TFO Doklean testified that on July 23, 2010, she travelled to CCHM acting in the undercover role of a patient,[26] with a concealed audio and video recorder,[27] and met with Respondent for approximately ten minutes. (Tr. vol. 1, at 177, 178, 181 & 268; Gov't Ex. 4.) The patient file indicates this was TFO Doklean's first visit to CCHM in her undercover role. (*See* Gov't Ex. 25.) TFO Doklean was in the company of several other DEA agents acting in undercover roles as patients, and the group was represented by an undercover agent posing in the role of ''crew leader or ringleader'' who was bringing all of the undercover patients to the clinic. (Tr. vol. 1, at 186.) TFO Doklean testified that she paid $300 for the office visit and another $200 to a CCHM staff member named Linda for ''VIP treatment,'' meaning expedited service. (Tr. vol. 1, at 186, 187.)

TFO Doklean further testified that the portion of the clinic she observed during her visit to CCHM included examination rooms, waiting areas, a pharmacy dispensary, triage area, front desk and a restroom. (Tr. vol. 1, at 179, 180.) TFO Doklean testified that while waiting for her appointment she engaged in a brief conversation with a male seated next to her regarding levels of prescribing at CCHM, and he told her that even if she was started on low levels of medication ''they will bump you up.'' (Tr. vol. 1, at 185.) TFO Doklean also testified that she observed a sign in the waiting room that stated: ''Please be aware that outside pharmacies are reporting prescription transactions to law enforcement agencies. Feel free to discuss this with your physician.'' (Tr. vol. 1, at 193.)

TFO Doklean testified that following a triage process she met with Respondent. Upon inquiry, TFO Doklean informed Respondent of issues for the prior six months with neck pain of unknown origin. (Gov't Ex. 4 at 31.) Respondent indicated in substance confusion because TFO Doklean had provided an MRI report of her back, not her neck. (Tr. vol. 1, at 201.) TFO Doklean further testified that she informed Respondent that the pain fluctuates from a two or three upwards, depending on the day, and impacts her daily activities, including child care. (Tr. vol. 1, at 202.) Later, when Respondent inquired whether TFO Doklean drank alcohol, TFO Doklean stated to Respondent that she had been in rehab last year in November, but was ''clean and sober.'' (Tr. vol. 1, at 203; Gov't Ex. 4 at 34.) TFO Doklean testified that Respondent made no further inquiry regarding where, why or how long she had been in rehabilitation. (Tr. vol. 1, at 203; Gov't Ex. 4 at 34–36.) Upon inquiry about taking medication, TFO Doklean stated to Respondent that in addition to Advils she has been taking some ''blues'' obtained from a friend on and off for about six months, representing that they seemed to help. (Gov't Ex. 4 at 34.) TFO Doklean testified that the term ''blues'' is street terminology for oxycodone 30 milligram tablets. (Tr. vol. 1, at 204.)

TFO Doklean next testified that Respondent examined her breathing with a stethoscope and requested that she perform range-of-motion exercises, including turning her head, which she successfully completed without display or complaint of pain. (Tr. vol. 1, at 205 & 206.) Respondent inquired and confirmed that TFO Doklean was not currently taking medications, and stated that he would get TFO Doklean started on some medication, cautioning her on the use and safe storage of the medication. (Tr. vol. 1, at 286; Gov't Ex. 4 at 36.) TFO Doklean then asked if she was going to get some ''blues'' and Respondent stated in substance that he would look at the chart and ''see what we can do for you.'' (*Id.*)

Respondent issued TFO Doklean a prescription for 120 Roxicodone 30 mg tablets, which CCHM filled for a cost of $600 cash. (Tr. vol. 1, 189, 190; Gov't Ex. 4 at 54.) TFO Doklean testified that in addition to requesting but not receiving a prescription for Xanax from Respondent, she also did not know what kind of prescription would be provided until after her meeting with Respondent had already concluded.

TFO Doklean also testified that she had been unsuccessful in persuading a CCHM office manager named Richard to increase the amount of the Roxicodone prescription, noting to Richard that ''[i]t's not enough to finance what I need to pay,'' which Richard acknowledged he understood. (Tr. vol. 1, at 290; Gov't Ex. 4 at 40.) TFO Doklean further testified that following her meeting with Respondent, Richard provided instruction and direction about concerns that Respondent had about patients ''not putting the proper things in the paperwork,'' and that the patients needed to say that they were in pain on the paperwork, and to tell the doctors they were in pain. This information was also directed to the undercover patients who had not yet been seen by a doctor. (Tr. vol. 1, at 188; Gov't Ex. 4 at 39–40.) Richard further stated to TFO Doklean (referring to Respondent): ''This guy is a little * * * this guy is a little * * * you know * * * serious and by the book in making sure * * * uh * * * He does everything * * * partly because he's been in a clinic that's been shut down before, so, it's very hard for him. He knows * * * you guys are cool.'' (Tr. vol. 1, at 290; *id.* at 40.)

Respondent testified in substance that based on TFO Doklean's statements, he believed she had both neck and back pain, and the pain was significant enough at times to impact her ability to provide care for her children. (Tr. vol.

UC1: [LAUGHS]

WOLF: [PAUSE] Google that. William's stretching exercises.

[26] The undercover role included identification information and an actual MRI report of the undercover officer's back taken in advance of the appointment. The MRI was provided to the clinic. (Tr. vol. 1, at 215; Gov't Ex. 4 at 60, 61.)

[27] TFO Doklean testified that she had a concealed recording device in her possession throughout her visit to CCHM, with the exception of a few minutes when the recorder was in possession of another undercover agent. (Tr. vol. 1, at 239.)

10, at 186, 189 & 190–91.) Respondent further testified that he was concerned with her drinking, but understood from TFO Doklean that she had been out of ''rehab'' and sober for eight or nine months. (Tr. vol. 10, at 192.) Respondent testified that with regard to the term ''blues'' and whether it constituted a ''red flag'' for prescribing, he did not ''want to make a value judgment upon her as to why she used that term'' rather than Roxicodone 30 mg. (Tr. vol. 10, at 193.) Respondent further explained that use of the term ''blues'' and previously buying or receiving a controlled substance outside of a prescription is not a disqualifier to his prescribing controlled substances to such a patient.

Respondent also testified that he gave TFO Doklean a prescription for an MRI of her neck and expected to review an MRI report on the next follow-up visit. (Tr. vol. 10, at 197.) Respondent further testified that he prescribed Roxicodone 30 mg tablets because of the severity of the unrelieved pain, and planned to reevaluate the patient in one month. (Tr. vol. 10, at 198.) Respondent testified with regard to the patient file, explaining that he documented various statements by TFO Doklean, including past history of alcohol use. (Tr. vol. 10, at 202.)

Dr. Berger testified in substance that the patient file reflected that TFO Doklean had a prior history of alcohol rehabilitation, but did not list her treating physician, type of treatment or that TFO Doklean had mentioned that she had obtained narcotics on the street. (Tr. vol. 7, at 146.) Dr. Berger testified that this information, taken together, ''preclude her from being a good candidate for receiving controlled drugs'' on her first visit, and that such a prescription would not be in compliance with ''the established care in Florida.'' (Tr. vol. 7, at 147.) Dr. Berger testified that Respondent was not in compliance with the established standard of care for TFO Doklean, based on Respondent's failure to conduct a complete physical examination, inquire further about past drug use and rehabilitation, or engage in appropriate consultations, among other deficiencies. (Tr. vol. 7, at 153–55.)

Dr. Berger's report similarly concluded that Respondent's treatment of TFO Doklean fell below the standard of care in the areas of patient evaluation, informed consent and agreement for treatment, periodic review, consultation, medical records and compliance with controlled substances laws and regulations. (Gov't Ex. 32 at 32–35.)

(e) SA Brigantty, July 23, 2010 Undercover Visit to CCHM

SA Brigantty testified in substance that he had nine years of law enforcement experience with DEA and participated in an investigation of Respondent on July 23, 2010. (Tr. vol. 2, at 13–16.) SA Brigantty testified that on July 23, 2010, he travelled to CCHM acting in the undercover role of a patient,[28] with a concealed audio and video recorder, and met with Respondent. (Tr. vol. 2, at 16, 22 & 26.) This was SA Brigantty's first time visiting CCHM as an undercover patient. (Tr. vol. 2, at 17.) SA Brigantty was in the company of several other DEA agents acting in undercover roles as patients, and the group was represented by a DEA agent acting in the undercover role of ringleader and patient. (Tr. vol. 2, at 17–19.) CCHM staff members also understood this role, and treated the undercover agents as a group. (Tr. vol. 2, at 17 & 18.) SA Brigantty paid $200 for the office visit, which was the same for each member of the group and included an expediting fee, and SA Brigantty later paid $750 for medication prescribed and another $50 tip to a female CCHM staff member during the clinic visit. (Tr. vol. 2, at 19, 42.)

SA Brigantty further testified that prior to meeting with Respondent he filled out various clinic forms, with assistance from CCHM staff. (Tr. vol. 2, at 2, 60–80.) Following a triage procedure, SA Brigantty testified that he met with Respondent. During the meeting, which lasted approximately fifteen minutes (*see* Gov't Ex. 9 at 35–46), SA Brigantty informed Respondent about lower back pain which SA Brigantty stated had been present for fifteen years, and was caused by heavy lifting. (Tr. vol. 2, at 22, 59 & 89; Gov't Ex. 9 at 36.) SA Brigantty testified that he informed Respondent that he had been taking pain medicine in the form of ''Oxys, 30 milligrams'' and a ''Zany bar'' referring to Xanax, which he purchased ''off the street.'' (Tr. vol. 2, at 37; Gov't Ex. 9 at 41.) SA Brigantty also represented to Respondent that the pain at times was a six or greater, and at times could be debilitating. (Tr. vol. 2, at 92, 96; Gov't Ex. 9 at 37.)

SA Brigantty testified that prior to being seen by Respondent he was standing outside Respondent's office and noted that Respondent was ''walking around, nervous like, trying to figure out what was going on,'' and before seeing SA Brigantty went to see another doctor for approximately twenty minutes. (Tr. vol. 2, at 97.) SA Brigantty further testified that he had then heard from other undercover officers present at CCHM that ''you need to say you are in pain'' in order for Respondent and the rest of the doctors to prescribe pain. (Tr. vol. 2, at 97–98.)

SA Brigantty further testified that during the office visit, Respondent performed a brief examination in the form of having him push, pull and lift his upper and lower extremities, and also showed SA Brigantty a chart. (Tr. vol. 2, at 40–43.) During the examination Respondent asked SA Brigantty a series of questions about past medical issues, including blood pressure, to which SA Brigantty responded that he had been informed earlier that it was high. (Gov't Ex. 9 at 40.) Respondent then acknowledged it was very high and counseled SA Brigantty on the need for re-evaluation, meaning the ''need to find a regular medical doctor as soon as possible'' to be rechecked. (Gov't Ex. 9 at 42.) Respondent inquired of SA Brigantty what he had previously been prescribed, and SA Brigantty stated ''Oxy Thirties,'' further explaining when asked by Respondent whether he ''use to go to American Pain'' that he put that on the form because the ''girls outside'' told him he had to write something. (Gov't Ex. 9 at 44.) SA Brigantty explained to Respondent that he was not seeing a physician and could barely afford to come to CCHM. Respondent made no inquiry regarding SA Brigantty's statement of falsely listing American Pain as a current or former treatment provider. (Gov't Ex. 9 at 44–46; 60–V–0010.)

Respondent issued SA Brigantty a prescription for 150 Roxicodone 30 mg tablets. (Tr. vol. 2, at 45; Gov't Ex. 9 at 53–54.)

Respondent testified in substance that he believed SA Brigantty had described significant pain, and even though SA Brigantty had previously been on a lot of medication, Respondent felt it reasonable to start him on a lower dose of 150 Roxicodone 30 mg tablets, to be taken up to five times per day. (Tr. vol. 10, at 265.) Respondent further testified that he did not believe it necessary to prescribe Xanax because the patient stated that if his pain were under control he would sleep better. (Tr. vol. 10, at 265.) Respondent also testified that the MRI report reflected significant disc disease, with disc bulging and ''evidence of boney abnormality compressing the spinal cord as well as both areas where the nerve comes out

[28] The undercover role included identification information and an actual MRI report of the undercover officer's back taken in advance of the appointment. The MRI was provided to the clinic prior to the appointment. (Tr. vol. 2, at 29–30; Gov't Ex. 9 at 55; Gov't Ex. 26 at 22.)

* * *.'' which correlated with SA Brigantty's complaint of pain. (Tr. vol. 10, at 267.)

Dr. Berger testified in substance that a patient who represents that he is illegally buying drugs on the street, and is requesting the same drug to be prescribed, would be precluded from receiving prescriptions for controlled substances. (Tr. vol. 7, at 161.) Dr. Berger further testified that based on his review of the medical file, he did not see anything that justified the issuance of controlled substances. (Tr. vol. 7, at 162; Gov't Ex. 26.)

(f) SA Priymak, April 7 and May 4, 2010 Undercover Visits to CCHM

SA Priymak testified in substance to having worked for DEA since 2004 and to participating in an investigation of Respondent on April 7 and May 4, 2011. (Tr. vol. 2, at 314–15.) On April 7, 2011, SA Priymak travelled to CCHM acting in the undercover role of a patient, carrying a concealed audio recorder. SA Priymak testified to seeing several dozen people in the waiting room, and to paying $175 cash to the receptionist. (Tr. vol. 2, at 318–19.) After completing a series of forms and a triage procedure,[29] SA Priymak met with Respondent. (Tr. vol. 2, at 320–21.) SA Priymak further testified that he informed Respondent that he had a little bit of pain in his neck with a pain level of two and three, which Respondent stated was low for him to write a prescription. (Tr. vol. 2, at 322–23.) SA Priymak also testified that upon questioning by Respondent, SA Priymak increased the level to five. (Tr. vol. 3, at 15.) SA Priymak informed Respondent that he was taking 160 milligrams of OxyContin per day along with a quantity of Xanax and Soma, stating he was buying them ''off the street.'' (Tr. vol. 2, at 323, 376.) SA Priymak also indicated a history of intravenous drug use which ended five years prior and current use of alcohol. (Gov't Ex. 5 at 38 & 41.)

SA Priymak next testified that Respondent informed him he would not write a prescription for thirty milligram ''oxi's'' so SA Priymak inquired about fifteen milligrams, to which Respondent shook his head and said yes. (Tr. vol. 2, at 324.) SA Priymak further testified that Respondent asked him if he wanted Xanax, to which SA Priymak said yes. (Tr. vol. 2, at 325.) Respondent also suggest to SA Priymak that he go to a rehabilitation facility. (Tr. vol. 2, at 325.) Respondent wrote a prescription to SA Priymak for 150 Roxicodone 15 mg and 30 Xanax 2 mg tablets. (Gov't Ex. 5 at 63–64.)

SA Priymak further testified that he returned to CCHM on May 4, 2010, for a follow-up appointment with Respondent. (Tr. vol. 2, at 327.) The cost of the appointment was $150, for which SA Priymak paid $200 in cash to CCHM staff but was not given change back. (Tr. vol. 2, at 328.) After a wait and triage procedures, SA Priymak met with Respondent for a very short visit lasting approximately less than four minutes. (Tr. vol. 2, at 328; Gov't Ex. 5 at 2–5.) SA Priymak testified that Respondent checked his breathing and again issued prescriptions for 150 Roxicodone 15 mg and 30 Xanax 2 mg tablets. (Tr. vol. 2, at 328–29; Gov't Ex. 5 at 65–66.) Respondent did not raise the issue of rehabilitation or the use of alcohol during the patient encounter on May 4, 2010. (Gov't Ex. 5 at 54–58.)

Respondent testified in substance that the MRI report associated with the April 7, 2010 visit had been verified. (Resp't Ex. 1 at 25; Tr. vol. 10, at 91.) Respondent further testified that he believed SA Priymak's reference to pain as a one, two and zero to be confusion on the part of the patient, and Respondent attempted to ''clarify'' but not coach the patient in arriving at a pain number. (Tr. vol. 10, at 94–95.) Respondent testified that during the course of his meeting with SA Priymak, Respondent came to believe that SA Priymak was from ''another country'' and was not communicating properly. (Tr. vol. 10, at 99.) Respondent explained that he asked a series of questions, including history of past treatment, alcohol and drug use. (Tr. vol. 10, at 102–03.) Respondent testified that he declined to write a prescription for the type and quantity of medication requested by SA Priymak; rather he used his medical judgment based on his interpretation and assessment of the degree of pain, but was convinced that SA Priymak had significant pain. (Tr. vol. 10, at 108.)

Respondent also testified that he does not believe a doctor is precluded from prescribing controlled substances to a patient who has previously taken or is currently taking illegal drugs or drugs without a prescription. (Tr. vol. 10, at 111.) With regard to the prescription for Xanax, Respondent testified that he prescribed it because SA Priymak stated he had problems sleeping, and Respondent felt it was medically appropriate. (Tr. vol. 10, at 116.) Respondent declined to prescribe Viagra, which SA Priymak had requested, because he saw no medical indication to support SA Priymak's request. (Tr. vol. 10, at 117.) Respondent testified that he diagnosed SA Priymak with neck pain, chronic pain and cervical disc disorder. (Tr. vol. 10, at 125.)

With regard to the May 4, 2010 follow-up visit, Respondent testified that he would have had the prior file information available to him, and relied on the truthfulness of what patients represent, including patient forms with attestations of truthfulness. (Tr. vol. 10, at 131; Resp't Ex. 2 at 15.) Respondent further testified that people may try to deceive him but he is ''always on the lookout to catch that,'' noting he is not perfect. (Tr. vol. 10, at 132.) Respondent testified that his interpretation of the March 10, 2010 MRI report was ''consistent with a patient having significant neck pain.'' (Tr. vol. 10, at 138; Resp't Ex. 2 at 25.) Respondent testified that based on the patient's representations that he was doing well, Respondent prescribed SA Priymak the same dose of medications.

Dr. Berger testified in substance that after a review of the patient file, among other information, he was of the opinion that prescriptions for Roxicodone and Xanax on April 7, 2010, were unwarranted, particularly given the patient's history of being an intravenous drug user and having purchased drugs illicitly on the street. (Tr. vol. 7, at 92.) Dr. Berger further testified that his review of the patient file noted a discrepancy between the chart, which referenced Roxicodone 30 mg, and the actual prescription, which Respondent issued for Roxicodone 15 mg. (Tr. vol. 7, at 97; Gov't Ex. 22 at 22–24.) Dr. Berger also testified that from April 7, 2010 to May 4, 2010, there was no significant information to legitimize the reissuance of a prescription for controlled substances, explaining that the patient had not gone for another opinion, to include other therapies to reduce narcotic requirements. (Tr. vol. 7, at 98.)

Consistent with his testimony, Dr. Berger opined in his written report that Respondent ''fell below the standard of care and treatment of this particular UC patient.'' (Gov't Ex. 32 at 73.) In support of this opinion, Dr. Berger noted that Respondent's evaluation lacked a complete history of pain, prior treatments, effects, physicians and records, among other deficiencies. (Gov't Ex. 32 at 73.)

(g) SA Zdrojewski, July 23, 2010 Undercover Visit to CCHM

SA Zdrojewski testified in substance that he had nine years of law enforcement experience with DEA, most

[29] The triage procedure at CCHM generally consisted of a collection of biometric information such as height, weight and blood pressure, and sometimes included urinalysis testing.

recently working in a Tactical Diversion Squad, and participated in an investigation of Respondent on July 23, 2010. (Tr. vol. 3, at 68–69.) SA Zdrojewski testified that on July 23, 2010, he travelled to CCHM, acting in the undercover role of a patient,[30] with a concealed audio recorder, and met with Respondent. (Tr. vol. 3, at 69 & 71.) SA Zdrojewski was in the company of several other DEA agents acting in undercover roles as patients, and the group was represented by a DEA agent, SA Jack Lundsford, acting in the undercover role of ''ringleader'' for the undercover patients. (Tr. vol. 3, at 69–72.) SA Zdrojewski testified that he paid $300 for the office visit and another $200 to SA Lundsford to be given to CCHM staff for ''VIP treatment.'' (Tr. vol. 3, at 72.)

SA Zdrojewski next testified that following completion of ''paperwork'' he waited and was eventually called to a triage room, where two female CCHM staff members recorded his height, weight and blood pressure. (Tr. vol. 3, at 73 & 76.) SA Zdrojewski was asked to provide a urine sample and noted during the process that other than directions from staff, the urinalysis process was unsupervised. (Tr. vol. 3, at 78.) After providing the urine sample to staff, SA Zdrojewski testified that he told staff members that he had ''fooled around with the test'' but no one said anything to him. (Tr. vol. 3, at 79.)

SA Zdrojewski further testified that he eventually was called and met with Respondent for approximately ten minutes.[31] (Tr. vol. 3, at 83.) Upon inquiry by Respondent, SA Zdrojewski stated in substance that he had been having intermittent neck pain for approximately one and one-half years, but did not know the cause. (Tr. vol. 3, at 86, 87 & 126.) SA Zdrojewski further testified that with regard to a history and physical examination form, Respondent had not discussed with him various items checked on the form, to include: Anti-inflammatories and diet, yoga/stretching exercises, and use of omega-3 fish oil, three to six grams per day, among others.[32] (Tr. vol. 3, at 88, 89; Gov't Ex. 28 at 5; Gov't Ex. 8 at 11–18.) Upon inquiry by Respondent, SA Zdrojewski stated that he smoked marijuana and was self-medicating for pain. (Tr. vol. 3, at 89 & 90.) SA Zdrojewski had originally written on the pain scale that his pain was a zero or a one but upon explanation by Respondent that zero to one meant no pain, SA Zdrojewski told him to ''top it,'' meaning all the way to the high end of the pain scale. (Tr. vol. 3, at 97, 141–42.) SA Zdrojewski stated to Respondent that other treating sources had given him very large amounts of pain medications, which he further indicated was more than he needed. (Gov't Ex. 8 at 12.)

SA Zdrojewski next testified that upon inquiry by Respondent about alcohol use, SA Zdrojewski stated he drank a lot, further explaining that he considered a ''case of beer'' to be ''a lot'' and drank no hard liquor when working. (Tr. vol. 3, at 88, 147; Gov't Ex. 8 at 14.) Respondent had SA Zdrojewski take some breaths and perform some physical maneuvers including bending and touching his toes.[33] (Gov't Ex. 8 at 16.) Respondent then explained to SA Zdrojewski the results of his MRI, noting that the ''MRI doesn't show much of anything and secondly, drinking a case of beer is not compatible with taking strong medicine like this * * *.'' (Tr. vol. 3, at 153; Gov't Ex. 8 at 17.) Respondent inquired of SA Zdrojewski about the alcohol consumption, to which SA Zdrojewski stated he would stop drinking. (Gov't Ex. 8 at 17–18; Tr. vol. 3, at 163.) Respondent noted the chart contained self-reported use of Xanax, and SA Zdrojewski said that Xanax had been given to him previously and that he would accept an additional Xanax prescription if one were offered to him. (*See* Gov't Ex. 8 at 18.) Respondent stated in substance that he does not give medication simply in order to write a prescription. (Gov't Ex. 8 at 18.) Respondent concluded the meeting with SA Zdrojewski by advising him to keep the medication locked up in a safe place. (Tr. vol. 3, at 167.) SA Zdrojewski further testified that at the end of the meeting with Respondent he did not know what, or even if, he was going to be prescribed medication. (Tr. vol. 3, at 169.)

Respondent issued a prescription to SA Zdrojewski for 150 Roxicodone 30 mg tablets. (Tr. vol. 3, at 184; Gov't Ex. 28 at 19–20.)

Respondent testified in substance that he learned from SA Zdrojewski during the patient visit that SA Zdrojewski had previously been treated at another clinic that was now closed, had tried other treatments, and had been taking 60 Xanax 2 mg, 240 Roxicodone 30 mg and 90 OxyContin 80 mg tablets. (Tr. vol. 10, at 239–41.) Respondent further testified that a patient's use of marijuana is not an automatic disqualifier for prescribing controlled substances. (Tr. vol. 10, at 243–44.) Respondent testified that it appeared SA Zdrojewski had done ''okay'' on medication but he had resorted to self-medicating with marijuana after the other clinic closed. (Tr. vol. 10, at 245.) Respondent also testified that after his discussion with SA Zdrojewski about use of alcohol, he understood from SA Zdrojewski's answer that he would rather take medication than use alcohol. (Tr. vol. 10, at 248.) Respondent testified that he did not prescribe Xanax because SA Zdrojewski stated he did not need it, and was also concerned that SA Zdrojewski was drinking some, so ''it was more cautious to hold off on that without a * * * strong indication.'' (Tr. vol. 10, at 250.)

Respondent further testified that he prescribed medication that Respondent believed was sufficient to cover SA Zdrojewski's pain, but noted in the patient file the need for referral to neurosurgery or a Board Certified pain management specialist before continuing care, because Respondent did not expect the patient to have such severe symptoms given the MRI findings. (Tr. vol. 10, at 254.) Respondent testified that he reviewed the patient chart after SA Zdrojewski left because he had some lingering questions, and made a note to prompt him to have questions answered on the next visit, which never occurred. (Tr. vol. 10, at 254; Resp't Ex. 8 at 5.)

Dr. Berger testified in substance that SA Zdrojewski's admission to Respondent that he was engaged in the illegal use of drugs made him a less suitable candidate for prescribing controlled substances to reduce pain. Dr. Berger also did not note any referral to rehabilitation in the patient file. (Tr. vol. 7 at 175–76.) Dr. Berger testified that issuing 150 dosage units of 30 mg Roxicodone to someone admitting use of marijuana is not within the established standard of care ''as a first-line of treatment'' in Florida. (Tr. vol. 7, at 176.)

(h) SA Ryckeley, July 23, 2010 Undercover Visit to CCHM

SA Ryckeley testified in substance that he had over ten years of law

[30] The undercover role included identification information and an actual MRI report of the undercover officer's neck taken in advance of the appointment. The MRI was provided to the clinic. (Tr. vol. 3, at 81; Gov't Ex. 8 at 24.)

[31] SA Zdrojewski represented to Respondent that this was his first visit to CCHM and that he had previously been treated at ''Tampa Bay Wellness before they were closed down.'' (Tr. vol. 3, at 97; Gov't Ex. 8 at 11.)

[32] This was consistent with testimony from the other witnesses who had posed as patients and seen Respondent.

[33] SA Zdrojewski testified that he stated to Respondent that he could not bend over and touch his toes at the same time that he was doing so, and in fact was able to complete the maneuver. SA Zdrojewski further testified that he over-exaggerated all of the requested maneuvers. (Tr. vol. 3, at 159, 160 & 185.)

enforcement experience with DEA, most recently working in a Tactical Diversion Squad, and that he participated in an investigation of Respondent on July 23, 2010. (Tr. vol. 3, at 199, 200 & 233.) SA Ryckeley testified that on July 23, 2010, he travelled to CCHM acting in the undercover role of a patient,[34] with a concealed audio recorder, and met with Respondent. (Tr. vol. 3, at 200 & 206.) SA Ryckeley was in the company of several other DEA agents acting in undercover roles as patients, and the group was represented by a DEA agent, SA Jack Lundsford, acting in the undercover role of ''sponsor'' for the undercover patients, with the undercover ''patients'' following his direction, ''and he was organizing primarily everything with the clinic staff.'' (Tr. vol. 3, at 201.) SA Ryckeley testified that he paid $300 for the office visit and another $200 to a CCHM staff member for ''VIP treatment,'' meaning accelerated preferential treatment. (Tr. vol. 3, at 201.)

SA Ryckeley further testified that following a triage procedure which included a urinalysis test, he was eventually called to meet with Respondent. (Tr. vol. 3, at 206.) SA Ryckeley informed Respondent initially during the meeting that he was suffering from back discomfort which began in May 2010.[35] SA Ryckeley testified that he informed Respondent that he sustained the injury while fishing and landing a fish, and had been taking his girlfriend's ''thirties,'' referring to 30-milligram oxycodone, which made him feel better. (Tr. vol. 3, at 207; Gov't Ex. 7 at 12–13.) Upon inquiry as to pain level, SA Ryckeley initially reported pain at ''around a two,'' later adjusting the level upward to ''moderate'' upon Respondent's explanation of the pain scale. (Tr. vol. 3, at 257.) SA Ryckeley testified that in his undercover role he was trying to avoid using the term ''pain'' to help gauge the willingness and propensity of the physician to prescribe controlled substances or discharge the patient. (Tr. vol. 3, at 236, 237.) Upon further inquiry by Respondent about pain, use of medication and impact on daily activities, Respondent stated in substance that SA Ryckeley was ''underwhelming'' him, that he should just take Tylenol, stating: ''You don't have anything wrong, I don't get it.'' (Tr. vol. 3, at 209; Gov't Ex. 7 at 23–24.)

[34] The undercover role included identification information and an actual MRI report of the undercover officer's lower back taken in advance of the appointment. The MRI was provided to the clinic. (Tr. vol. 3, at 216; Gov't Ex. 7 at 67.)

[35] SA Ryckeley related the date of injury to the date of his MRI. (Gov't Ex. 7 at 18–19.)

Upon inquiry, SA Ryckeley informed Respondent that he drinks ''socially,'' elaborating that he drank ''two (2), two (2) or, I don't know. Two (2) or three (3) drinks, max * * * a week maybe, I don't know, maybe * * * it depends on the occasion * * *.'' (Gov't Ex. 7 at 26.) Respondent advised SA Ryckeley that ''we don't prescribe medicines for people who drink alcohol'' explaining further the incompatibility of drinking and taking medications, which SA Ryckeley acknowledged, stating ''yeah'' and ''Okay, doc.'' (*Id.* at 26–27.)

Respondent further inquired of SA Ryckeley whether the ''thirties (30s) seem to be working for you,'' and SA Ryckeley replied that he liked them, further explaining that ''they work good,'' prompting Respondent to state: ''You know, you're killing me, I can't even believe I'm having this conversation.'' (Gov't Ex. 7 at 28.) SA Ryckeley testified that Respondent had him perform a range-of-motion test, including bending and walking across the room, which SA Ryckeley performed with ease. (Tr. vol. 3, at 210; Gov't Ex. 7 at 28.) Upon inquiry by Respondent as to SA Ryckeley's current pain, SA Ryckeley responded that pain was a five or seven without medication. (Gov't Ex. 7 at 29.) SA Ryckeley testified that at the completion of the meeting, Respondent told him he would be started on some medication but Respondent ''never told me that he was going to issue me oxycodone.'' (Tr. vol. 3, at 211–12.)

Respondent issued SA Ryckeley a prescription for 150 Roxicodone 30 mg tablets, which CCHM filled for an initial cost of $900 cash, but CCHM staff refunded SA Ryckeley $150 because he was a member of a ''group.'' (Tr. vol. 3, at 212; Gov't Ex. 7 at 62–63.)

Respondent testified in substance that he understood SA Ryckeley's pain to have begun approximately three months prior to the appointment, and interpreted references of ''discomfort'' to mean pain. (Tr. vol. 10, at 209–12.) Respondent also testified that with regard to alcohol use, he had tried to overemphasize and caution SA Ryckeley not to ''drink and take medicine.'' (Tr. vol. 10, at 227.) Respondent further testified that he interpreted various statements by SA Ryckeley to mean that he was somewhat language-challenged, but gave him the benefit of the doubt while finding SA Ryckeley's choice of words ''a little unusual.'' (Tr. vol. 10, at 227.)

Respondent also testified that he prescribed a lower dose of pain medication than what SA Ryckeley had represented he had taken of his girlfriend's medication, explaining to the patient not to take the medication more often than needed. Respondent testified regarding the patient chart, explaining the chart reflected his diagnosis of lumbar disc displacement, chronic low back pain and muscle spasm. (Tr. vol. 10, at 237; Resp't Ex. 7 at 4.) Respondent testified that he made notes regarding reevaluation of the patient on a follow-up visit, including a concern if the patient was ''a legitimate pain patient,'' and intended to perform a urine drug screen test on the next visit with possible referral to a ''Board Certified pain management specialist.'' (Tr. vol. 10, at 238; Resp't Ex. 7 at 5.)

Dr. Berger testified in substance and in error that SA Ryckeley had reported ''only a three week history of back pain.'' [36] (Tr. vol. 7, at 164; Tr. vol. 9, at 49–60.) Dr. Berger also testified that references in the medical file regarding the patient taking controlled substances from his girlfriend makes the patient ''a bad candidate for compliance,'' because the patient may be willing to share or divert medication. (Tr. vol. 7, at 167.)

5. Respondent's Registered Locations

The Government presented the testimony of DI Barbara Boggess, DEA, who testified in substance to having approximately twenty-five years of experience with DEA as a diversion investigator. (Tr. vol. 1, at 67.) DI Boggess identified nine registered locations where Respondent had maintained a DEA COR, along with Respondent's Internet application for a DEA registration in Orlando, Florida. (Tr. vol. 1, at 70; Gov't Exs. 2 & 3.) The evidence also included a ''returned'' envelope, sent by DEA to Respondent's registered location in Wellington, Florida, bearing a postage date of December 22, 2010.[37]

DI Boggess further testified that if a registrant discontinues practice at a registered location, there is a process to return a COR to DEA. (Tr. vol. 1, at 83–84.) A registrant that leaves a location with the intent of returning prior to the registration expiration date is not required to notify DEA. (Tr. vol. 1, at 86.)

[36] The testimony of SA Ryckeley, which was fully consistent with the medical file, audio recording and transcript, reflected a reported duration of pain of approximately three months. (*See* Gov't Exs. 7 & 27.) On cross-examination, Dr. Berger eventually acknowledged the error, stating: ''I felt that [Respondent] wrote three weeks. Frankly, three weeks or three months is not that big a difference.'' (Tr. vol. 9, at 60.)

[37] Contrary to the Government's Prehearing Statement, DI Boggess offered no testimony pertaining to her activities on December 16, 2010, related to collecting unused copies of DEA Form 222, or inventory of controlled substances at Respondent's registered location in Deerfield, Beach, Florida. (*See* ALJ Ex. 9 at 38.)

6. Respondent's Registration History and Prescribing Practices

Respondent offered testimony related to his prescribing experience and practice generally. Respondent also presented testimony from three witnesses related to his work for public safety departments at three registered locations in Florida. Mark Pure, Division Chief, Green Acres Fire and Rescue Department, testified in substance that he has been employed by the City of Greenacres, Florida for approximately eighteen years, and has known Respondent the entire time. (Tr. vol. 9, at 146–47.) Mr. Pure testified that Respondent was the Medical Director for the fire department, overseeing emergency medical service issues, to include writing protocols. The written protocols included guidance on handling of controlled substances such as morphine, Dilaudid and others. (Tr. vol. 9, at 149.) Mr. Pure testified that during his tenure he was unaware of any issues or concerns related to Respondent's ordering, maintenance or distribution of controlled substances.

David Dyal, Assistant Fire Chief, Stuart, Florida, testified in substance to having previously worked for the West Palm Beach Fire Department from 1976 to 2004, where he worked with Respondent. (Tr. vol. 9, at 170–71.) Mr. Dyal testified that he met Respondent in the 1980's after Respondent became Medical Director, and worked with Respondent until 2004, but has not worked with him since. (Tr. vol. 9, at 179.) Mr. Dyal testified to interaction over the years with Respondent related to medical treatment protocols, paramedic training and record keeping, to include Respondent's preparation of copies of DEA Form 222. Mr. Dyal further testified that he was not aware of any issues with controlled substances, such as safety or diversion, during his tenure. (Tr. vol. 9, at 174.) Mr. Dyal testified that he believed Respondent to be an outstanding physician. (Tr. vol. 9, at 177.)

Philip Webb, Fire Chief, City of West Palm Beach, Florida, testified in substance to having previously worked with Respondent since in or about 1985 or 1986, but only professionally. (Tr. vol. 9, at 191 & 196.) Mr. Webb testified that during the entire twenty-six year period, Respondent has been the Medical Director for the fire department, performing functions such as training, quality assurance and protocols, among others. (Tr. vol. 9, at 192–93.) Mr. Webb further testified that he is unaware of any problems or issues regarding controlled substances during the time period that Respondent has been Medical Director. (Tr. vol. 9, at 193–94.) Mr. Webb testified that he has not observed Respondent write prescriptions or treat patients. (Tr. vol. 9, at 198.)

Respondent testified in substance to having a twenty-eight year history as an emergency room physician, prescribing controlled substances to large numbers of patients over the years, in addition to work with emergency medical services. (Tr. vol. 9, at 222.) Respondent testified that he has experience assessing pain, as well as treating chronic pain. (Tr. vol. 9, at 222–23.) Respondent's experience included patients seeking pain medication, and he would attempt to validate if the pain was real or not. (Tr. vol. 9, at 227.) Respondent further testified that over time he developed a ''sixth sense in determining whose pain was real or not.'' (Tr. vol. 9, at 231.) Respondent further testified that since residency training, he has not had any formal training in pain management, other than a one-hour home study course related to pain. (Tr. vol. 11, at 191–92.)

Respondent next testified that he did not receive any new or additional training before starting work at CMG. (Tr. vol. 9, at 232.) Respondent left CMG because of a disagreement with the owner regarding the owner's unwillingness to fire a staff member that Respondent believed was responsible for the falsification of a patient drug screen. (Tr. vol. 9, at 233.) Respondent was not allowed to take his patient files with him when he left CMG, because Respondent felt under duress, fear and in danger, but did not report the incident to the police. (Tr. vol. 11, at 69–70, 74.) Respondent also worked for another pain clinic for approximately one week before it was closed. (Tr. vol. 9, at 235.)

Respondent testified that he began working at CCHM in April 2010, as one of four or five doctors, along with five or six staff members. (Tr. vol. 9, at 236.) In October 2010, Respondent became the owner of CCHM, as well as practicing physician, and ''fired'' or ''didn't continue'' a number of staff members, due to issues of trust and comfort that they were on the ''same page.'' (Tr. vol. 9, at 236–37.) Respondent testified that he began making other changes at the clinic upon becoming owner, in an attempt to implement changes that were being contemplated but not yet enacted by the Florida Board of Medicine. (Tr. vol. 9, at 237–38, 249; Resp't Ex. 22.) As part of that process, Respondent hired a Florida certified risk manager, who worked with Respondent to implement a policy and procedure manual for CCHM. (Tr. vol. 9, at 238; Resp't Ex. 23.)

Respondent testified that after becoming owner of CCHM, he recalled an occasion where he ''learned that a triage person had dirtied, if you will, a urine test,'' explaining that to be ''slang that patients use'' where check boxes are made to look like the patient is taking medication. (Tr. vol. 9, at 239.) Respondent further testified that he confronted the employee, who admitted the misconduct, and then Respondent fired the person. (Tr. vol. 9, at 240–41.) Respondent also testified that on six to ten occasions Respondent or his staff contacted the Broward County Sheriff's Office to report illegal or deceptive activity, but found the Sheriff's Office very unresponsive. (Tr. vol. 9, at 241–43.)

Respondent testified that the specific changes to CCHM that he began implementing after becoming owner in October 2010 included changes to patient drug testing, an office policy and procedure manual, and urine drug screening process, and the discharge of hundreds of patients. (Tr. vol. 9, at 260–74; Resp't Ex. 23.)

Respondent next testified that during his tenure at CCHM beginning in April 2010, he had ''no knowledge that a staff member or physician filled in a form'' on a patient's behalf. (Tr. vol. 9, at 285.) Respondent testified there were times when notations might be placed on forms based on what a patient told a doctor. (*Id.*) Respondent testified that with regard to SA Priymak's patient file, an arrow on the pain scale form filled out by the patient that reflects higher pain may have been placed on the form by Respondent, who explained in substance that marking a patient form in that matter is appropriate if it clarifies what the patient meant. (Tr. vol. 11, at 63–64; Gov't Ex. 22 at 10.)

Respondent testified that he did not know how many of his patients lived outside of Florida and ''never tracked that,'' but based on patient files acknowledged three lived in Kentucky, and another had identification listing residence in Virginia. (Tr. vol. 11, at 85–87; Resp't Exs. 13, 15, 17 & 19.) Respondent testified that his staff tried to get medical records, but acknowledged that six of the patient files presented at hearing contained no prior medical records or verification of statements made by the patients.[38] (Tr. vol. 11, at 91–92; Resp't Exs. 11, 13, 15–17 & 19.) Respondent testified that

[38] With regard to verifying patient statements, Respondent tautologically explained: ''Well, if you can't get medical records, then you know, it can't be verified.'' (Tr. vol. 11, at 92.)

hundreds of other patient files contain prior medical records, but acknowledged that none introduced at hearing, including undercover files, contained any. (Tr. vol. 11, at 94.)

Respondent testified that he did not recall how he was paid while working at CMG, but the salary was not tied to dispensing pills, and Respondent received payment from the owner. (Tr. vol. 11, at 97–98.) Respondent testified that while at American Pain he made ''maybe $1000,'' explaining that he ''never actually made any money there, because the checks never cleared.'' (Tr. vol. 11, at 104.) At CCHM, Respondent testified that he recalls being paid ''$1500 a day'' by check, and received ''$250 a week'' which was not ''directly attached to the distribution of pills'' but had to do with time Respondent spent in the CCHM pharmacy, on things such as record-keeping, and work with the ''pharmacy tech,'' among other duties.[39] (Tr. vol. 11, at 106.)

Respondent further testified that he was aware of the term ''VIP service'' in the context of a pain clinic visit, explaining that staff members didn't ask for money, ''but that you know, occasional patient would add some money to their bill, in order to be expedited'' at the clinic. (Tr. vol. 11, at 183.)

IV. Discussion

A. The Applicable Statutory and Regulatory Provisions

The 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.[40] ''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.[41] 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.[42] 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).[43]

B. The Public Interest Standard

The CSA, at 21 U.S.C. 824(a)(4), provides, insofar as pertinent to this proceeding, that the Administrator may revoke a COR if she finds that the continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a DEA COR if she determines that such registration would be inconsistent with the public interest. In determining the public interest, the 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 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). Application of the public interest factors requires an individualized determination and assessment of prescribing and record-keeping practices that are ''tethered securely to state law * * * and federal regulations.'' *Volkman* v. *DEA,* 567 F.3d 215, 223 (6th Cir. 2009). Additionally, in an action to deny a registrant's COR, the DEA has the burden of proving that the requirements for revocation are satisfied.[44] The burden of proof shifts to the respondent once the Government has made its prima facie case.[45]

C. 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 unrestricted medical license in Florida. Moreover, up until the time he was served with the OSC/IS in this case, Respondent held a Florida state dispensing license.[46] (Tr. vol. 11, at 117.) Although not dispositive, Respondent's possession of a valid unrestricted medical license in Florida weighs against a finding that Respondent's registration would 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

In this case, there is indeed evidence that Respondent has failed to remain in compliance with applicable federal and state law relating to controlled substances, and that his past experience in dispensing controlled substances with regard to several patients was inconsistent with the public interest. The evidence at hearing centered in substantial part on patient files previously seized from Respondent's office on December 16, 2010. (*E.g.,* Tr. vol. 2, at 111.) In addition to the patient files, the Government presented the testimony and written report of a medical expert witness, Dr. Berger, with regard to his review of eight patient files

[39] Respondent testified that payment for pharmacy duties continued up until he purchased CCHM in October 2010. (Tr. vol. 11, at 108.)

[40] 21 U.S.C. 822(a)(2); 21 U.S.C. 802(10).

[41] 21 CFR 1306.04(a).

[42] 21 U.S.C. 844(a).

[43] *See Kuen H. Chen, M.D.,* 58 FR 65,401, 65,402 (DEA 1993).

[44] *See* 21 CFR 1301.44(e) (2010).

[45] *See Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008); *see also Thomas E. Johnston,* 45 FR 72,311, 72,311 (DEA 1980).

[46] He surrendered that license because ''without a DEA license, I could not dispense.'' (Tr. vol. 11, at 117.)

along with his opinion as to whether Respondent issued prescriptions in each instance for a legitimate medical purpose and in the usual course of professional practice. The patient files related to office visits with Respondent occurring at various dates between April and July, 2010. Respondent testified as to his standard of care and treatment for each of the eight patients, along with his past experience, among other testimony. Respondent also testified as to his standard of care and treatment of six additional patients. (*See* Resp't Exs. 11, 13, 15–17 & 19.)

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 Florida law may be found in FAC 64B8–9.013 (''Standards for the Use of Controlled Substances for the Treatment of Pain'').[47] Prevailing Florida regulation emphasizes the importance of ''prescribing, dispensing, [and] administering controlled substances including opioid analgesics[] for a legitimate medical purpose[] that is supported by appropriate documentation establishing a valid medical need and treatment plan.'' Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003). It further provides that ''[p]hysicians should be diligent in preventing the diversion of drugs for illegitimate purposes,'' and that ''prescribing must be based on clear documentation of unrelieved pain * * *.'' *Id.* r. 64B8–9.013(1)(d)–(e). In support of these principles, the Florida Board of Medicine has adopted a list of standards for the use of controlled substances for pain control. *See id.* r. 65B8–9.013(3). Pertinent obligations include the following:

(a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record should also document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) Treatment Plan * * *

(c) Informed Consent and Agreement for Treatment. The physician should discuss the risks and benefits of the use of controlled substances with the patient * * *.

(e) Consultation. The physician should be willing to refer the patient as necessary for additional evaluation and treatment * * * Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion * * *.

(f) Medical Records. The physician is required to keep accurate and complete records to include, but not be limited to:

1. The medical history and physical examination, including history of drug abuse and dependence, as appropriate;

2. Diagnostic, therapeutic, and laboratory results;

3. Evaluations and consultations;

4. Treatment objectives;

5. [D]iscussion of risks and benefits;

6. Treatments;

7. Medications (including date, type, dosage, and quantity prescribed);

8. Instructions and agreements; and

9. Periodic Reviews * * *.

10.

Fla. Admin. Code Ann. r. 65B8–9.013(3) (2003).

Turning to the evidence in the instant case, the record reveals violations of federal and state law relating to Respondent's interactions with undercover agents posing as patients at two clinics: CCHM and CMG.

1. CCHM

(a) SA Marshall

(i) SA Marshall, March 10, 2010 Visit to CCHM

As noted above, the record reflects that SA Marshall visited CCHM on March 10, 2010, and was ultimately treated by Dr. [L.C.].[48] (*See, e.g.,* Gov't Ex. 6 at 18 & 20; Tr. vol. 4, at 7.) SA Marshall presented the staff with an MRI. (Tr. vol. 4, at 43.) A man in the lobby filled out some of SA Marshall's patient paperwork, to include circling the numbers nine and eight on his pain scale, the descriptions of pain, the times of day that pain became worse, whether pain was continuous and side effects from medication. (Tr. vol. 4, at 22, 38–39.) A patient in the lobby told SA Marshall that to indicate on his patient forms that he was already receiving opiates, he should reference American Pain, a clinic which was then closed, ''because they had been closed down and [CCHM] wouldn't be able to pull my prior history there * * *.'' (Tr. vol. 4, at 41.) SA Marshall told Dr. [L.C.] that ''someone in the lobby had * * * circled the 9's, and I told him that I was more like a three or a four.'' (Tr. vol. 4, at 50.) Dr. [L.C.] ultimately issued SA Marshall a prescription for oxycodone and Xanax. (Gov't Ex. 21 at 25; Tr. vol. 4, at 42–43; *see* Gov't Ex. 6 at 19, 21–23.)

(ii) SA Marshall, April 7, 2010 Visit to CCHM

SA Marshall returned to CCHM in an undercover capacity on April 7, 2010. (*E.g.,* Gov't Ex. 6, at 1.) A CCHM employee named Cindy Mesa recognized him when he arrived, stating ''I know you.'' (Gov't Ex. 6 at 2.) SA Marshall responded that he was there for a follow-up visit and Ms. Mesa directed him to a window for follow-up patients. (Gov't Ex. 6 at 3.) Respondent later testified that on April 7, 2010, SA Marshall appeared unshaven and his hair stood up in spikes as if there were gel in it. (Tr. vol. 10, at 60.)

Behind closed doors in the triage nurse's office (*see* Tr. vol. 4, at 20), SA Marshall had a conversation with CCHM triage nurse (Tr. vol. 4, at 13) Chera Kay Davis (*e.g.,* Gov't Ex. 6 at 27), in which SA Marshall recounted that an unknown white male in the lobby (Tr. vol. 4, at 13–14) during his March 10 visit ''said * * * to give you some dough and you'd dirty up my urine * * * He told you that * * * he'd slide you fifty dollars * * * and that you'd, you, dirty up my urine.''[49] (Gov't Ex. 6 at 10.) Ms. Davis responded that she remembered (Gov't Ex. 6 at 10) and then asked: ''Oh, he just gave you fifteen's the last time?'' to which SA Marshall responded ''Yeah, he didn't give me [anything] * * * I don't have [anything] in my urine, so I hope he'll up, he'll up me * * * You think he will?'' (Gov't Ex.

[47] Due to the effective dates of the applicable state regulation, FAC 64B8–9.013 (2003) applies to conduct between October 19, 2003, and October 17, 2010; FAC 64B8–9.013 (2010) applies to conduct thereafter. *See generally https://www.flrules.org/gateway/ruleNo.asp?id=64B8–9.013.*

[48] Although there is some ambiguity in the record as to the date, the great weight of references to SA Marshall's March 2010 visit to Coast to Coast places the meeting on March 10, 2010.

[49] At hearing, SA Marshall explained that ''what I mean by dirty up my urine is to ensure that it showed it had narcotics in my system * * *'' (Tr. vol. 4, at 13.)

6 at 10.) Ms. Davis replied: ''You're seeing another doctor though, so don't * * * worry about him.'' (Gov't Ex. 6 at 10–11.) SA Marshall testified that ''I slid her $50. Then she took it and she found the sheet that referenced urinalysis and I noticed that she checked opiates, specifically * * * And she never tested my urine.'' [50] (Tr. vol. 4, at 15, 18; *see* Gov't Ex. 21 at 26.) This conversation constitutes evidence that at least one member of Respondent's staff was willing to falsify SA Marshall's patient files in an effort to facilitate the diversion of controlled substances.

The record further reflects a meeting between Respondent and SA Marshall on April 7, 2010.[51] (*Compare* Gov't Ex. 6 at 1, *with id.* at 16; Tr. vol. 4, at 20.) Respondent asked ''what have you been treated for here?'' to which SA Marshall responded ''my neck.'' (Gov't Ex. 6 at 18.) Respondent asked how SA Marshall hurt himself, to which SA Marshall replied ''I'm homeless * * * I live out on the streets * * * [a]nd I can't sleep.'' (Gov't Ex. 6 at 18.) SA Marshall stated he was taking an unidentified medication to help him sleep and oxycodone to help with his stiff neck. (Gov't Ex. 6 at 19.) Respondent asked how bad his pain was, to which SA Marshall responded that ''sometimes it's like a three or four * * * How * * * does it need [to] be?'' (Gov't Ex. 6 at 19.) SA Marshall also told Respondent that a person in the lobby had filled out his patient forms. (*E.g.,* Tr. vol. 4, at 62; Gov't Ex. 6 at 20.) Respondent replied: ''Is this a test? * * * I think this must be * * * a test for me.'' (Gov't Ex. 6 at 19–20; Tr. vol. 4, at 24.) Respondent asked what being homeless had to do with pain medicine, confirming with SA Marshall in substance that SA Marshall was selling the prescriptions. (Gov't Ex. 6 at 21–23.) Shortly thereafter, Respondent escorted SA Marshall to the reception area, (Tr. vol. 4, at 25), stating: ''we don't, um, participate in such * * * folly.'' (Gov't Ex. 6 at 23.)

SA Marshall testified that Respondent walked up to a nurse but ''that was in a back room, and I couldn't hear what they were saying.'' (Tr. vol. 4, at 25.) SA Marshall waited and observed Respondent call another patient.

SA Marshall testified that a nurse named Cindy Mesa then took him aside for a conversation (Tr. vol. 4, at 25) in the reception area (Gov't Ex. 6 at 24). Ms. Mesa elaborated:

> Mesa: Are you [expletive] crazy? * * * You told him you live on the street and that you sell the pills?
> UC1: Well he wouldn't * * * listen to my story about how I'm trying to fix my neck.
> Mesa: Oh my God! You know, okay, now you know what I have to do? I have to change the files and erase this [information] that he put here, and reschedule for [Dr.[R.C.]] tomorrow. Okay? * * * never, never say that you sell this, that, that on the street, ever. Because they think that you're an undercover, okay? And that you're trying to bust his nuts * * * Now I'll have to call you tomorrow.

(Gov't Ex. 6 at 25–26.) At hearing, SA Marshall explained that Ms. Mesa told him she would ''change your chart, erase the information and call you back tomorrow to see another doctor.'' (Tr. vol. 4, at 26.) Respondent testified that he was not privy to this conversation, nor was he made aware that records from SA Marshall's April 7, 2010 visit would be destroyed or that SA Marshall returned the next day to see Dr. [N.]. (Tr. vol. 4, at 65–66.) Respondent further testified that there was no basis in the medical record to conclude that Dr. [N.] was aware that SA Marshall had been ejected the previous day. (Tr. vol. 10, at 68.) Although I find that that Respondent did not know in April 2010 that his employee destroyed documents from SA Marshall's original patient chart or arranged for him to be seen again, I find that Respondent believed SA Marshall was an undercover law enforcement officer, which served as his basis for discharging SA Marshall. At hearing, Respondent testified that he discharged SA Marshall because he was concerned about the possibility of diversion, which I do not find credible. (Tr. vol. 10, at 61–62, 64.) In fact, Respondent had a concern about law enforcement activity dating back to at least March 5, 2010, as evidenced by his statement to SA Bazile during an undercover patient visit at CMG that he was aware from news stories that DEA was ''targeting doctors like him.'' (Tr. vol. 6, at 23.)

(iii) SA Marshall, April 8, 2010 Visit to CCHM

On April 8, 2010, one day after his unsuccessful visit with Respondent, SA Marshall returned to CCHM in an undercover capacity (Tr. vol. 4, at 27) and was seen by Dr. [N.] (Gov't Ex. 6 at 38; Tr. vol. 4, at 27–28.) The evidence further reflects that Cindy Mesa had prepared a new chart for SA Marshall and ''She had me sign something, which was so quick, I don't know what I signed.'' (Tr. vol. 4, at 27.) SA Marshall received prescriptions for OxyContin, Roxicodone and Xanax from Dr. [N] or Dr. [N.]'s physician's assistant. (Tr. vol. 4, at 28, 42; Gov't Ex. 21 at 24.)

(iv) SA Marshall, May 4, 2010 Visit to CCHM

SA Marshall returned to CCHM in an undercover capacity for a fourth visit on May 4, 2010. (*E.g.,* Gov't Ex. 6, at 27; Tr. vol. 4, at 11, 28–29.) SA Marshall had a conversation with triage nurse Chera Kay Davis (Tr. vol. 4, at 29) recounting how Respondent had rejected SA Marshall as a patient on a previous visit and what happened afterward. ''[H]e went and he told Cindy and * * * she changed my paper work and brought me back in and I saw * * * [Dr. [N.]]. So I hope he doesn't remember me * * * my paperwork is all different,[52] but he shouldn't * * * recognize it.'' (Gov't Ex. 6 at 38; *see generally* Tr. vol. 10, at 59.) Davis responded: ''You go and tell that man, tell him that you are in pain. What the hell!'' (Gov't Ex. 6 at 38.) This conversation constitutes evidence that multiple members of Respondent's staff knew, and were not concerned, that CCHM staff member Cindy Mesa had tampered with SA Marshall's patient files in an effort to facilitate the diversion of controlled substances.

SA Marshall then met with Respondent, who did not recognize him. (Gov't Ex. 6 at 39–41; Tr. vol. 4, at 126; Tr. vol. 10, at 69–70.) Nor did SA Marshall call Respondent's attention to the fact that they had met before (*see* Tr. vol. 4, at 76, 125–26); Respondent testified that SA Marshall's spiked hair was covered with a hat, that SA Marshall presented with a different persona and that Respondent had seen approximately 400 patients since last they met. (Tr. vol. 10, at 69, 73–74, 76.) The meeting lasted under three minutes. (Tr. vol. 4, at 30, 128.) Respondent listened to SA Marshall's breathing and directed him to place his hands out palm up. (Tr. vol. 4, at 31.) Although SA Marshall had indicated in his patient forms that he had emphysema/asthma, bipolar disorder, fractures, insomnia, depression and headaches (Tr. vol. 4, at 36–37; Gov't Ex. 21 at 10–11),

[50] SA Marshall later testified that he gave the triage nurse money on March 10, not April 7. (Tr. vol. 4, at 18–19.)

[51] SA Marshall testified that his first meeting with Respondent occurred on April 8, 2010, (Tr. vol. 4, at 7), but he later retracted this testimony and stated that his first meeting with Respondent occurred on April 7, 2010. (Tr. vol. 4, at 10.)

[52] The record reflects, however, that some of SA Marshall's original paperwork remained. (*E.g.,* Tr. vol. 4, at 38 (paperwork completed on March 10, 2010).) I therefore infer that Cindy Mesa destroyed only the notes relating to SA Marshall's first visit associated with Respondent's decision to terminate SA Marshall as a patient, clearly evidencing Ms. Mesa's disagreement with Respondent's assessment that SA Marshall was an undercover law enforcement officer. (*See* Tr. vol. 4, at 92.)

Respondent did not discuss any of these topics with SA Marshall. (Tr. vol. 4, at 36–37.) As noted above, Dr. Berger found notable the absence of psychiatric consultations in the patient chart. (*See* Tr. vol. 10, at 64–65.)

Respondent then inquired whether SA Marshall had pain in his back, and SA Marshall responded in the negative. (Tr. vol. 4, at 31.) Respondent asked if SA Marshall had pain in his neck, and SA Marshall responded in the affirmative. (Tr. vol. 4, at 31.) Moments later, Respondent issued SA Marshall the same prescription Dr. [N.] had prescribed on April 8, 2010 (Tr. vol. 4, at 86): 120 oxycodone 30 mg and 30 Xanax 3 mg tablets.[53] (Tr. vol. 4, at 31; Gov't Ex. 6 at 45; Gov't Ex. 21 at 22.) Respondent did not address alternative medications, treatment plans or physical therapy. (Tr. vol. 4, at 44–45.) Respondent did not ask SA Marshall for prior medical records from previous doctors, which is inconsistent with the requirement and spirit of Fla. Admin. Code Ann. r. 64B8–9.013(3)(f), which provides that a physician must keep accurate medical records.[54] (Tr. vol. 4, at 45.) He ordered no diagnostic tests, provided no time table for his pain management, discussed no objective goals for pain relief and did not explain how SA Marshall's care would continue or be monitored. (Tr. vol. 4, at 45.) Respondent did, however, ask whether, overall, SA Marshall was doing okay, to which SA Marshall responded in the affirmative. (Tr. vol. 4, at 81.) Dr. Berger testified in substance that the medical file for SA Marshall contained numerous inconsistencies, to include no obvious physical examination on the first visit, an MRI report issued two days before the first visit with no prescribing or ordering physician noted on the MRI report. (Tr. vol. 10, at 63–64; Gov't Ex. 21 at 8.)

The record further reveals evidence that Respondent documented in SA Marshall's patient file discussions that did not actually occur. For instance, despite contrary notations in the patient file (*see* Gov't Ex. 21 at 8), SA Marshall testified that Respondent never discussed anti-inflammatory medication, diet, the risks and benefits of the medication, omega-3 fish oil, glucosamine chondroitin sulfate, avoidance of alcohol, soda and illegal drugs or weaning off of medication or the medications SA Marshall was currently taking. (Tr. vol. 4, at 35–36, 39.) Respondent did, however, advise SA Marshall to do some stretching. (Tr. vol. 10, at 85.) Respondent's conduct constitutes a failure to keep accurate records, to include evaluations, consultations and discussion of risks and benefits, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3).

In summary, the record reveals violations attributable to Respondent of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA Marshall's undercover visits to CCHM. I find that Respondent credibly testified that he did not recognize SA Marshall on May 4, 2010, or remember having terminated him as a patient. Nevertheless, substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Marshall lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR § 1306.04(a). Moreover, I find that Respondent knew or should have known that staff members and individuals posing as patients at CCHM diverted or attempt to divert controlled substances.

(b) SA Saenz

SA Saenz visited CCHM in an undercover capacity on March 4, 2010, twice on March 10, 2010, and again on April 8, 2010. (*See* Tr. vol. 2, at 236–37, 259 & 265.) She was seen by Dr. [L.C.], Dr. [R.C.] and Dr. [N.] and prescribed controlled substances by Dr. [R.C.] and Dr. [N.][55] (Tr. vol. 2, at 237, 281–83; Gov't Ex. 24 at 25–26.) May 4, 2010, however, was the first time SA Saenz came into contact with Respondent at CCHM, when she visited again in an undercover capacity. (*See* Tr. vol. 2, at 231, 238.) SA Saenz testified that at each visit she went to a different doctor at CCHM, ''told them I wanted something stronger'' and the doctors accommodated her request. (Tr. vol. 2, at 263–64.) She has no legitimate medical condition that would justify taking any of the prescriptions she was ultimately prescribed. (Tr. vol. 2, at 264.)

During SA Saenz's undercover visit to CCHM on May 4, 2010 (Tr. vol. 2, at 231), she was accompanied by two other undercover agents initially and a third who joined them later. (Tr. vol. 2, at 233 & 285.) Upon arriving at the clinic they requested to be moved to the front of the line, paid a receptionist named Carla $200 for the $150 office visit and did not receive any change. (Tr. vol. 2, at 233–34.) Carla then instructed SA Saenz to complete paperwork to add to her patient file, which already contained paperwork from previous visits. (Tr. vol. 2, at 235–36.) She was directed to wait in a waiting room, after which she completed triage procedures with staff members. (*See* Tr. vol. 2, at 241.)

The record reflects that Respondent briefly met with SA Saenz in a patient consultation room and issued her controlled substances prescriptions after limited conversation and a cursory physical examination. SA Saenz testified that she met with Respondent for no more than ten minutes. (Tr. vol. 2, at 242, 244.) He asked her how she was, whether her current prescriptions were helping and whether she had a job; beyond that did not discuss her previous medication. (Tr. vol. 2, at 242, 257.) She said her prescriptions, including oxycodone, were helping and that she had a job at daycare but requested to increase her Roxicodone 30 mg dosage from ninety to 120 pills, and Respondent agreed. (Tr. vol. 2, at 242–43, 275–76.) Using a computer, he printed prescriptions for 120 Roxicodone 30 mg and 30 Xanax 2 mg tablets. (Tr. vol. 2, at 245; Gov't Ex. 15 at 1–2, 5–6; Gov't Ex. 24 at 2 & 24) and advised her not to share or sell her prescriptions. (Tr. vol. 2, at 243–44.) SA Saenz testified that Respondent checked her heart rate with a stethoscope but did not conduct any further testing or direct her to complete any physical exercises. (Tr. vol. 2, at 245.) Respondent asked what was bothering her and she indicated her lower back. (Tr. vol. 2, at 245.) He did not use his hands to check her spine. (Tr. vol. 2, at 245.) Respondent did not discuss the prior doctors that SA Saenz saw, additional diagnostic tests she might have, a treatment plan, the objective and goals for pain relief, a time table for pain management treatment, the risks and benefits of the pain medication or alternative medication and treatments. (Tr. vol. 2, at 249–50.) Under such circumstances, questions arise as to whether Respondent complied with

[53] As Respondent testified, I find that Dr. Berger's testimony that Respondent had doubled the prescription was inaccurate. (Tr. vol. 10, at 82–83.)

[54] A copy of SA Marshall's MRI report appears to have been in his case file at the time Respondent viewed it. (*E.g.*, Gov't Ex. 21 at 27–28; Tr. vol. 4, at 42–45.)

[55] SA Saenz testified that Dr. [L.C.] declined to prescribe medication for her during a previous visit to Coast to Coast. ''He told me he didn't want me to be a drug addict, and that is why he wasn't going to prescribe it, because he didn't think I needed it.'' (Tr. vol. 2, at 300.) SA Saenz did not tell Respondent about her conversation with Dr. [L.C.], but she did tell the clinic staff (Tr. vol. 2, at 301), which tends to show that Respondent's staff facilitated or acquiesced in the prescription of controlled substances for other than a legitimate medical purpose and outside the usual course of professional practice.

Florida guidelines regarding treatment plans and informed consent, to include discussion of risks and benefits. *See* Fla. Admin. Code Ann. r. 65B8–9.013(3)(b) & (c).

The record further reveals evidence that Respondent documented in SA Saenz's patient file discussions that did not actually occur. For instance, despite contrary notations in the patient file (Gov't Ex. 24 at 2 & 9), SA Saenz testified that Respondent never discussed anti-inflammatory medications, diet, the risks and benefits of the medication, yoga and stretching exercises, omega-3 fish oil, recommended at 36 grams per day, glucosamine chondroitin sulfate, avoidance of alcohol and soda, smoking cessation, follow-up visits or weaning off medications, in violation of compulsory language contained in Fla. Admin. Code Ann. r. 65B8–9.013(3)(f) (''The physician *is required* to keep accurate and complete medical records * * * .'' (emphasis supplied)). Of additional concern is Respondent's failure to discuss alcohol avoidance while on the controlled substances that he prescribed, in light of the fact that SA Saenz had indicated on patient intake forms in her patient file that she drank alcohol. (Tr. vol. 2, at 255; Gov't Ex. 24 at 12.)

By corollary, the record reveals evidence of discussions that should have occurred, but didn't. SA Saenz testified that in her patient intake form she indicated that she suffered from insomnia and depression (Gov't Ex. 24 at 11, Tr. vol. 2, at 291) but the record supports the inference that Respondent did not inquire about these matters (*see* Tr. vol. 2, at 226 (SA Saenz's testimony that she did not forget about anything that occurred during her visit with Respondent)) and the patient note from the visit does not reflect that Respondent made such inquiries. (*See* Gov't Ex. 24 at 2.)

In support of his prescribing practices, Respondent testified as to how SA Saenz presented as a patient on May 4, 2010. He testified that she had been seen previously, had an MRI reflecting abnormalities in her lower lumbar spine and that Dr. [R.C.] and Dr. [N.] prescribed medication that did not afford her much relief. (Tr. vol. 10, at 174–75.) Respondent opined that ''trying to dial in the right dose for each patient, sometimes takes some modifications and takes some time to reach that dose.'' (Tr. vol. 10, at 175.) Moreover, Respondent testified that ''She lists back in March that * * * she was taking a large amount of medication [and] * * * was still well below what she represented that she had taken'' previously. (Tr. vol. 10, at 176–77; *see also id.* 179.) Respondent further explained that two drugs that SA Saenz had listed on her pain assessment form, Roxicodone 30 mg and oxycodone 50 mg tablets, might reasonably be prescribed together to address breakthrough pain. (Tr. vo. 10, at 177–78.) Respondent testified that he was relying on the truthfulness of the information contained in her patient file, and that had he been aware of the misrepresentations, he would not have prescribed medications to her. (Tr. vol. 10, at 180.) Respondent further testified that he believed she was using the medication for medical purposes and was not diverting. (Tr. vol. 10, at 180–81.)

As noted above, I give little to no weight to Dr. Berger's testimony with respect to SA Saenz because of material factual errors in his analysis of this patient file.

In sum, the record reveals violations of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA Saenz's May 4, 2010 visit to CCHM. Substantial evidence supports a finding that Respondent kept inaccurate records, in violation of Florida regulations. The Government, however, has failed to sustain its burden of proof to support its allegation that Respondent's issuance of controlled substances prescriptions to SA Saenz were for other than a legitimate medical purpose.

(c) SA O'Neil

SA O'Neil visited CCHM in an undercover capacity in March and April 2010 and met with Dr. [L.C.] (Tr. vol. 3, at 301–02.) Pursuant to those visits, SA O'Neil supplied CCHM with an MRI report. (*See* Tr. vol. 3, at 304; Gov't Ex. 14 at 55–56.) On May 4, 2010, he returned to CCHM in an undercover capacity and met with Respondent for the first time. (*E.g.,* Tr. vol. 3, at 301.) The circumstances of Respondent's interaction with SA O'Neil make clear that Respondent and Respondent's staff believed SA O'Neil was diverting and abusing controlled substances.

On May 4, 2010, SA O'Neil arrived at CCHM with three other agents and entered the facility through the front door. (Tr. vol. 3, at 301.) Upon arrival, SA O'Neil signed in as a returning patient and requested that he and the other three agents be seen together. (Tr. vol. 3, at 303, 305.) A woman asked whether they were new patients. SA O'Neil responded ''No, no, no. They're * * * followers.'' (Gov't Ex. 14[56] at 3.) The staff member complied with his request and placed the agents' charts in the same area. (Tr. vol. 3, at 306; *see* Gov't Ex. 14 at 16–19.) SA O'Neil paid $200 for a $150 visit and let the employee keep the change. (Tr. vol. 3, at 305.) He also told the staff member that he would quadruple the money. (Tr. vol. 3, at 306; Gov't Ex. 14 at 16.) Although not dispositive, this evidence indicates that the staff of CCHM interacted with patients in unorthodox ways. For instance, the overpayment by $50 and discussion of quadrupling provides some evidence of a profit motive for employees to process patients according to the patients' requests instead of according to an established or conventional medical office procedure. Hearing the patients referred to as ''followers'' provides some basis for the staff member to have suspected, if not actually known, that the patients were together as some sort of a common plan or scheme.

SA O'Neil next proceeded to the triage area where a female staff member named Ms. Wade measured his blood pressure, weight and temperature and asked for his height. (Tr. vol. 3, at 306; *see* Gov't Ex. 14 at 23–25.) SA O'Neil testified that ''I discussed the fact that I don't take the medication * * * And she said 'I know.' She said something to the extent of 'I know, I'm not stupid.' '' (Tr. vol. 3, at 307.) A transcription of an undercover recording of the conversation confirms SA O'Neil's account:

WADE [Laughs]: Ah ah ah. [Pause] How could he get you on this s[tuff]?
UC1: Uh-huh.
WADE: You asked him for it?
UC1: Yeah, of course. I'm not gonna waste money * * * for nothing * * * even more too.
WADE: You take the pills, Sean?
UC1: Nah.
WADE: I know you [unintelligible] * * * Besides, I know you don't take them.
UC1: How can you tell?
WADE: What you mean how can I tell? I'm stupid?

(Gov't Ex. 14 at 24–25; *see generally* Tr. vol. 3, at 308.) This conversation constitutes evidence that Respondent's staff in this instance possessed actual knowledge of diversion by patients. The staff's open indifference, if not encouragement, of patients seeking controlled substances for no legitimate medical purpose is inconsistent with Respondent's claim that he was

[56] SA O'Neil testified that in the context of the first tape (N43.1) of Government Exhibit 23, SA O'Neil is identified as UC1. (Tr. vol. 3, at 363.)

unaware of the problems plaguing CCHM. Episodes such as this, while perhaps not on their own dispositive as to Respondent's specific knowledge of staff misconduct, do in the aggregate weigh in favor of a finding that Respondent was, at a minimum, willfully blind to the flagrant indications of diversion and abuse at the clinic he worked in and later owned.

Following his conversation with Ms. Wade, SA O'Neil waited and was later seen by Respondent. (Tr. vol. 3, at 308–10.) The consultation occurred in an office and lasted approximately fifteen minutes. (Tr. vol. 3, at 310.) Respondent asked SA O'Neil how he was, what his age was and what his current medication was. (Gov't Ex. 14 at 26.) SA O'Neil responded that he was ''not bad'' and that he took ''thirties (30s) * * * two times. And then fifteens (15s) I usually take about one eighty (180), but you wrote it too low last time * * * And then, Xanax, two (2) milligrams, and sometimes soma.'' [57] (Gov't Ex. 14 at 26.) Respondent reviewed the medication SA O'Neil had been prescribed previously by Dr. [L.C.], stating: ''Well, it's inappropriate * * * your blood pressure. You're taking a blood pressure medicine?'' (*See* Gov't Ex. 14 at 26–27; *see generally* Tr. vol. 10, at 150–51.) SA O'Neil responded ''Uh * * * I just never filled it,'' to which Respondent replied that SA O'Neil's blood pressure was up again on that day. (Gov't Ex. 14 at 27.)

SA O'Neil next told Respondent what Dr. [L.C.] had told him on a previous visit. ''He told me * * * 'start, and you can go up each time.' * * * I found out he only works Wednesdays, but, * * * he said you'd [sic] gonna increase it.'' (Gov't Ex. 14 at 27.) This statement by SA O'Neil apprised Respondent that SA O'Neil was a drug-seeking individual and that Respondent's colleague, Dr. [L.C.], was also aware of this fact.

Respondent asked how SA O'Neil was doing on the present dosage of medication. (Gov't Ex. 14 at 27.) A transcript of the conversation that followed reveals that SA O'Neil communicated that although he was doing ''Fine'' (Gov't Ex. 14 at 27), he nevertheless wanted a higher dosage of medication for other than a legitimate medical purpose:

WOLFF: Oh, so you're doing okay?
UC1: No, no. I need more. But I don't need any less. The present dose is not * * * it would be better if it was more. It's not, you know, not making me feel worse.
WOLFF: No, no, I understand. You ran out, or it wasn't enough
UC1: Yeah, yeah, I ran out.[58]

(Gov't Ex. 14 at 27–28.) Respondent's comment about SA O'Neil's medication running out represents the first instance that either of them had suggested that SA O'Neil ran out.

SA O'Neil later requested that Respondent increase his prescription to 210 pills, to which Respondent replied ''maybe eventually, but * * * I can't double your medicine now. Absolutely not.'' (Gov't Ex. 14 at 30.) The record further reflects that during the meeting, Respondent advised SA O'Neil that ''the goal is not to get up to the highest number possible.'' (Gov't Ex. 14 at 33; Tr. vol. 3, at 338–39.) This statement by Respondent is somewhat consistent with his testimony at hearing that he prescribed controlled substances to SA O'Neil only for a legitimate medical purpose. But other statements and actions by Respondent cut against a finding that Respondent's continued registration would be consistent with the public interest. SA O'Neil provided Respondent with unmistakable evidence of diversion or abuse, stating that he was taking liquid drops of oxycodone that a friend gave him (Gov't Ex. 14 at 30; *see id.* at 34 (''Oxy''); Tr. vol. 10, at 154–55), to which Respondent replied:

WOLFF: Don't even tell me that.
UC1: Is that still bad?
WOLFF: Yeah, high abuse.

(Gov't Ex. 14 at 30.) Incredibly, a follow-up visit sheet in SA O'Neil's patient file dated May 4, 2010, and filled out by Respondent (*see* Tr. vol. 3, at 321–22), reflects a handwritten check in the box labeled ''No indication of substance abuse or diversion.'' (Gov't Ex. 23 at 2.) Not only did Respondent state that he did not wish to be told about abuse, Respondent filled out paperwork as if he had not been so told.[59] Nor did Respondent talk to SA O'Neil about referring him to rehabilitation (Tr. vol. 3, at 371–72), as is contemplated by Fla. Admin. Code Ann. r. 64B8–9.013(3)(e) (''The management of pain in patients with a history of substance abuse * * * requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.'').

At hearing, Respondent testified concerning his statement ''Don't even tell me that.'' Respondent testified that ''I was very disturbed that he would do such a thing, and that was what I said meaning that it—it hurt me to hear that because I don't like to hear patients using that because I think it's a dangerous product.'' (Tr. vol. 10, at 155.) Having observed the witness's demeanor at hearing I reject this statement as not credible, particularly in light of contemporaneous records that Respondent filled out as if SA O'Neil had never told him he was taking liquid oxycodone. (*See* Gov't Ex. 23 at 2.)

In light of the foregoing evidence, it is apparent that Respondent knew or should have known that SA O'Neil presented as a patient who intended to divert or abuse the controlled substances he sought from Respondent. This conclusion is confirmed by statements attributable to Respondent: The record reflects that Respondent directed SA O'Neil not to take anyone else's medication, to only take his own medication as indicated on the bottle, that there was a risk of death and that ''you're living on the edge.'' (Gov't Ex. 14 at 30–31.) Respondent's failure to reject SA O'Neil as a patient and his decision to issue him controlled substances prescriptions is inconsistent with state and federal law. *See* Fla. Admin. Code Ann. r. 64B8–9.013(1)(d) (''Physicians should be diligent in preventing the diversion of drugs for illegitimate purposes.''); *see also* 21 CFR 1306.04(a) (''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'')

Additional statements by Respondent demonstrate Respondent's awareness of the impropriety in the medical community about prescribing to a patient known to be diverting or abusing controlled substances:

WOLFF: Most pain clinics, when, uh, they find out that uh * * * patients taking other people's stuff, [NOISE].[60]
UC1: Really?
WOLFF: Absolutely. Instantly.
UC1: Even if you run out?
WOLFF: Yeah. [Unintelligible.] * * * because then you will have violated what I just said * * *.''

(Gov't Ex. 14 at 32; Tr. vol. 3, at 312.) Respondent's admission that most clinics would not continue prescribing controlled substances to SA O'Neil under the circumstances (*see also* Tr. vol. 10, at 159) is strong evidence that

[57] Respondent testified that he did not understand ''you'' to be referring to himself, because he hadn't seen SA O'Neil before. (Tr. vol. 10, at 151–52.)

[58] SA O'Neil had not previously indicated that he ran out of medication until Respondent suggested the possibility.

[59] As noted below, I therefore reject Respondent's explanation that his statement ''Don't even tell me that'' (Gov't Ex. 14 at 30) should be understood as Respondent's emotional reaction to the patient's behavior. (Tr. vol. 10, at 155.)

[60] The reference to noise on the transcript reflects Respondent's verbal reference to being cut off. *See infra* note 94.

Respondent's May 4, 2010 prescriptions to SA O'Neil were outside the usual course of professional practice. Notwithstanding Respondent's admission of the general consensus that further prescribing would be inappropriate, Respondent nevertheless prescribed 150 Roxicodone 30 mg, 90 Roxicodone 15 mg and 30 Xanax 2 mg tablets, constituting an increase of thirty dosage units of oxycodone from what Dr. [L.C.] had prescribed previously. (*E.g.,* Gov't Ex. 14 at 53–54; Tr. vol. 3, at 311, 331 & 356.) And Respondent made clear that SA O'Neil would be welcome again in the future and Respondent would continue to prescribe controlled substances:

UC1: * * * So I should probably just make my appointment in thirty (30) days with you then, right?
WOLFF: I'm here for you.
UC1: All right. Thanks, doc.
WOLFF: Yeah. We got a bond now.[61]

Gov't Ex. 14 at 33.) I find that Respondent's issuance of controlled substances to SA O'Neil was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a); *see* Fla. Admin. Code Ann. r. 65B8–9.013.

The record further reflects evidence that Respondent documented in SA O'Neil's patient file discussions with the patient that did not actually occur. For instance, contrary to the indications in SA O'Neil's patient file[62] (*see* Gov't Ex. 23 at 9), Respondent did not discuss alternative medications, such as anti-inflammatories, a treatment plan for SA O'Neil's pain management, omega-3 fish oil, glucosamine chondroitin sulfate, avoiding alcohol, smoking and soda, any of SA O'Neil's other doctors other than Dr. [L.C.], SA O'Neil's MRI report, any diagnostic test, objectives or goals for pain relief, a timetable for treatment, the risks and benefits of his medication or SA O'Neil's continuing care, how he would be monitored on controlled substances or weaning off the medications he was taking. (Tr. vol. 3, at 315–16, 324.) Respondent's conduct constitutes a failure to keep accurate records, to include evaluations, consultations and discussion of risks and benefits, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3).

Explaining why he prescribed controlled substances to SA O'Neil given his indications of drug abuse or diversion, Respondent testified that ''I didn't want him to have to use liquid medication to supplement what he was previously on. I wanted him * * * to be in that controlled environment * * * where the amount of medication that he's on is controlled by the physician.'' (Tr. vol. 10, at 163.) By raising SA O'Neil's dosage, ''it was my goal to achieve pain control on * * * a slightly increased dosage that would negate any need on his part to supplement the medication because he may have run out.'' (Tr. vol. 10, at 164.) Respondent testified that if he had thought SA O'Neil was diverting controlled substances, ''I would not have written him anything.'' (Tr. vol. 10, at 164.) I reject this testimony as not credible, because it is inconsistent with the objective evidence of record. In short, Respondent at hearing attempted to present the impression that Respondent took very seriously the dangers to the patient illuminated by the patient's self-reported drug abuse or diversion. But Respondent's contentions at hearing are not as telling as his own statements to SA O'Neil on May 4, 2010, when Respondent joked about the friend providing oxycodone drops to SA O'Neil, stating ''Maybe that person that gave you the, uh, * * * oxy * * * let you use the computer, in light of the fact that they're trying to murder you * * * Google that. William's stretching exercises.'' (Gov't Ex. 14 at 34.) y

Moreover, as discussed above, Dr. Berger identified numerous problems with Respondent's prescription of controlled substances to SA O'Neil, including, among others, reason to opine that Respondent's documentation with respect to SA O'Neil was ''absolutely below the standard of care.'' (Tr. vol. 7, at 117.)

In summary, the record reveals numerous violations of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA O'Neil's undercover visit to CCHM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA O'Neil lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a).

(d) TFO Doklean

The record reflects that TFO Doklean visited CCHM in an undercover capacity on July 23, 2010. (*E.g.,* Gov't Ex. 4, at 1.) TFO Doklean's undercover role was as a patient with a level of neck pain that affected her ability to interact normally with her children. (Tr. vol. 1, at 230, 253, 255–56, 258, 264 & 282.) Upon arriving at the clinic, she wrote on patient intake forms that running and exercise made her pain worse. (Gov't Ex. 25 at 9; Tr. vol. 1, at 316.) She also brought an MRI report that she had acquired for the purpose of her undercover visit using her undercover name. (*See* Tr. vol. 1, at 215.) At hearing, TFO Doklean testified that she intended to determine whether she could acquire a prescription without filling out patient intake forms in their entirety. (Tr. vol. 1, at 237.) She therefore intentionally left blank the questions inquiring about her pain level. (Tr. vol. 1, at 252–53.) No one else filled out any of her forms for her. (Tr. vol. 1, at 315.) She made cash payments to office staff totaling $1100. (Tr. vol. 1, at 190.) The payments included: $300 for an office visit (Tr. vol. 1, at 186; Gov't Ex. 4 at 7–9); $200 for ''expedite service'' (Tr. vol. 1, at 187, 314; *see* Gov't Ex. 4 at 13); and $600 for medication (Tr. vol. 1, at 189–90 & 213). Respondent ultimately met with TFO Doklean for approximately ten minutes and issued a prescription for oxycodone.

Respondent's prescribing to TFO Doklean was marked by a number of irregularities. First, although she complained of neck pain, the sole MRI report TFO Doklean produced related to her lumbar region and not her neck. (Tr. vol. 1, at 201; Gov't Ex. 4 at 60–61.) Respondent was aware of this discrepancy, and issued a prescription directing TFO Doklean to obtain a cervical spine MRI. (Gov't Ex. 4 at 56; Tr. vol. 10, at 196–97; *see* Tr. vol. 10, at 186.) Notably, however, Respondent did not require that TFO Doklean acquire the MRI report for her neck before prescribing controlled substances. Respondent testified that based on TFO Doklean's statements that ''it goes up and down'' and that the pain ''radiates,'' and based on gestures she made pointing to her lower back, Respondent believed TFO Doklean had back pain, as well as neck pain. (Tr. vol. 10, at 188.) After TFO Doklean testified that her pain was preventing her from playing with her children, Respondent testified that although she stated that her pain was ''two or three'' on a pain scale (Gov't Ex. 4 at 33), Respondent interpreted her pain as actually being

[61] Respondent also instructed SA O'Neil not to see other doctors. (Gov't Ex. 14 at 29.) At hearing, Respondent testified that ''I felt he had received the message and given me feedback that he would comply with my direction.'' (Tr. vol. 10, at 160.)

[62] Page nine of Government Exhibit 23 is not dated or signed and does not on its face contain express indications that Respondent completed it on May 4, 2010, or that it applies to SA O'Neil. Nevertheless, the document is included in an exhibit that SA O'Neil testified contains his medical records (*see* Tr. vol. 3, at 367) and the context, including SA O'Neil's testimony that SA O'Neil did not fill it out (Tr. vol. 3, at 323) offers a basis to conclude that Respondent completed the form.

higher, such as an eight or a ten. (Tr. vol. 10, at 190–91, 201.) Respondent's assertion that the patient's pain was more than twice the level that the patient herself indicated on the pain scale is dubious.

Respondent's medical examination of TFO Doklean raises additional questions regarding whether the controlled substances prescription he provided was pursuant to a legitimate medical purpose. TFO Doklean testified that Respondent's physical examination of TFO Doklean consisted of placing a stethoscope on her back, asking her to breathe in and out; having her perform some range-of-motion exercises: Bending down, turning her neck and standing on a foot. She displayed no discomfort and did not complain of pain during the exercises, which she completed successfully in less than one minute. (Tr. vol. 1, at 206–08.) TFO Doklean further testified that Respondent seemed to chuckle at the fact that TFO Doklean could bend down completely and touch the ground in a swift maneuver. (Tr. vol. 1, at 206.) Respondent asked if she had any pain when she did the exercises, and she said ''not right now.'' (Tr. vol. 1, at 206.) Respondent did not touch TFO Doklean's spine or neck, the area of her professed pain (Tr. vol. 1, at 208); in fact, he only touched her when he put the stethoscope on her. (Tr. vol. 1, at 208.)

Viewed together, the evidence relating to TFO Doklean's lumbar MRI and Respondent's physical examination constitute a lack of objective indicia of neck pain, along with subjective indicia of neck pain that are inconsistent, insomuch as the patient's comments are contradicted by her ease at performing physical exercises in the clinical setting. This disparity further calls into question the extent to which the prescription Respondent issued to TFO Doklean was pursuant to a legitimate medical purpose consistent with 21 CFR 1306.04(a) and Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) & (3)(f) (2003).

Also of concern is Respondent's acquiescence to TFO Doklean's apparent diversion or misuse of controlled substances. The record reflects that TFO Doklean told Respondent she was getting the ''blues,'' referring to oxycodone 30 mg tablets, from a friend. (*See* Gov't Ex. 4 at 34; Gov't Ex. 25 at 2; Tr. vol. 1, at 204, 216–17.) In addition, for ''Past History of Pain Management,'' Respondent wrote ''Friends & Street.'' (Gov't Ex. 25 at 2; *see* Tr. vol. 1, at 216–17.) Respondent then asked TFO Doklean ''how long have you been taking the blues'' and whether they helped. (Gov't Ex. 4 at 34.) TFO Doklean responded that she took them every couple of days, and they did help. Respondent did not press the matter. Nor did he ''refer the patient as necessary for additional evaluation and treatment,'' notwithstanding the Florida requirement that ''[s]pecial attention should be given to those pain patients who are at risk for misusing their medication'' or who ''pose a risk for medication misuse or diversion * * *'' Fla. Admin. Code Ann. r. 65B8–9.013(3)(e). Respondent explained he thought TFO Doklean was getting controlled substances from friends because ''she didn't have the money to see a doctor previously.'' (Tr. vol. 10, at 194.) He intended to ''prescribe medication for her in a controlled way * * * [t]hat prevents diversion and prevents her from continuing to have to get medicine in an illegitimate way.'' (Tr. vol. 10, at 196.) ''I don't discriminate against people for their language, for their social status, for how much money they have.'' (Tr. vol. 10, at 194.)

Respondent's response to TFO Doklean's professed participation in the illicit misuse or diversion of controlled substances is all the more concerning given TFO Doklean's indication that she had undergone rehabilitation for addiction to alcohol. (*See* Gov't Ex. 4 at 34; *see also* Gov't Ex. 25 at 8.) Respondent asked her when she had undergone rehabilitation, TFO Doklean responded ''last November,'' and the conversation moved on to other topics. (Gov't Ex. 4 at 34.) Respondent never asked the name of her rehabilitation clinic, how long she was in rehabilitation or the specific reasons for her treatment. (Tr. vol. 1, at 203.) Even if Respondent believed that TFO Doklean's acquisition from friends of controlled substances was for purely therapeutic purposes, Respondent should have been concerned about her history of addiction. Indeed, although she stated she was sober in her interview with Respondent (Gov't Ex. 4 at 34), TFO Doklean's patient forms indicate that she presently drinks alcohol. (Gov't Ex. 25 at 8.) Respondent was therefore faced with contradictory information but accepted TFO Doklean's representation that she was clean and sober, without securing confirmatory records from any medical facility. Respondent failed to comply with his ''require[ment] to keep accurate and complete records to include, but not * * * limited to: * * * 1. The medical history * * * including history of drug abuse and dependence * * * .'' Fla. Admin. Code Ann. r. 65B8–9.013(3)(f).

The record further contains evidence that Respondent annotated TFO Doklean's patient file to document conversations with TFO Doklean that did not in fact occur. (*See, e.g.,* Tr. vol. 1, at 221–22.) For instance, despite contrary notations in the patient file (*see* Gov't Ex. 25 at 5), TFO Doklean testified that Respondent never discussed anti-inflammatory medications, diet, the risks and benefits of the medication Respondent prescribed, the risk of abuse or addiction or physical dependence, yoga/stretching exercises, omega-3 fish oil, strict avoidance of alcohol, smoking cessation, illegal drugs, follow-up in one month or issues or concerns or weaning off medication. (Tr. vol. 1, at 217–20.) Similarly, TFO Doklean testified that Respondent filled out the Consent for Chronic Opioid Therapy form, which recites that Respondent has discussed alternate options of ''acupuncture, m[a]ssage, neurological evaluation and surgery'' (Gov't Ex. 25, at 16), but that Respondent never discussed those options with her. (Tr. vol. 1, at 224–25.) In fact, TFO Doklean signed the form before even being seen by Respondent. (Tr. vol. 1, at 225.) Respondent also did not discuss with TFO Doklean other pain medication options and did not ask for TFO Doklean's prior medical records from another doctor, other than the lumbar MRI noted above. (Tr. vol. 1, at 227–28.) He did not ask about her prior treatment plan or give her a time table for pain management. (Tr. vol. 1, at 228.) He did not suggest alternative medications or treatment options. (Tr. vol. 1, at 228.) These facts demonstrate that Respondent did not keep accurate medical records, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3).

At the end of his meeting with TFO Doklean, Respondent agreed to prescribe medication for TFO Doklean (Gov't Ex. 4 at 36), ultimately prescribing 120 Roxicodone 30 mg tablets. (Gov't Ex. 4 at 53.) Remarkably, TFO Doklean did not know what the medication would be until the consultation with Respondent had already ended.

After her consultation with Respondent, TFO Doklean talked to a manager at the clinic named Richard Mendez. (Tr. vol. 1, at 188.) TFO Doklean testified that Mr. Mendez provided instruction and direction about concerns that Respondent had about patients ''not putting the proper things in the paperwork,'' and that the patients needed to say that they were in pain on the paperwork, and to tell the doctors that they were in pain. (Tr. vol. 1, at 188.) This information was also directed to the undercover patients with TFO Doklean who had not yet been seen by a doctor. (Tr. vol. 1, at 188; Gov't Ex. 4 at 39–40; Gov't Ex. 4, Audio Session

#1 10:44–46.) Mr. Mendez further stated to TFO Doklean (referring to Respondent): ''This guy is a little * * * this guy is a little * * * you know * * * serious and by the book in making sure * * * uh * * * He does everything * * * partly because he's been in a clinic that's been shut down before, so, it's very hard for him. He knows * * * you guys are cool.'' (Tr. vol. 1, at 290; *id.* at 40.) I find that Respondent in this instance subjectively did not believe that TFO Doklean was in pain, which weighs in favor of a finding that Respondent's prescription of controlled substances lacked a legitimate medical purpose and was outside the usual course of professional practice. Additionally, the fact that Respondent asked Mr. Mendez to inform patients he had not yet seen to say they were in pain contradicts Respondent's testimony that in all instances he believed that the patients to whom he prescribed controlled substances were truly reporting pain.

TFO Doklean testified that she observed a sign in the waiting room that stated: ''Please be aware that outside pharmacies are reporting prescription transactions to law enforcement agencies. Feel free to discuss this with your physician.'' (Tr. vol. 1, at 193.) This sign in Respondent's waiting room is evidence that Respondent was aware that a meaningful number of his patients diverted or were at risk of diverting controlled substances.

In addition, as noted above, Dr. Berger testified, *inter alia,* that, in substance, the circumstances ''preclude [TFO Doklean] from being a good candidate for receiving controlled drugs'' on her first visit, and that such a prescription would not be in compliance with ''the established care in Florida.'' (Tr. vol. 7, at 147.)

Viewed as a whole, although Respondent's prescription of controlled substances to TFO Doklean was not wholly without some indicia of medical purpose, substantial evidence supports a finding that Respondent's prescription of controlled substances to TFO Doklean lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a).

(e) SA Brigantty

The record reflects that SA Brigantty visited CCHM in an undercover capacity on July 23, 2010. (*E.g.,* Gov't Ex. 9 at 3; Tr. vol. 2, at 16.) The evidence regarding this visit reveals a number of departures from the usual course of professional practice that call into question the degree to which the medication that Respondent ultimately prescribed to SA Brigantty was pursuant to a legitimate medical purpose.

As an initial matter, the context of SA Brigantty's arrival at CCHM suggests the existence of an arrangement between undercover agents posing as patients and CCHM's office staff. After being met outside by an individual named Freddy, SA Brigantty entered the clinic through a rear entrance with a group of other undercover agents posing as patients. (Tr. vol. 2, at 17–18.) ''The staff understood that we, as a whole, all those people who went in at the same time, were together.'' (Tr. vol. 2, at 18.) All the undercover officers paid a two hundred dollar expediting fee ''to get through the clinic, see the doctors, and get out.'' (*Id.* at 19.) Although not dispositive, this arrangement casts suspicion on the legitimacy of Respondent's medical practice at CCHM because it provides circumstantial evidence that Respondent's staff participated in a plan by which groups of individuals, who may or may not have legitimate medical needs, could obtain controlled substances. SA Brigantty's testimony that he paid a fifty dollar tip to a female office staff member in the reception area (Tr. vol. 2, at 43) raises similar concerns because it represents a concrete instance of a staff member receiving cash in exchange for funneling patients to Respondent.[63]

At his meeting with Respondent, SA Brigantty presented as a patient with pain in his lower back for the past fifteen years, which he attributed to lifting heavy objects at a construction job. (Gov't Ex. 9 at 35–36.) He described his pain as about six on a pain scale of one to ten. (Gov't Ex. 9 at 37.) He further described an additional kind of his pain as ''pretty [expletive] bad,'' to which Respondent replied: ''I don't have a number that correlates with that one * * * .'' (*Id.;* Tr. vol. 2, at 96.) SA Brigantty testified that he also circled the number ten on the pain scale. (*See* Tr. vol. 2, at 48.)

SA Brigantty testified that Respondent did not ask him about his past treatments, previous diagnostic tests or the names of his previous doctors over the fifteen-year period. (Tr. vol. 2, at 34–36.) In fact, however, Respondent did ask where SA Brigantty previously received pain treatment, and SA Brigantty replied that he had gone to Jacksonville. (Gov't Ex. 9 at 25.) SA Brigantty also told Respondent that he had previously purchased ''The Oxys. Thirty (30) milligrams'' and ''a Zanie bar,'' referring to Xanax, off the street. (Gov't Ex. 9 at 41; *see* Tr. vol. 2, at 37.) He said he hadn't taken medication for approximately one month, but that the drugs helped him and he had been taking them for two to three years. (Gov't Ex. 9 at 41.) SA Brigantty also wrote on a Pain Assessment Form that he was presently taking oxycodone and Xanax (Gov't Ex. 26, at 9; Tr. vol. 2, at 49), statements which he orally contradicted when he informed Respondent that he was not presently taking medication. (Tr. vol. 2, at 125.) Given SA Brigantty's confessed illicit use of controlled substances, Respondent failed to ''refer the patient as necessary for additional evaluation and treatment,'' notwithstanding the Florida regulations providing that ''[s]pecial attention should be given to those pain patients who are at risk for misusing their medications'' or who ''pose a risk for medication misuse or diversion * * *'' Fla. Admin. Code Ann. r. 65B8–9.013(3)(e). Ultimately, Respondent issued a prescription to SA Brigantty for oxycodone, explaining that many patients get their medications from the street because they: ''find that that is the only place they can get it, short of coming to a doctor. So by starting them on medication you can stop them * * * from having to get the medication in places that they shouldn't be.'' [64] (Tr. vol. 2, at 180.)

The record reveals interactions between Respondent and SA Brigantty that reflect poorly both as to Respondent's standard of care as a physician and as to Respondent's knowledge of operations at CCHM. During the patient consultation, Respondent advised SA Brigantty that his blood pressure was high: ''You need to get yourself re evaluated. Meaning you need to find a regular medical doctor as soon as possible and have that re checked.'' (Gov't Ex. 9 at 42.) Respondent, however, did not offer to prescribe blood pressure medication or perform any diagnostic testing for blood pressure, (Tr. vol. 2, at 38), because

> I didn't want to prescribe medication for people I was only going to see one time * * * giving a patient a strong recommendation * * * was more in the patient's best interest * * * because it

[63] The extent and import of Respondent's knowledge of his staff's practices is discussed in numerous locations throughout this Recommended Decision.

[64] Respondent declined to issue a prescription for Xanax, because SA Brigantty ''seemed to indicate that if the pain was under control, he would be sleeping better. So I didn't want to prescription [sic] any Xanax if it wasn't necessary.'' (Tr. vol. 10, at 265.)

prompted them to seek out a regular medical doctor, which would have been a more appropriate place for them to receive medication on a regular basis, and receive the follow-up that they needed.

(Tr. vol. 2, at 169.) Respondent later contradicted himself, testifying that

> My best measure of success was in my interaction with the patient, in that we were going to prescribe some medication, we were going to see how he did * * * I would have had to see him back, at a follow-up appointment, and ask him questions as to how he was doing. And then I would have been able to measure the success of the oxycodone treatment. (Tr. vol. 2, at 214–15.)

This second statement by Respondent can be read in two ways: either Respondent thought SA Brigantty would return for another visit, undercutting Respondent's assertion that he did not expect SA Brigantty would return for a follow-up appointment; or it shows that Respondent did not truly expect ever to see SA Brigantty again, calling into question Respondent's ability to monitor the success of his interaction with the patient and tending to show Respondent did not believe he was issuing the prescription in the usual course of a professional practice or pursuant to a legitimate medical purpose.[65]

In any event, even if it can be reconciled with his other statements, Respondent's explanation as to why he failed to prescribe blood pressure medications to SA Brigantty raises more questions than it answers. First, Respondent's assertion that he did not expect to see SA Brigantty again for a follow-up visit is inconsistent with Respondent's testimony that line items on the History and Physical Examination Form in SA Brigantty's medical file ''should serve as talking points, over time, with patients'' and need not be discussed all at once. (Tr. vol. 2, at 172; *see* Gov't Ex. 26 at 5.) These two statements are inconsistent because viewing the discussion checklist as the basis of a continuing doctor-patient dialogue over time is incompatible with a view that the patient probably will not return for a follow-up visit.

Moreover, Respondent's opinion that SA Brigantty should seek a ''regular doctor,'' speaks volumes as to Respondent's beliefs about his own practice. Respondent explained that he considers himself ''a regular medical doctor. But in this setting, this was a clinic where we treated pain management, or our main role was pain management.'' (Tr. vol., 2, at 169.) Even if Respondent's testimony concerning the need for SA Brigantty to see a separate ''regular doctor'' is to be taken at face value, the record unambiguously reflects that Respondent did not refer SA Brigantty to any particular ''regular doctor'' (Tr. vol. 2, at 170), which is inconsistent with the referral standard contained in Fla. Admin. Code Ann. r. 65B8–9.013(3). Moreover, Respondent did not discuss the risks to a person with high blood pressure of taking oxycodone, the controlled substance he ultimately prescribed to SA Brigantty (Tr. vol. 2, at 39–40), contrary to Fla. Admin. Code Ann. r. 65B8–9.013(3)(c) (''The physician should discuss the risks and benefits of the use of controlled substances with the patient * * * .'') and Fla. Admin. Code Ann. r. 65B8–9.013(3)(f) (requiring accurate and complete medical records of ''Discussion of risks and benefits''). Additionally, Respondent's contention that the oxycodone he prescribed to SA Brigantty was merely a ''therapeutic trial'' (Tr. vol. 2, at 177–78) cannot comfortably coexist with Respondent's assertion that he did not believe SA Brigantty would return for a follow up visit (*see* Tr. vol. 2, at 169).

Also notable is evidence of SA Brigantty's misrepresentation in his undercover role about his own medical history, and Respondent's reaction after learning of the misrepresentation. SA Brigantty testified that when filling out patient intake paperwork, a female member of Respondent's office staff communicated the requirement that ''you had to put down * * * a primary doctor, or some other place you have been to * * * . she told us you can put anything down, put American Pain, they are closed.'' (Tr. vol. 2, at 20–21.) On cross-examination, SA Brigantty elaborated that the staff member had instructed: ''I don't care what it is, where you have been, you can write American Pain.'' (Tr. vol. 2, at 61.) In fact, the staff member's actual statement as reflected in a transcribed recording was: ''Your last physician is gonna be * * * We need all the information. If you don't have it you gotta, somehow get it. If it is American Pain, Right [sic] American Pain, if they are no longer there or * * * you gotta put something.'' (Gov't Ex. 9 at 23; *see* Tr. vol. 2, at 73.) SA Brigantty testified that he interpreted this as coaching him to write ''American Pain'' as his previous provider. (Tr. vol. 2, at 21.)

This incident came to light during Respondent's consultation with SA Brigantty, when Respondent inquired if SA Brigantty had been to American Pain. The undercover agent responded that he wasn't seeing a physician, but that the office staff had instructed him '''You need to write something.' Someone said American, I was like '[expletive] it, I'll put American.''' (Gov't Ex. 9 at 44.) Despite knowing that the patient had falsified his medical record, and knowing that SA Brigantty believed Respondent's staff had coached him to make such a falsification, Respondent ultimately issued a prescription for 150 Roxicodone 30 mg tablets to SA Brigantty. (Gov't Ex. 9 at 53–54; Tr. vol. 2, at 29.) SA Brigantty paid $750 cash. (Tr. vol. 2, at 31.) Applicable Florida regulations are clear about the mandatory weight of the recordkeeping guideline: ''The physician is required to keep accurate and complete records'' before prescribing controlled substances. Fla. Admin. Code Ann. r. 65B8–9.013(3)(f). Respondent's acquiescence in recordkeeping inaccuracies weighs heavily against Respondent's continued registration under Factors Two and Four of 21 U.S.C. 823(f).

SA Brigantty's undercover patient file reflects additional irregularities. For instance, a History and Physical Examination form not filled out by SA Brigantty (Tr. vol. 2, at 45) reflects that Respondent prescribed to SA Brigantty Roxicodone 15 mg and Xanax 2 mg tablets. (Gov't Ex. 26, at 5.) SA Brigantty testified, however, that he never received any such prescriptions from Respondent. (Tr. vol. 2, at 45.) Respondent explained that his notation in the file as to the Roxicodone 15 mg and Xanax 2 mg must have been in error. (Tr. vol. 2, at 163–64.) Even crediting Respondent's testimony and finding that the inaccuracy was an oversight, the error nevertheless constitutes a violation of Florida's recordkeeping regulations. *See* Fla. Admin. Code Ann. r. 65B8–9.013(3)(f). In addition, the record reflects that SA Brigantty completed a urine test, which Respondent's office staff did not monitor. (Tr. vol. 2, at 133–34.)

The record further reveals evidence that Respondent documented in SA Brigantty's patient file discussions with the patient that did not actually occur. For instance, despite contrary notations in the patient file (Gov't Ex. 26 at 5–6), SA Brigantty testified that Respondent never discussed anti-inflammatory medications, diet or the risks and benefits of medication, including the

[65] In support of his prescribing practices, Respondent testified that an MRI report for SA Brigantty revealed significant disc disease and evidence of a boney abnormality compressing the spinal cord sac, consistent with pain. (Tr. vol. 10, at 267–68.) On different facts devoid of irregularities in CCHM's office practice and Respondent's conduct with respect to SA Brigantty and SA Brigantty's indications of diversion, such evidence might have been more persuasive.

risk of abuse, addiction and physical dependence; yoga and stretching exercises; omega-3 fish oil, strict avoidance of alcohol, smoking cessation, or the avoidance of illegal or recreational drugs while on pain medication; or the weaning off of medication or the treatment plan objectives of pain relief or improvement, improved physical and psychological function, improving activity of daily living, working at full capacity, rehabilitation programs or interdisciplinary approaches to treatment.[66] (Tr. vol. 2, at 45–48.)

Respondent attempts to downplay these misrepresentations on the basis that some of the information he failed to discuss with SA Brigantty is contained in the consent form for opioid medications provided to patients at CCHM. (*E.g.,* Tr. vol. 2, at 170.) This attempt is unpersuasive for two reasons. First, Respondent's argument is undercut by his admission in a similar context that ''the word discussed should probably be whited out'' because ''these should serve as talking points, over time, with patients.'' (Tr. vol. 2, at 172.) Respondent's argument fails because if the items are to be discussed over time, it is logical to check off an item only once it has actually been discussed, and not before, as happened here. Second, Respondent's argument cannot overcome the plain language of the Florida regulation providing that ''[t]he physician is *required* to keep accurate and complete records to include * * * [e]valuations and consultations [and] * * * [d]iscussion of risks and benefits * * * .'' Fla. Admin. Code Ann. r. 65B8–9.013(3) (emphasis supplied).

In addition, as noted above, Dr. Berger testified in substance that a patient who is illegally buying drugs on the street, and who requests that the same drug be prescribed, should be precluded from receiving prescriptions for controlled substances. (Tr. vol. 7, at 161.) Dr. Berger further testified that based on his review of the medical file, he did not see anything that justified the issuance of controlled substances to SA Brigantty. (Tr. vol. 7, at 162; Gov't Ex. 26.)

In summary, the record reveals numerous violations of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA Brigantty's undercover visit to CCHM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Brigantty lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a).

(f) SA Priymak

SA Priymak first visited CCHM in an undercover capacity on April 7, 2010, accompanied by two or three other undercover agents. (*E.g.,* Tr. vol. 2, at 315–16; Gov't Ex. 5 at 1.) He approached the front desk, presented as a new patient and obtained patient intake forms, which he filled out as he sat down. (Tr. vol. 2, at 317–20.) He paid $175 for the visit. (Tr. vol. 2, at 319.) Dozens of people were waiting in the lobby. (Tr. vol. 2, at 318.) After completing all the triage procedures that were requested of him, SA Priymak testified that Respondent called his name, and SA Priymak followed Respondent to an office. (Tr. vol. 2, at 321.) This testimony, consistent with testimony of other agents, tends to show that Respondent did have interaction with the waiting area. Respondent therefore was not completely isolated from the waiting or triage area and can reasonably be understood to have at least some knowledge of things that occurred there and objects present there, to include a sign on the waiting room wall as of July 23, 2010 stating: ''Please be aware that outside pharmacies are reporting prescription transactions to law enforcement agencies. Feel free to discuss this with your physician.'' (Tr. vol. 1, at 193.)

When SA Priymak entered the consultation room, Respondent asked if it was SA Priymak's first visit, to which SA Priymak responded in the affirmative. (Gov't Ex. 5 at 34.) Respondent's next statement was ''Alright. Let['s] see. We gonna help with your pain in your neck,'' (Gov't Ex. 5 at 34; Tr. vol. 2, at 321) even though SA Priymak had not mentioned having any pain or neck issues.[67] SA Priymak affirmed that he had neck pain, stating also that his shoulder was ''kind a * * * tight.'' (Gov't Ex. 5 at 34.) Respondent asked SA Priymak how long he had had pain, how he had injured his neck, how old he was and whether he was working. (Gov't Ex. 5 at 34–35.) SA Priymak responded that the pain began in 2001 when he tweaked his neck playing basketball, that he was thirty-four years old and that he was between jobs, working in construction. (Gov't Ex. 5 at 34–35.)

SA Priymak further told Respondent that he was not presently taking medication (Gov't Ex. 5 at 35), in direct contrast to his later statements to Respondent and also his pain assessment form dated April 7, 2010, which indicated he was taking medications consistent with OxyContin, Xanax, Soma and Dilaudid, listing side effects from medication as ''it feels good.'' (Gov't Ex. 22 at 9–10; *see* Tr. vol. 2, at 331, 349–50.) I find that SA Priymak's statement that ''it feels good'' was evidence of potential diversion that Respondent did not sufficiently weigh in deciding to prescribe controlled substances. Moreover, SA Priymak testified that Respondent never discussed Dilaudid with SA Priymak (Tr. vol. 2, at 349), constituting additional evidence of Respondent's lack of concern for potential drug abuse or diversion.

Respondent remarked that SA Priymak's condition didn't sound so bad, to which SA Priymak responded that he had been taking medication on and off for the last ten years ''cause it gets tight, especially in my * * * shoulder.'' (Gov't Ex. 5 at 36.) Respondent stated ''So the pain is sort of mild. It's that right?'' and asked what medicines SA Priymak had been taking. (Gov't Ex. 5 at 36.) He responded that he was taking four tablets of ''Oxy forties'' per day, which Respondent confirmed was oxycodone, and ''some Somas'' that weren't helping him, and agreed that the pain was mild. (Gov't Ex. 5 at 36–37, 40; Tr. vol. 2, at 323.) Respondent confirmed: ''you told me that pain is mild * * * and mostly affects you * * * when you play basketball * * * you otherwise do pretty good?'' (Gov't Ex. 5 at 37.) SA Priymak responded: ''Mm * * * No. I just * * * I need that * * * to get through the day,'' and stated that sometimes his pain was a five. (Gov't Ex. 5 at 37.) Under the number ''5'' on SA Priymak's pain assessment form, there appears a handwritten arrow that SA Priymak testified he did not draw (Gov't Ex. 22 at 10; Tr. vol. 2, at 350), leading to the conclusion that Respondent drew the arrow. Respondent asked if SA Priymak was sleeping well, to which SA Priymak responded in the negative and indicated that he had been taking one-half to two bars of Xanax. (Gov't Ex. 5 at 37, 40.)

Upon inquiry from Respondent, SA Priymak stated that he was not allergic to any medications, smoked approximately two cigars per day, had high blood pressure and had used

[66] Respondent did, however, raise the issue of surgery. (Tr. vol. 2, at 102.)

[67] In mitigation, SA Priymak testified that he provided Coast to Coast with an MRI report of his neck (Tr. vol. 2, at 331), which Respondent later testified was consistent with a patient having significant neck pain. (Tr. vol. 10, at 138.)

intravenous drugs five or six years ago. (Gov't Ex. 5 at 38.) Respondent then inquired:

WOLFF: Is there any history of drug abuse or drug dependence?
UC1: Mm * * * I've been taking Oxies for, for a while.
WOLFF: Ox[y]codone.
UC1: Yes.
WOLFF: How much [o]xycodone are you taking?
UC1: I mean, it depends. Uhm * * * it's kind of expensive, so * * * I * * * buy forties. * * *
WOLFF: And have you seen a doctor at all uh lately, or no?
UC1: No, no.
WOLFF: No. So just get them off the street.
UC1: Yeah.

(Gov't Ex. 5 at 39; *see also* Tr. vol. 2, at 323; Tr. vol. 3, at 33.)

The record reveals evidence that Respondent's staff tampered with SA Priymak's patient file. On cross-examination, SA Priymak admitted that he was not actually taking controlled substances that he claimed he obtained off the street. (Tr. vol. 3, at 33–34.) A urine drug screen for SA Priymak, however, indicates a positive test for opiates/morphine, benzodiazepine and oxycodone. (Gov't Ex. 22 at 25; *see* Tr. vol. 3, at 34–36.) Further complicating matters is SA Priymak's testimony that he did not recall taking a drug test. (Tr. vol. 3, at 37.) He testified that ''when I was seen at the triage room, the staff member indicated playfully that—checked something in my file like 'Yeah, you have drugs in your system.' '' (Tr. vol. 3, at 37; *see* Gov't Ex. 5 at 24.) I find by substantial evidence that a member of Respondent's staff at CCHM falsified SA Priymak's patient file to reflect false positive test results for a urine drug screen. Although there is no indication that Respondent knew of this particular instance of tampering with SA Priymak's medical record, the record as a whole supports the conclusion that such practices were not uncommon at CCHM. Each additional instance of misconduct by Respondent's staff decreases the credibility of Respondent's contention that he was unaware of his staff's actions.

Respondent then inquired about SA Priymak's alcohol consumption, to which he admitted drinking three or four bottles of beer a couple times a week. (Gov't Ex. 5 at 39.) Respondent conducted a brief physical examination of SA Priymak, including motion exercises. (*See* Tr. vol. 2, at 330.) SA Priymak successfully completed the exercises without showing signs of pain (Tr. vol. 2, at 330), which should have given Respondent pause before prescribing controlled substances. Perhaps it did: Respondent then stated ''I think that you're taking a lot of medicine for mild pain.'' (Gov't Ex. 5 at 40.) He continued that SA Priymak was ''on requirements for medication []way out of proportions for the degree of pain you have * * * I don't think I['m] gonna be able to help you. * * *'' (Gov't Ex. 5, at 41.) SA Priymak then proposed:

UC1: Can you help me with something of less amount?
WOLFF: Like?
UC1: I won't be able to function, like thirties (30s), twenties (20s).
WOLFF: I mean, thirties (30s) is always right, you know?
UC1: Can be thirties (30s)?
WOLFF: I just don't' see it uh for * * * what you have.
UC1: Can you give me some fifteens (15)s?
WOLFF: You know, maybe I'll give you some fifteens (15s).
UC1: Oh, thank you.
WOLFF: You probably would need to be on * * * medicine to get off of this. You should go up to some sort of rehab facility * * * you want some Xanax?
UC1: Yeah.

(Gov't Ex. 5 at 42; *see generally* Tr. vol. 2, at 347.) SA Priymak next requested Viagra, stating that he was going to a party next week and wanted to try it. (Gov't Ex. 5 at 43.) Respondent asked if he had ''some problems * * * that we're gonna give that for you?'' to which SA Priymak answered in the negative. (Gov't Ex. 5 at 44.) Respondent confirmed: ''Just for the party?'' to which SA Priymak responded ''yeah.'' Respondent laughed and said ''Good try.'' (Gov't Ex. 5 at 44.) Respondent wrote SA Priymak a prescription for 150 Roxicodone 15 mg and 30 alprazolam 2 mg tablets on April 7, 2010.[68] (Gov't Ex. 22 at 23; Tr. vol. 2, at 325–36.)

Respondent's failure to refer SA Priymak to a particular rehabilitation center, despite the notation in the patient chart ''Rec. pt see MD for Suboxone'' (Gov't Ex. 22 at 6) is concerning and raises questions of whether Respondent complied with Fla. Admin. Code Ann. r. 65B8–9.013(3)(f) (requiring a physician to keep accurate medical records) and Fla. Admin. Code Ann. r. 65B8–9.013(3)(e) (stating that a physician ''should be willing to refer the patient as necessary for additional evaluation and treatment * * *'').[69]

Respondent acted correctly in declining to prescribe Viagra to SA Priymak, in light of the patent lack of medical indication. Respondent's prescription of pain medication, however, was another matter. Respondent knew that SA Priymak was a drug-seeking individual who had purchased controlled substances off the street and whom Respondent suspected had used intravenous drugs due to ''something on his arm.'' (Tr. vol. 10, at 100.) As noted above, Dr. Berger opined that prescriptions for Roxicodone and Xanax were unwarranted, particularly given the patient's history of being an intravenous drug user and having purchased drugs illicitly on the street. (Tr. vol. 7, at 92.) Moreover, Respondent acknowledged that SA Priymak's mild pain level did not support the controlled substances SA Priymak said he was currently taking off the street. (Tr. vol. 10, at 105.) Additionally, Respondent did not inquire as to the source of SA Priymak's drugs, nor did he admonish him to stop acquiring off the street.

Under these circumstances, it cannot be concluded that Respondent's controlled substances prescriptions, even at a so-called ''reduced'' amounts, were pursuant to a legitimate medical purpose or within the usual course of professional practice. To the contrary, they were not. Respondent's testimony that he didn't want SA Priymak to suffer from withdrawal symptoms (Tr. vol. 10, at 128) and the fact that Respondent's prescription of oxycodone was less than half of the dosage that SA Priymak represented he was previously taking (Tr. vol. 3, at 32; Tr. vol. 10, at 109) perhaps mitigate in Respondent's favor, but do not alter the conclusion that the prescriptions themselves were not justified under all the circumstances.

SA Priymak returned to CCHM in an undercover capacity on May 4, 2010. (Tr. vol. 2, at 315.) He paid $200 for the $150 visit but did not receive any change back. (Tr. vol. 2, at 327–28.) This evidence is consistent with payments for ''VIP service,'' apparently common at CCHM. As noted elsewhere in this

[68] SA Priymak also testified that a staff member at the reception area said Respondent did not have a DEA license and therefore the prescription could not be filled at Coast to Coast. (Tr. vol. 2, at 326–27.)

[69] Referring to a later visit by SA Priymak, Respondent testified that he did not urge that SA Priymak get rehabilitation treatment at his second visit to CCHM because SA Priymak said he was not experiencing withdrawal symptoms. (Tr. vol. 10, at 140.) The persuasiveness of Respondent's testimony in this regard is substantially undercut by Respondent's statement that SA Priymak ''was no longer having to get his medicine on the street.'' (Tr. vol. 10, at 141.) Respondent had no way to verify the truth of this statement, nor does a transcript of the May 4, 2010 visit indicate Respondent made such an inquiry. (*See* Gov't Ex. 5, at 54–58.)

Recommended Decision, overpaying for medical service is indicative of, or at least consistent with, a climate where patients and staff members play an improper role in causing controlled substances to reach patients outside the usual course of professional practice. The record as a whole supports a finding that all or substantially all of the undercover agents sought and received VIP treatment as a matter of course. Given the clear prevalence of this practice at CCHM, I reject Respondent's testimony that he had no knowledge of it, especially as the admitted owner of CCHM as of October 2010, daily work history at CCHM beginning in April 2010, and in light of Respondent's admission at hearing that he was familiar with the practice for an ''occasional patient.'' (Tr. vol. 11, at 183.)

After completing triage procedures, SA Priymak met with Respondent. (Tr. vol. 2, at 328.) Respondent asked whether the medication he had prescribed was working, to which SA Priymak responded in the affirmative. (Tr. vol. 2, at 328; Tr. vol. 3, at 56–58.) After checking SA Priymak's breathing, Respondent asked him to move his hands up and down and his head from left to right. (Tr. vol. 2, at 330.) Respondent prescribed 150 Roxicodone 15 mg and 30 alprazolam 2 mg tablets. (Tr. vol. 2, at 328–29, 338, 348, 352; Tr. vol. 3, at 60–61; Gov't Ex. 22 at 20–21.)

The record reveals evidence that Respondent documented in SA Priymak's patient file discussions that did not actually occur. For instance, despite contrary notations in the patient file (*e.g.,* Gov't Ex. 22 at 6), SA Priymak testified that Respondent did not discuss a treatment plan with SA Priymak on either April 7 or May 4, 2011, alternative medications or treatment options, anti-inflammatories or diet, yoga and stretching exercises or return to functional ability while on pain medication. (Tr. vol. 2, at 331, 333 & 345.) Respondent's conduct constitutes a failure to keep accurate records, to include evaluations, consultations and discussion of risks and benefits, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3).

As noted above, Dr. Berger credibly testified that in his professional medical opinion, Respondent's April 7, 2010 and May 4, 2010 Roxicodone and Xanax prescriptions were unwarranted and that Respondent's treatment of SA Priymak fell below the standard of care. (*E.g.,* Tr. vol. 7, at 92, 98; Gov't Ex. 32 at 73.) The record as a whole reveals numerous violations of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA Priymak's undercover visits to CCHM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Priymak lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a)

(g) SA Zdrojewski

The record reflects that SA Zdrojewski visited CCHM in an undercover capacity on July 23, 2010, along with nine other undercover agents. (Tr. vol. 3, at 69.) The agents arrived at the back door of the clinic. (Tr. vol. 3, at 69–70.) The back room was bare, containing approximately eleven chairs and ''there was really no real interaction with office staff.'' (Tr. vol. 3, at 70.) After a few minutes, an armed staff member named Fred or Freddie, and a separate staff member named Lina, came to the back room and spoke with the ''ringleader'' SA Lunsford. (Tr. vol. 3, at 71–72.) The agents paid $500, including an extra $200 for ''VIP treatment, speeding it up a little bit.'' (Tr. vol. 3, at 72; Gov't Ex. 8 at 3–4.) SA Zdrojewski also testified that he gave his patient paperwork to SA Lunsford to hand in to the office staff.[70] (Tr. vol. 3, at 73–74.) Although not dispositive, this evidence indicates that the staff of CCHM interacted with patients in unorthodox ways. The existence of a ringleader, the agents' entrance through a back door of the clinic into a back room, and the payment of $200 for preferential treatment provides clear evidence of a profit motive for employees to process patients according to the patients' requests instead of according to an established and legitimate medical procedure.

SA Zdrojewski also testified that agents made comments within earshot of clinic staff members that ''This is costing us too much money. We're not gonna make any money off this.'' (Tr. vol. 3, at 73.) Although not dispositive, this testimony provides evidence that CCHM staff members, at least those within earshot of the undercover agents, knew that the ''patients'' sought to acquire controlled substances for the purpose of diverting and selling them.

SA Zdrojewski proceeded to a triage area where he was weighed and his blood pressure and other vital signs were measured. (*See* Tr. vol. 3, at 74–76; Gov't Ex. 8 at 8.) SA Zdrojewski's blood pressure reading was high, and SA Zdrojewski informed staff members that he was on the medication Diovan, which he believed they documented in his chart.[71] (Tr. vol. 3, at 77.) Triage staff informed SA Zdrojewski that he couldn't see a doctor without conducting a urinalysis first. (Tr. vol. 3, at 77.) SA Zdrojewski submitted a urine specimen for analysis. (Tr. vol. 3, at 77.) SA Zdrojewski testified that

> It was not supervised, and after I came out of [the bathroom], I was kind of joking around that I fooled with the test, like put water in it * * * I just said I fooled around with the test in front of staff members and in front of those nurses to other agents and was kind of laughing about it, but then no one ever said anything.

(Tr. vol. 3, at 78–79.) The cup he used did not contain a label identifying it as his own. (Tr. vol. 3, at 79.) The staff's non-reaction and apparent indifference to SA Zdrojewski's manifestations that he had tampered with his urine drug screen are indicative of a culture at CCHM that is accepting of diversion of controlled substances and prescribing outside the usual course of professional practice. I find that the drug screen process, as applied to SA Zdrojewski and other undercover agents discussed elsewhere in this Recommended Decision, was manifestly inadequate at CCHM, which Respondent knew or should have known. Respondent's testimony that he felt the need to improve the urinalysis process after assuming ownership of CCHM in October 2010 indicates that at some point prior to October 2010 he had actual knowledge of the deficiencies in CCHM's urinalysis process. (*See* Tr. vol. 9, at 260–74.)

SA Zdrojewski testified to his visit with Respondent. A staff member directed SA Zdrojewski to stand in a dimly lit hallway with no chairs for approximately ten to fifteen minutes. (Tr. vol. 3, at 83.) He watched an individual named Richard Mendez enter Respondent's office, where SA Zdrojewski saw Respondent sitting at a desk. (Tr. vol. 3, at 83.) After exiting Respondent's office, Mr. Mendez talked to an undercover agent who then approached SA Zdrojewski, stating: ''You have pain.'' (Tr. vol. 3, at 84.) Although not dispositive, this statement

[70] SA Zdrojewski also testified that he supplied a true MRI report of his body. (Tr. vol. 3, at 81; *see* Gov't Ex. 8 at 24.)

[71] Respondent also asked SA Zdrojewski if he had medical problems such as high blood pressure or diabetes, and SA Zdrojewski responded in the affirmative, stating he was on Diovan. (Gov't Ex. 8 at 14.)

is consistent with other evidence of record that Respondent instructed CCHM staff members to tell patients they needed to indicate pain.[72]

A couple minutes later, Respondent invited SA Zdrojewski to enter the office, which contained a desk, chairs and an examination table. (Tr. vol. 3, at 85–86.) SA Zdrojewski approached the examination table ''and kind of vaulted myself up on it.'' (Tr. vol. 3, at 86.)

Respondent asked if SA Zdrojewski was visiting for the first time, and SA Zdrojewski responded in the affirmative, stating that he had previously been a patient at Tampa Bay Wellness, which had closed. (Gov't Ex. 8 at 11.) Respondent inquired where SA Zdrojewski's pain was and how long the pain had lasted, to which SA Zdrojewski responded ''Neck'' and a year and a half.[73] (Gov't Ex. 8 at 11.) SA Zdrojewski further stated that he was self-employed as a charter captain and could not explain how he hurt his neck.[74] (Gov't Ex. 8 at 11–12; *see* Tr. vol. 3, at 87.) He stated that his previous doctor gave him ''crazy amounts but I didn't even fill it all out. Dude was giving me ninety (90) count eighties (80's) * * * [and] sixty (60), two (2) [m]illigrams [X]anax and two hundred forty (240) Thirties (30's) * * * Don't need all that.'' (Gov't Ex. 8 at 12.) Respondent replied by asking SA Zdrojewski to describe his pain, noting that ''You got zero (0) to one (1), is that right?'' (Gov't Ex. 8 at 12.) Respondent did not ask what SA Zdrojewski was doing with the excess medication he was not using. (Tr. vol. 3, at 98.)

At hearing, SA Zdrojewski testified that he had circled zero to one on the pain scale. (Tr. vol. 3, at 96.) SA Zdrojewski stated to Respondent that his pain was intermittent, comes and goes, and later in his conversation with Respondent ''I just said, 'Well, then top it, then,' meaning just, you know, 'You write it in there,'' and that's all I said is, ''Top it, then,' and he filled that out.'' [75] (Tr. vol. 3, at 97.) As viewed at the date of hearing, SA Zdrojewski's pain assessment form indicates that Respondent circled the numbers eight through ten on the pain scale. (Gov't Ex. 28 at 9; *see* Tr. vol. 3, at 97.) Although SA Zdrojewski stated ''It can be'' after Respondent inquired whether ''the pain's been pretty bad?'' (Gov't Ex. 8 at 12), SA Zdrojewski told Respondent that he controls his pain: ''you know, I'm just, not gonna sit around.'' (Gov't Ex. 8 at 13.) The inconsistency in SA Zdrojewski's representations as to the degree of his pain and SA Zdrojewski's ability to vault up onto the examination table should have given Respondent pause before prescribing controlled substances.

SA Zdrojewski also told Respondent that he had previously received traction treatment and treatment from a chiropractor. (Tr. vol. 3, at 87.) Respondent asked when SA Zdrojewski last received treatment from Tampa Bay Wellness, and SA Zdrojewski responded that he had received treatment approximately two months previously. (Gov't Ex. 8 at 15.) Respondent, however, did not ask for these doctors' prior medical records. (Tr. vol. 3, at 95.)

Respondent conducted a physical examination of SA Zdrojewski, lasting approximately one to two minutes. (Tr. vol. 3, at 107.) He directed SA Zdrojewski to complete a variety of range-of-motion exercises (*see* Gov't Ex. 8 at 16), which SA Zdrojewski did with ''solid, strong movements. I kind of over-exaggerated my movements. * * * '' (Tr. vol. 3, at 106.) Moreover, SA Zdrojewski testified that he completed all those movements without mentioning pain.[76] (Tr. vol. 3, at 106–07.) As noted elsewhere in this Recommended Decision in the context of other undercover patients, the ease and overtly painless effort with which SA Zdrojewski completed his physical examination contradicted SA Zdrojewski's reports of pain, which varied throughout the course of the meeting. It was an inconsistency that should have alerted Respondent to the possibility that SA Zdrojewski was posing as a patient who was not seeking controlled substances for a legitimate medical purpose. Perhaps Respondent considered this possibility and simply went through the motions in conducting a physical examination: on a patient who complained of neck pain, Respondent never touched SA Zdrojewski's neck. (Tr. vol. 3, at 107.)

Consulting SA Zdrojewski's MRI report, Respondent told SA Zdrojewski he had only trace amounts of inflammation in the joints between SA Zdrojewski's vertebra and neck: ''it's very minimal * * * Other than that it's normal. There's no disk herniations, everything else is in place * * * .'' (Gov't Ex. 8 at 16.) SA Zdrojewski inquired what caused his headaches, in that case. Respondent answered: ''Oh, my God, there's nothing. I * * * I don't know. There's nothing around here that, that ah, explains that.'' (Gov't Ex. 8 at 16; Tr. vol. 3, at 95.) The following colloquy ensued:

WOLFF: Well, uh * * * we have a little issue here. First of all your MRI doesn't show much of anything and secondly, drinking a case of beer [77] is not compatible with taking a strong medicine like this * * * I'm not sure * * *

UC1: I can pull that off.

WOLFF: I'm not sure how you lived though, all of this Oxy * * *

UC1: I * * * I told you I didn't take, I didn't take all of that.

WOLFF: * * * . alcohol * * * coupled with Oxycontin and Oxycodone and Xanax is being very bad combination, as in you need to worry about death * * *

UC1: You got to watch your * * * I get it. I'll stop drinking.

WOLFF: Watch you! Yeah I * * * I think that * * * um * * * So, you rather take the medicine than to be drinking, is that right?

UC1: Yeah, yup.

WOLFF: Alright, well let me look at your chart to see what we can do to help you.

(Gov't Ex. 8 at 17–18.) On July 23, 2010, Respondent issued SA Zdrojewski a prescription for 150 Roxicodone 30 mg tablets.[78] (Gov't Ex. 28 at 19; Gov't Ex. 8 at 22–23; Tr. vol. 3, at 103.) Although Respondent testified that this prescription is much less than what SA Zdrojewski told Respondent he had previously been prescribed (Tr. vol. 10, at 255), the import of the difference is reduced in substantial part by SA Zdrojewski's statement to Respondent that he wasn't even filling all of the prescriptions his previous doctor had provided, because they were ''crazy amounts.'' [79] To be certain, Respondent's lowering of the dosage

[72] *E.g., supra* text at notes 26–28 (noting TFO Doklean's testimony that a staff member voiced Respondent's concerns that patients needed to say they were in pain in their paperwork, and needed to tell doctors they were in pain).

[73] Respondent asked how long SA Zdrojewski's back had been hurting, and SA Zdrojewski replied that in fact his neck was the issue. (*E.g.,* Tr. vol. 3, at 86–87.)

[74] Respondent did not inquire about SA Zdrojewski's duties as a charter captain. (Tr. vol. 3, at 99.)

[75] To similar effect, Respondent testified that SA Zdrojewski had said ''swap it.'' (Tr. vol. 10, at 242.)

[76] The only apparent exception was one instance in which Respondent apparently directed SA Zdrojewski to bend over, and the latter replied ''I can't bend that far down.'' (Gov't Ex. 8 at 16.) Even in this case, however, SA Zdrojewski did successfully bend down and touch his toes, even as he said he could not. (Tr. vol. 3, at 160.)

[77] SA Zdrojewski had told Respondent he was drinking a lot of alcohol, to include a case of beer on the weekends. (*See* Tr. vol. 3, at 88; Gov't Ex. 8 at 14.)

[78] Respondent declined to write SA Zdrojewski a prescription for Xanax because Respondent didn't believe SA Zdrojewski needed it. (Gov't Ex. 8 at 18.)

[79] Notably, Respondent demonstrated no interest in learning any information to include the doctor's name at Tampa Bay Wellness that had prescribed what SA Zdrojewski represented to be ''crazy amounts'' of controlled substances.

standing alone cuts somewhat in Respondent's favor; but I find Respondent's reliance on SA Zdrojewski's self-reported past prescriptions of excessive quantities of controlled substances as a baseline for future prescriptions to be facially outside the usual course of professional practice.

The record further reveals evidence that Respondent documented in SA Zdrojewski's patient file discussions that did not actually occur. For instance, despite contrary notations in the patient file (*e.g.,* Gov't Ex. 28 at 5), SA Zdrojewski testified that Respondent never discussed anti-inflammatories and diet, the risk and benefits of medication, including the risk of abuse and addiction and physical dependency,[80] yoga and stretching exercises, omega-3 fish oil, the use of illegal drugs,[81] weaning off medications, treatment plans for pain relief or improvement,[82] improving physical and psychological functions, regaining quality of life, improving SA Zdrojewski's activities of daily living, sleep, improved energy, mood or motivation, working at full capacity, a rehabilitation program, exercise, diet, lifestyle or habits. (Tr. vol. 3, at 88–92.) He did not discuss alternative medications beside controlled substances or alternative treatments for pain, such as back injections. (Tr. vol. 3, at 109.) Respondent's conduct constitutes a failure to keep accurate records, to include evaluations, consultations and discussion of risks and benefits, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3). Consistent with Dr. Berger's testimony as noted above (*e.g.,* Tr. vol. 7, at 176), Respondent's failure to refer SA Zdrojewski to rehabilitation for his use of recreational and illicit controlled substances, and what may well have been his excessive use of licit controlled substances, is also inconsistent with Florida standards.[83] *See* Fla. Admin. Code Ann. r. 65B8–9.013(3)(e) (''The physician should be willing to refer the patient as necessary for additional evaluation and treatment * * * Special attention should be given to those patients who are at risk for misusing their medications [or] * * * pose a risk for medication misuse or diversion * * * .'')

By corollary, the record reveals evidence of discussions that should have occurred, but didn't. The record reflects that SA Zdrojewski indicated in his patient form that he suffered from bipolar disorder (Gov't Ex. 28 at 7), but SA Zdrojewski testified that Respondent did not discuss bipolar disorder. (Tr. vol. 3, at 93–94.) SA Zdrojewski further testified that Respondent did not discuss high blood pressure. (Tr. vol. 3, at 93.)

In sum, the record reveals numerous violations of applicable standards and regulations concerning the prescribing of controlled substances in the context of SA Zdrojewski's July 23, 2010 visit to CCHM. Substantial evidence supports a finding that Respondent's prescription of controlled substances to SA Zdrojewski lacked a ''legitimate medical purpose * * * that is supported by appropriate documentation establishing a valid medical need and treatment plan,'' in violation of Fla. Admin. Code Ann. r. 64B8–9.013(1)(b) (2003), and was outside the usual course of professional practice, in violation of 21 CFR 1306.04(a).

(h) SA Ryckeley

The record reflects that SA Ryckeley visited CCHM in an undercover capacity on July 23, 2010. (*E.g.,* Gov't Ex. 7 at 2; Tr. vol. 3, at 200.) He arrived with a group of nine other undercover officers, and the group was ''shepherded in through the back door.'' (Tr. vol. 3, at 200, 203.) SA Ryckeley testified that the group was led by undercover agent Jack Lunsford, who was acting as a sponsor: a person who arranged for a group of people to come in and attempt to seek pain medicine. (Tr. vol. 3, at 201.) A female employee of the clinic greeted the group and requested $300 for the office visit. (Tr. vol. 3, at 201.) The agents also paid her an additional $200 for accelerated preferential treatment.[84] (Tr. vol. 3, at 201; Gov't Ex. 7 at 6.)

Record evidence concerning SA Ryckeley's visit with Respondent in Respondent's office (Tr. vol. 3, at 206) reveals a number of departures from the usual course of professional practice. As the visit began, Respondent asked if it was SA Ryckeley's first visit, and SA Ryckeley said yes. (Gov't Ex. 7 at 18.) Respondent asked ''where's your pain that we're gonna help you with?'' to which SA Ryckeley replied ''Uh, back discomfort. I came in with, uh, David Hays and all those guys.'' (Gov't Ex. 7 at 18.) SA Ryckeley's statement gave Respondent reason to suspect, if not to know, that SA Ryckeley was visiting CCHM with other people as part of a common plan or scheme that may not have been connected to legitimate complaints of pain.

It is also notable that SA Ryckeley's statements regarding the intensity of his pain changed over the course of the interview. Respondent asked SA Ryckeley to describe his pain with reference to the pain descriptions on a Pain Assessment Form, which SA Ryckeley did not complete upon intake but believed that Respondent partially completed for him during the consultation.[85] (Gov't Ex. 7, at 20; Gov't Ex. 27 at 9; Tr. vol. 3, at 225–26.) SA Ryckeley replied that his pain ached in his lower back area. (Gov't Ex. 7 at 20.) ''[I]t comes and goes, mostly comes when I fish.'' (Gov't Ex. 7 at 20.) Respondent asked how bad the pain was, on a scale of one to ten, to which SA Ryckeley responded ''[u]h, probably around two (2).'' (Gov't Ex. 7 at 20.) Respondent replied that maybe SA Ryckeley didn't understand the pain scale, and that ''a one (1) and two (2) is * * * just sort of * * * a very mild kinda problem, ten (10) is were your [sic] screaming. So, that sort of the scale * * * So * * * would you characterize it as mild? Which is about (1) or two (2), or, or moderate? You know, five (5) or six (6) or is it pretty severe, like, eight

[80] Respondent did counsel SA Zdrojewski, however, on the risk of alcohol. (Tr. vol. 3, at 88.)

[81] Strictly speaking, Respondent did ask whether SA Zdrojewski was using recreational drugs or had any drug abuse or dependence problems, to which SA Zdrojewski replied that he was presently self-medicating with marijuana. (Gov't Ex. 8 at 15; *see* Tr. vol. 3, at 89.) But Respondent's response upon learning of SA Zdrojewski's marijuana use was ''Oh, Oh.'' (Gov't Ex. 8 at 15.) Respondent asked no follow-up questions about his marijuana use. Nor does a transcript of the interview reveal that he asked ''How often?'', as SA Zdrojewski testified. (*See* Tr. vol. 3, at 89.) Significantly, Respondent did not counsel SA Zdrojewski against using marijuana while on pain medication. (Tr. vol. 3, at 90; *see* Gov't Ex. 8.) Respondent's testimony tending to suggest that he believed SA Zdrojewski ''was using marijuana to get through the day'' now that the Tampa clinic was closed (Tr. vol. 10, at 245) is hard to reconcile with SA Zdrojewski's statements to Respondent that the medication he had been receiving there was wildly excessive.

[82] SA Zdrojewski explained ''I didn't even know how many oxycodones I was getting [from Respondent] until I received them.'' (Tr. vol. 3, at 109.)

[83] Respondent's testimony that he intended to make referrals to a neurosurgeon at the next visit (Tr. vol. 10, at 254) is not to the contrary. As an initial matter, there was no subsequent visit. Moreover, Respondent's failure to make a referral in the context of SA Zdrojewski is generally consistent with Dr. Berger's testimony that Respondent failed to make a proper referral in the context of SA Priymak, providing some evidence of a trend. (*See generally* Tr. vol. 8, at 298; Gov't Ex. 5 at 42.)

[84] As noted elsewhere in this Recommended Decision, although not dispositive, evidence of ''VIP treatment'' indicates that the staff of CCHM interacted with patients in unorthodox ways. The existence of a sponsor and the payment of $200 for preferential treatment provides some evidence of a profit motive for employees to process patients according to the patients' requests instead of according to an established and legitimate medical procedure.

[85] Respondent testified that SA Ryckeley commented that he was not very good with words, which Respondent interpreted as meaning SA Ryckeley was not an educated man and wasn't good with language. (Tr. vol. 10, at 215.)

(8) or nine (9) or ten (10)?'' (Gov't Ex. 7 at 21.) SA Ryckeley replied: ''Well, I guess it, it could be moderate, I would imagine * * * middle of the road.'' (Gov't Ex. 7 at 21.) SA Ryckeley later characterized his pain as a five or a seven. (Gov't Ex. 7 at 29.) The record does reveal one possible benign explanation for SA Ryckeley's shifting answers: a transcript of the patient meeting shows that SA Ryckeley stated ''when I read through that twelve (12) page medical questionnaire it was a lot of words I didn't understand on there.'' (Gov't Ex. 7 at 29; *see also* Tr. vol. 3, at 270–71.)

SA Ryckeley viewed the situation less optimistically, and testified at hearing that he interpreted remarks by Respondent as coaching him to state he had greater pain. The record shows that Respondent asked how the pain affected SA Ryckeley's life, work and home. (Gov't Ex. 7 at 22.) SA Ryckeley replied that it makes it more difficult to fish, to which Respondent laughed and stated: ''You're under-whelming me.'' (Gov't Ex. 7 at 22.) Respondent elaborated, later saying: ''[E]ither I'm missing the point or you're missing the point.'' (Gov't Ex. 7 at 23.) Respondent told SA Ryckeley that he should just take Tylenol. ''You don't have anything wrong, I don't get it.'' (Gov't Ex. 7 at 24.) SA Ryckeley explained that he believed Respondent was being ''a box-checker * * * going through and checking the boxes and making every element to justify writing me * * * .'' (Tr. vol. 3, at 210.) SA Ryckeley called Respondent's comments ''clear-cut coaching'' (Tr. vol. 3, at 210) ''that I better say the right things if I wanted to get the prescription, so that's what I did.'' (Tr. vol. 3, at 224.) ''[I]t was apparent that he was coaching me to a higher level to be able to prescribe me narcotics.'' (Tr. vol. 3, at 269.)

SA Ryckeley presented Respondent with evidence that he had been taking controlled substances that he obtained without a prescription. Respondent asked how long SA Ryckeley had had back pain, to which SA Ryckeley responded that his pain started in May while he was fishing on a sport fishing charter boat. (Gov't Ex. 7 at 18–19.) SA Ryckeley told Respondent that he took some of his girlfriend's ''thirties,'' and ''it put me in a state were [sic] I liked it, it made me feel better * * * and so I experimented with that, I know I probably shouldn't of [sic] done that.'' (Gov't Ex. 7 at 19–20.) ''I've never really thought about [my pain] after that.'' (Gov't Ex. 7 at 22.) SA Ryckeley testified that Respondent wasn't fazed or set back by learning that SA Ryckeley was using his girlfriend's oxycodone. (Tr. vol. 3, at 208.) In spite of, or perhaps because of, the fact that SA Ryckeley indicated on a patient form that no doctor prescribed the oxycodone he had been taking (*see* Tr. vol. 3, at 228), Respondent did not ask if any doctor prescribed the 180 oxycodone 30 mg tablets that SA Ryckeley indicated on his Pain Assessment Form that he was taking. (Tr. vol. 3, at 226; Gov't Ex. 27 at 9.)

The record contains evidence that Respondent acknowledged the impropriety of SA Ryckeley's illicit use and possible abuse of oxycodone, but decided to issue a prescription for controlled substances anyway. SA Ryckeley told Respondent he was taking oxycodone six times per day but stopped two weeks before the consultation because of an impending drug test for a job application. (Gov't Ex. 7 at 22 & 24.) He said that his girlfriend had been prescribed four pills per day, but ''[s]ometimes people gave me two (2) at the club and stuff like that.'' (Gov't Ex. 7 at 25.) Respondent later asked:

WOLFF: But the, the thirties (30s) seem to work good for you?
UC1: Yeah, I like them.
WOLFF: You like them?
UC1: Well, which I mean, I think they, they work good.
WOLFF: You know, you're killing me, I can't even believe I'm having this conversation. [LAUGHS]
UC1: I've never, I've never been a, uh, educated man doc, you know?
WOLFF: Killing me * * * .

(Gov't Ex. 7 at 28.) SA Ryckeley's confession that he had diverted controlled substances from his girlfriend and others at ''the club'' and his statement that he liked the opioids should have constituted grounds for significant concern by Respondent that the patient was abusing or diverting controlled substances. Indeed, as noted above, Dr. Berger also testified that references in the medical file regarding the patient taking controlled substances from his girlfriend makes ''them a bad candidate for compliance,'' because they may be willing to share or divert their medication. (Tr. vol. 7, at 167.) At hearing, Respondent testified that he found the response ''I like them'' to be unusual and assumed it was related to SA Ryckeley's difficulty communicating and gave SA Ryckeley the benefit of the doubt. (Tr. vol. 10, at 226–27.) But Respondent's reply that ''you're killing me'' demonstrates Respondent's recognition that issuing a prescription under such circumstances would raise serious questions whether such a prescription was within the usual course of professional practice or pursuant to a legitimate medical purpose. Moreover, the record reflects that Respondent did not discuss a rehabilitation program to address the fact that SA Ryckeley was taking between four and six oxycodone pills per day without a prescription (Tr. vol. 3, at 225), as contemplated by Fla. Admin. Code Ann. r. 64B8–9.013(3)(e) (''The management of pain in patients with a history of substance abuse * * * requires extra care, monitoring, and documentation, and may require consultation with or referral to an expert in the management of such patients.'').[86]

Respondent ultimately agreed to ''get you started on some medication, we'll see how you do.'' (Gov't Ex. 7 at 31.) Respondent issued a prescription for 150 Roxicodone 30 mg tablets, constituting a decrease by thirty pills from the amount that SA Ryckeley had self-reported. (Tr. vol. 3, at 211, 271; Gov't Ex. 7 at 62–66.) SA Ryckeley filled the prescription at CCHM for a cost of $900. (Tr. vol. 3, at 211.) Because he was a member of a group of patients who had entered the clinic together, the staff determined that SA Ryckeley had overpaid and refunded him $150. (*See* Tr. vol. 3, at 212.) Even in the absence of expert testimony, I find that the practice of providing a discount on medication to patients who arrive together in a group bears no rational connection to the legitimate practice of medicine. Moreover, although it is not by itself conclusive proof of diversion of controlled substances, such a practice is nevertheless consistent with diversion.

The record reflects Respondent's own uncertainty as to whether a controlled substances prescription for SA Ryckeley was for a legitimate medical purpose: ''I don't know, if, if you don't need it I don't want you to take it but if your pain is such that, you know, you can't function without it, then, uh, then that's a reasonable indication.'' (Gov't Ex. 7 at 32.) He cautioned SA Ryckeley not to take the medication except as indicated, not to buy, sell or share it, and to keep it locked in a safe place. (Gov't Ex. 7 at 31.) ''I know it's out in the street and everything, but we consider it serious stuff * * *'' (Gov't Ex. 7 at 31.) At hearing, Respondent testified that he was merely ''trying to give him an appreciation for the fact that I don't want him to take the medication unless he needs it.'' (Tr. vol. 10, at 231.) Given SA Ryckeley's shifting answers regarding the scope of his pain and the

[86] Respondent did indicate in the patient file that at the next visit he would ''consider referral to a Board Certified pain management specialist'' (Tr. vol. 10, at 238; Gov't Ex. 27 at 6; Resp't Ex. 7 at 5), but there is no indication regarding referral to a rehabilitation program. In any event, there was no subsequent visit and no such referral ever occurred.

other indications of diversion and abuse, however, I give Respondent's explanation little weight. Indeed, Respondent testified that he wrote in SA Ryckeley's patient file (Gov't Ex. 27 at 6; Resp't Ex. 7 at 5) that ''I want to make sure patient is legitimate * * * without a chance of diversion. Will perform urine drug test next visit * * * .'' (Tr. vol. 10, at 238.) Respondent's notation effectively deferring his present concerns of diversion to a future date is consistent with a pattern of evidence that Respondent repeatedly and deliberately ignored clear indications of diversion while prescribing controlled substances.

The record further reveals evidence that Respondent documented in SA Ryckeley's patient file discussions that did not actually occur. For instance, despite contrary notations in the patient file (*e.g.,* Gov't Ex. 27 at 5), SA Ryckeley testified that Respondent never discussed sleep disturbance, anti-inflammatory medications, diet or alternative forms of treatment, yoga and stretching exercises, omega-3 fish oil, smoking, weaning off medication or a time frame for pain management. (Tr. vol. 3, at 219–21, 231.) Moreover, although SA Ryckeley told Respondent that he occasionally experienced headaches (Gov't Ex. 7 at 21), Respondent did not discuss the possibilities of neurosurgical consultation and surgery. (Tr. vol. 3, at 228.) Respondent's conduct constitutes a failure to keep accurate records, in violation of Fla. Admin. Code Ann. r. 65B8–9.013(3).

In mitigation, Respondent did inquire whether SA Ryckeley drank. SA Ryckeley responded that he drank socially: ''Two (2) or three (3) drinks, max * * * a week maybe.'' (Gov't Ex. 7 at 26.) Respondent replied that ''we don't prescribe medicines to people who drink alcohol because the interaction between alcohol and medicine is bad * * * you could die from it.'' (Gov't Ex. 7 at 26–27.) ''[T]his medicine and alcohol is not to be mixed.'' (Gov't Ex. 7 at 27.)

Moreover, Respondent did ask SA Ryckeley whether he was currently working. (Gov't Ex. 7 at 24.) SA Ryckeley responded: ''Uh, I'm between jobs.'' (Gov't Ex. 7 at 24.) There is no evidence that Respondent asked SA Ryckeley why SA Ryckeley wrote on his patient medical history that he was currently employed. (*See* Gov't Ex. 27 at 8.) SA Ryckeley did, however, tell Respondent that he occasionally works on weekends. (*See* Gov't Ex. 7 at 32.) SA Ryckeley also told Respondent that he used to work as a boat captain on a commercial charter. (Gov't Ex. 7 at 24.) Respondent initially thought ''if [SA Ryckeley] couldn't go fishing, it wouldn't be the end of the world. But then I realized that this was his job.'' (Tr. vol. 10, at 222.) Respondent asked if the pain depleted his energy, and SA Ryckeley responded that the pain ''makes me less willing to do what I like to do * * * because * * * I'm in discomfort.'' (Gov't Ex. 7 at 25.) He elaborated that he is in a better mood when on oxycodone pills, that they improve his relationship with his girlfriend or his sex life, and that it is significantly more difficult to work without medicine. (Gov't Ex. 7 at 25–26.)

In addition, Respondent did conduct a physical examination of SA Ryckeley and also explained that SA Ryckeley's MRI report showed a bulging disk. (Gov't Ex. 7 at 28, 30; *see* Tr. vol. 3, at 208.) SA Ryckeley's performance during a physical examination, however, should have raised concerns of diversion: Respondent instructed SA Ryckeley to perform a range-of-motion test and walk across the room (Tr. vol. 3, at 208 & 210; Tr. vol. 10, at 228; *see* Gov't Ex. 7 at 21), which SA Ryckeley completed with ease and without complaining about pain. (Tr. vol. 3, at 210.) Because SA Ryckeley told Respondent that he was not currently taking medication (Gov't Ex. 7 at 22 & 24), Respondent could not have believed that SA Ryckeley had pain that was satisfactorily numbed by medication. He therefore should have been concerned that SA Ryckeley's successful and apparently painless completion of the range-of-motion tests contradicted SA Ryckeley's reports of pain, which, as noted above, varied throughout the course of the meeting. It was an inconsistency that should have apprised Respondent that SA Ryckeley may not have been a legitimate patient.

Of still greater concern is that Respondent commenced a physical examination of SA Ryckeley only after deciding to prescribe controlled substances to SA Ryckeley. (*See* Gov't Ex. 7 at 28 (''You like [oxycodone]? * * * You know, you're killing me, I can't even believe I'm having this conversation * * * Alright, hold up your arms up here, like this * * * .'').) In requiring that physicians conduct a patient evaluation prior to prescribing controlled substances, *see* Fla. Admin. Code Ann. r. 64B8–9.013(3)(a), the Florida Board of Medicine intended that the physical examination inform the practitioner's decision of whether to prescribe controlled substances, not vice versa. Where, as here, the physician conducts a physical examination of a first-time patient only after having already decided to prescribe controlled substances, the physician cannot be considered to have acted within the usual course of professional practice.

After considering the evidence weighing in Respondent's favor with respect to SA Ryckeley, the balance of the evidence shows that Respondent knew or should have known that SA Ryckeley was presenting as a patient who had previously obtained and used controlled substances without a prescription and presently intended to use controlled substances for other than a legitimate medical purpose. Dr. Berger was of the opinion that statements by SA Ryckeley, if known by the physician, ''would absolutely preclude a physician practicing medicine within the standard of care'' from prescribing controlled substances. (Gov't Ex. 32 at 111.) I further reject as inconsistent with the weight of the evidence Respondent's statements at hearing to the effect that he would not have prescribed controlled substances if he did not believe SA Ryckeley was a real pain patient. (*See, e.g.,* Tr. vol. 10, at 233–34.) Moreover, I find that Respondent's prescription of oxycodone to SA Ryckeley was outside of the usual course of professional practice and lacked a legitimate medical purpose, in violation of Fla. Admin. Code Ann. r. 64B8–9.013 and 21 CFR 1306.04(a).

2. CMG

As discussed above, the Government presented evidence relating to prescribing practices at CMG and undercover visits to see Respondent at that location by three agents: SA Miller, SA McClarie and SA Bazile. The Government did not produce patient records for these undercover agents or present expert testimony surrounding their visits. Moreover, in light of testimony by Respondent, the treating physician, that he acted appropriately, I give little weight to the evidence relating to CMG except with respect to SA Bazile. The record reflects that after Respondent issued a prescription for 90 Roxicodone 15 mg tablets, SA Bazile testified that she said ''can I have something to sleep and he said do you have trouble sleeping? I said sometimes and he said—he seemed a little irritated. He said you're not very convincing.'' (Tr. vol. 6 at 23.) Ultimately, however, Respondent issued a prescription for Xanax. (Tr. vol. 6, at 24.) SA Bazile's unrebutted testimony that Respondent did not find SA Bazile's need for Xanax ''very convincing,'' even without the aid of expert testimony, fully supports a finding that Respondent's prescription for Xanax was not pursuant to a legitimate medical purpose under 21

CFR 1306.04(a). *See Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,450 (DEA 2011) (explaining that in cases of particularly flagrant conduct by a registrant ''expert testimony adds little to the proof necessary to establish a violation of Federal law'').

3. Summary of Undercover Patients

For the foregoing reasons, I find by substantial evidence that Respondent issued a substantial number of controlled substance prescriptions for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of federal and state law.[87] Additionally, Respondent repeatedly failed to comply with the requirement to keep accurate and complete records.[88] This finding weighs heavily in favor of a finding under Factors Two and Four of 21 U.S.C. 823(f) that Respondent's continued registration would be inconsistent with the public interest.

4. Evaluation of Expert Testimony

The evidence at hearing included opinions from Dr. Berger and Respondent regarding Respondent's prescribing practices. Expert testimony regarding a physician's prescribing practices is an important but not indispensible part of evaluating whether a practitioner is acting for a ''legitimate medical purpose'' in the ''usual course of his professional practice.'' [89] The Agency has previously held that ''[w]here, for example, the Government produces evidence of undercover visits showing that a physician knowingly engaged in outright drug deals, expert testimony adds little to the proof necessary to establish a violation of federal law.'' *Cynthia M. Cadet, M.D.,* 76 FR 19,450 (DEA 2011).

As a general matter, the opinion of a treating physician in the context of a DEA administrative hearing should not automatically be given greater weight than the opinion of a non-examining physician. ''Despite a certain degree of lingering confusion among the courts of appeals, it has become overwhelmingly evident that the testimony of the 'treating physician' receives no additional weight.'' *Eastover Mining Co.* v. *Williams,* 338 F.3d. 501, 509 (6th Cir. 2003). Unlike a Social Security benefit determination that is governed by a regulation giving deference to a treating physician, no such regulation pertains to a DEA administrative hearing.[90] Accordingly, I have not given Respondent's testimony on the facts of this case greater weight simply because of his status as a treating physician, particularly given the short duration of his treatment of each undercover patient.

Dr. Berger's testimony at hearing, while credible for the most part, was fraught with numerous instances of nonresponsive answers and lapses of memory with regard to the evidence, including his written report. Additionally, Dr. Berger's testimony and report was found to contain substantive errors, including dates of patient treatment, urinalysis results, identity of signatures and patient history.[91] (*See, e.g.,* Tr. vol. 7, at 222–24; Tr. vol. 8, at 5; Tr. vol. 8, at 199.) Notwithstanding the foregoing deficiencies, I have given Dr. Berger's testimony and opinions with regard to seven of eight patient files significant weight, as discussed above, since his opinions were well supported by other objective evidence of record, including the patient file.[92] While I have given weight to Dr. Berger's opinions regarding ''medical standards of care'' for seven of the eight patient files relating to CCHM, I give no weight to his various opinions and statements regarding the legality of conduct by physicians and staff at CCHM. (Gov't Ex. 23 at 123.)

Respondent's testimony in this case was significantly diminished by his lack of credibility in numerous instances, to include a lack of objective patient record evidence to support his assertions that he always conducted an adequate patient evaluation, and that he reasonably believed each of the undercover patients to which he prescribed controlled substances truthfully reported real pain. The evidence of record is overwhelming that Respondent had actual knowledge of diversion in a number of instances or simply ignored clear warning signs in others, making incredible his assertion that he was effectively duped into prescribing controlled substances during each undercover visit, with the exception of SA Marshall.[93] Respondent's testimony and opinion that he acted in accord with the public interest standard in numerous ''other'' cases, even if accurate, is unavailing because even a single act of intentional diversion is sufficient grounds upon which to revoke a registration, *e.g., Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,450 n.3 (DEA 2011), and ''evidence that a practitioner has properly treated thousands of patients does not negate a prima facie showing that the practitioner has committed acts inconsistent with the public interest.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (DEA 2009).

The evidence in this case reflects in numerous instances a willful blindness or deliberate ignorance by Respondent of facts that put him on notice of actual or potential diversion, yet Respondent ''deliberately closed his eyes to wrongdoing that should have been obvious to him.'' *U.S.* v. *Veal,* 23 F.3d 985, 988 (6th Cir. 1994). For example, Respondent made no substantive inquiry to SA Bazile's statement that she likes ''blues'' and shares them with friends. (Tr. vol. 6, at 22–23.) Similarly, Respondent failed to inquire about the details surrounding SA Priymak's statement that he gets oxycodone off the street. (Gov't Ex. 5 at 39.) In response to SA O'Neil's statement that he was illegally taking liquid oxycodone, Respondent stated: ''Don't even tell me that.'' (Gov't Ex. 14 at 30.) Respondent later stated in substance that most pain clinics hearing such information would cut the patient off.[94] (Gov't Ex. 14.)

I find Respondent's testimony explaining that his comment ''[d]on't even tell me that'' was simply an expression of being ''disturbed'' and ''hurt'' to hear such information to be palpably not credible in light of the totality of the evidence, particularly Respondent's pattern of ignoring similar evidence of diversion and abuse. (*See* Tr. vol. 10, at 155.) The context of Respondent's conversation with SA O'Neil demonstrates that rather than being interested in finding out the facts of the patient's liquid oxycodone use, a substance that Respondent considered highly dangerous, Respondent clearly implied that he did not want to hear such information. (Gov't Ex. 14 at 30–

[87] *E.g.,* 21 CFR 1306.04(a); 21 U.S.C. 841(a)(1); and Fla. Admin. Code Ann. r. 65B8–9.013 (2003).

[88] Fla. Admin. Code Ann. r. 65B8–9.013(3)(f).

[89] 21 CFR 1306.04(a).

[90] *See* 20 CFR 404.1527(d)(2) and 416.927(d)(2).

[91] Dr. Berger's written report was as unimpressive as his testimony in various respects, to include factual errors and the lack of a date and signature, among other deficiencies. Upon inquiry as to the basis for Dr. Berger's identification of his written report as the final draft, given the absence of a date or signature, he responded: ''It looks familiar to me.'' (Tr. vol. 9, at 137.)

[92] I have given Dr. Berger's testimony with regard to SA Saenz little to no weight due to Dr. Berger's material and erroneous belief that Respondent had treated SA Saenz on more than one occasion, and his erroneous interpretation of a urinalysis report, which clearly influenced his opinion regarding Respondent's standard of care.

[93] Even with regard to SA Marshall, Respondent's decision not to prescribe rested on his belief that SA Marshall was an undercover law enforcement officer rather than upon a concern for preventing diversion.

[94] Compare transcript with audio/video recording of undercover visit, with the latter reflecting Respondent's verbal reference to other clinics cutting a patient off from treatment. (Gov't Ex. 14 at 32; 2010–05–04_ONeil_24_vid.002 at 19:20–19:40.)

32.) The evidence of Respondent's willful blindness to illicit drug use and evidence of diversion was also evidenced by his testimony regarding his departure from CMG over the falsification of a patient drug screen by a staff member. Respondent testified that when he left CMG he felt under duress, fear and danger, but did not report the incident to the police. (Tr. vol. 9, at 69–70, 74.)

Additional examples of Respondent's willful blindness to issues of diversion permeate the record, but further elaboration is unnecessary.

5. Respondent's Positive Experience in Dispensing Controlled Substances

Respondent offered testimony and evidence of his past positive experience in dispensing controlled substances, including his experience working in hospitals and with public safety departments. Additionally, Respondent offered testimony supported by patient files related to his positive experience in treating patients [C.E.], [D.P.], [J.B.], [R.C.], [L.K.], and [J.R.] (Resp't Exs. 11, 13, 15–17 & 19.) Respondent further testified that after becoming owner of CCHM, he implemented various improvements to include staff changes, an updated urinalysis process, and a clinic procedure manual. Respondent also argued that additional files in the Government's possession but otherwise unavailable to Respondent evidenced further instances of positive experience in dispensing controlled substances.

I have considered the evidence related to Respondent's past experience in dispensing controlled substances and find that with regard to Respondent's work with hospitals and public safety departments, he has in fact acted consistent with the public interest. Additionally, the un-rebutted evidence pertaining to patients [C.E.], [D.P.], [J.B.], [R.C.], [L.K.], and [J.R.] are consistent with Respondent's testimony and reflect positive prescribing experiences.

Respondent's claim that patient files in the Government's possession but not produced at hearing or otherwise made available to Respondent may contain additional evidence of positive prescribing is unsupported by record evidence since none of the ''additional'' patient records were produced by either party at hearing. Even if Respondent's claim of additional positive experiences were supported by patient files, Agency precedent has held that such evidence is entitled to some evidentiary weight only in cases where a practitioner credibly demonstrates an acceptance of responsibility and reform of past practices.

> [E]vidence that a practitioner has treated thousands of patients does not negate a prima facie showing that the practitioner has committed acts inconsistent with the public interest. While such evidence may be of some evidentiary weight in assessing whether a practitioner has credibly shown that she has reformed her practices, where a practitioner commits intentional acts of diversion and insists she did nothing wrong, such evidence is entitled to no weight.

Jayam Krishna-Iyer, M.D., 74 FR 459, 463 (DEA 2009).

While I have carefully considered the evidence of Respondent's past positive experiences in dispensing controlled substances, I find those experiences are vastly outweighed by the substantial evidence of Respondent's repeated misconduct in issuing controlled substance prescriptions to undercover law enforcement officers for other than a legitimate medical purpose and outside the usual course of professional practice, in violation of Federal and state law. The weight of Respondent's prior positive experiences is further diminished by Respondent's failure to admit any wrongdoing with regard to his conduct at CMG [95] and CCHM.

Factor 5: Such Other Conduct Which May Threaten the Public Health and Safety

Under Factor Five, the 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 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).[96] 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).

Respondent argues generally that the Government has failed to establish by a preponderance of evidence that Respondent's continued registration would be inconsistent with the public interest. (Resp't Br. at 14.) Respondent's testimony at hearing repeatedly demonstrated Respondent's belief that he had engaged in no past misconduct and was in full compliance with existing laws and regulations. (Tr. vol. 11, at 296.) Respondent's testimony further demonstrated a remarkable lack of acknowledgment and recognition of the risks of diversion. For example, Respondent testified in substance that he did not believe that a patient's use of the street term ''blues'' for Roxicodone constituted a ''red flag'' for diversion, even with knowledge of the patient's self-reported recent history of alcohol rehabilitation and illicit use of Roxicodone, because Respondent ''didn't want to make a value judgment'' on the patient's use of the term ''blues.'' (Tr. vol. 10, at 192–93.) Respondent testified in substance that with regard to another patient, he interpreted ''in a positive way'' the patient's statement that the patient was illicitly using another person's medication because the patient ''had gotten relief'' from pain, but did not make any substantive inquiry about the details of the patient's illicit use of the medication.

After balancing the foregoing public interest factors, I find that the Government has established by substantial evidence a prima facie case in support of denying Respondent's application for registration, based on Factors Two, Four and Five of 21 U.S.C. 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).

The record reveals that Respondent has not sustained his burden in this regard. In fact, as discussed above, Respondent's testimony in numerous instances was not credible and reflected an overall lack of admission of past misconduct, let alone acceptance of responsibility. 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 weighs heavily in favor of a finding that Respondent's registration would be inconsistent with the public interest.

[95] As noted above, the Government has sustained its burden of proving by substantial evidence that Respondent prescribed Xanax to SA Bazile for other than a legitimate medical purpose or outside of the usual course of professional practice.

[96] *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.'')

V. Conclusion and Recommendation

I recommend revocation of Respondent's DEA CORs FW1453757, BW3918440, BW4448571, AW2065058, FW1338690, BW4362935, AW2654639, AW8594233 and BW0601446 as a practitioner, and denial of any pending applications for renewal or modification to include application WI0053115C, on the grounds that Respondent's continued registration would be fully inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f).

Dated: July 25, 2011.

s/Timothy D. Wing,

Administrative Law Judge.

[FR Doc. 2012–1972 Filed 1–31–12; 8:45 am]

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H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the ''Sergeant Matthew J. Fenton Post Office''. (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the ''M.D. Anderson Plaza'' and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the ''Sergeant Angel Mendez Post Office''. (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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