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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 2:12-cr-60-FtM-998PL
	:	
TODD ALAN BENFIELD	:	

**PLEA AGREEMENT**

A. **Particularized Terms**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, Todd Alan Benfield, and the attorney for the defendant, Donald P. Day, mutually agree as follows:

1. **Count Pleading To**

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with knowingly and unlawfully taking, shooting and killing a Florida Panther (*Felis concolor coryi*), an endangered species protected by the Endangered Species Act of 1973, in violation of Title 16, United States Code, Section 1538(a)(1)(B) and Section 1540(b)(1), and Title 50, Code of Federal Regulations, Section 17.11(h).

2. **Maximum Penalties**

Count One is punishable by a maximum term of imprisonment of one year,

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without parole, a fine of not more than \$100,000, or both, a term of supervised release of not more than one year, and a special assessment of \$25.00, said special assessment to be due on the date of sentencing. In addition to a fine and special assessment, Count One is also punishable by a maximum term of probation of five years.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: The defendant took (shot or killed) an animal;

Second: The animal was one listed as an endangered species;

Third: The defendant engaged in the conduct unlawfully, that is, without permission from the agency that could issue permits and authorize such activity, either the U.S. Department of the Interior or Commerce; and

Fourth: The defendant did such acts knowingly.

4. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

5. Acceptance of Responsibility - Two Levels

At the time of sentencing, and in the event that no adverse information is

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received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

6. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

7. Joint Recommendation

The United States and the defendant agree that they will jointly recommend that the court make the following findings and conclusions as to the proper calculation and application of the advisory Sentencing Guidelines under all the circumstances of this case:

- a. Base Offense Level: Pursuant to Section 2Q2.1 (a) of the Sentencing Guidelines, the base offense level in this matter is Level 6.
- b. Endangered Wildlife: Wildlife listed as endangered by the Endangered Species Act as set forth in 50 C.F.R. Part 17. Under Section 2Q2.1(b)

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(3)(B)(ii), defendant's offense level should be increased by +4 levels.

- c. The adjusted offense level prior to any adjustment for acceptance of responsibility is 10.

The parties understand that such recommendations are not binding on the Court and that, if they are not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Sentencing Agreement

The parties stipulate and agree that based upon the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense, the sentencing guidelines, the history and characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to criminal conduct, defendant should be sentenced to a term of probation of three (3) years. In addition to the mandatory conditions pursuant to 18 U.S.C. § 3563, the parties stipulate to the following special conditions of probation:

(a) The defendant shall serve a term of thirty (30) days intermittent confinement in the custody of the Bureau of Prisons during the first year of probation pursuant to 18 U.S.C. § 3563(b)(10);

(b) The defendant shall contribute 200 hours of community service at the Florida Panther National Wildlife Refuge or the Rookery Bay National Estuarine Research Reserve, in the area of wildlife conservation pursuant to 18 U.S.C. § 3563(b)(12), and U.S.S.G. § 5F1.3;

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(c) The defendant shall pay a fine of \$5,000. The parties request pursuant to 16 U.S.C. § 1540(d), that the Clerk's Office disburse the money in the form of a Treasury check with the payee being "United States Fish and Wildlife Service," and indicate on the check or check transmittal document that the fine is payable to the "Lacey Act Reward Account," and also include the agency case number 2009405517.

The check should be transmitted to:

United States Fish and Wildlife Service  
Division of Financial Management / Denver Operations  
Cost Accounting Section  
P.O. Box 272065  
Denver, CO 80227-9060.

(d) In furtherance of the sentencing principles provided for under 18 U.S.C. § 3553(a), § 3563(b)(22) and U.S.S.G. § 5F1.3, the defendant shall make a Community Service Payment of \$5,000 payable during the term of probation to the National Fish and Wildlife Foundation ("NFWF"). The Community Service Payment shall be applied by NFWF to fund projects aimed at the protection, scientific study, restoration, and/or benefit of the Florida Panther or its habitat in or near Collier County in the Middle District of Florida.

NFWF is a charitable and nonprofit organization established pursuant to 16 U.S.C. §§ 3701-3710. Its purposes include the acceptance and administration of "property . . . to further the conservation and management of fish, wildlife, plants, and other natural resources," and the performance of "such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions for present and future generations of Americans." 16 U.S.C. § 3701(b)(1), (2). NFWF is empowered to "do any and all acts

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necessary and proper to carry out" these purposes, including, specifically, solicitation, acceptance, administration, and use of "any gift, devise or bequest . . . of real or personal property." 16 U.S.C. § 3703(c)(1), (11). NFWF's Congressional charter mandates that it be governed by a Board of Directors that includes the Director of the United States Fish and Wildlife Service, the Under Secretary of Commerce for Oceans and Atmosphere, and various individuals educated or experienced in fish, wildlife, ocean, coastal, or other natural resource conservation. 16 U.S.C. § 3702(b)(1), (2). NFWF is also required by its charter to submit to Congress annually a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments. 16 U.S.C. § 3706(a), (b).

The defendant shall remit the Community Service Payment to NFWF by either certified check or electronic funds transfer. Certified checks should be delivered to the National Fish and Wildlife Foundation, attention Chief Financial Officer, 1133 15th Street, NW, Suite 1100, Washington DC, 20005, and should include a reference to the case number in this proceeding. Payments via electronic funds transfer should be made in accordance with written wiring instructions provided by NFWF through its Chief Financial Officer or Vice President, Impact-Directed Environmental Accounts, at the time of transfer.

Because the payment is designated as community service, the defendant agrees that he will not characterize, publicize or refer to the community service payment as a voluntary donation or voluntary contribution. The defendant understands and agrees that the Court may enter an order establishing intended use of the funds by the National Fish and Wildlife Foundation;

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(e) The defendant agrees to pay the mandatory Special Assessment fee of \$25, said amount due and owing as of the date sentence is pronounced;

(f) The defendant shall complete a hunter education certification class;

(g) The defendant shall not hunt in Florida or any other State during the term of Probation; and

(h) Within 45 days of the date of sentencing, the defendant shall be liable for the payment for, arrangement of, and publication of a public apology and public awareness notification (in the form attached to this plea agreement and comporting with the actual sentence imposed) to run once a week for two consecutive weeks in the Naples Daily News.

The parties understand that such recommendations are not binding on the Court and that, if they are not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

9. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 16, United States Code, Section 1540(e)(4)(B) and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees, including but not limited to the following:

(a) Mathews Solocam Switchback XT Bow with sights, shock compensator and accessories;

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- (b) Mechanical Bow Release;
- (c) Arrow used to kill Florida Panther with 3 bladed Muzzy Broadhead;
- (d) Bow Case;
- (e) Ladder Tree Stand; and
- (f) Arrow w/broadhead (Muzzy 3 blade).

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offenses to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a

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consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose

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upon the defendant in addition to forfeiture.

**B. Standard Terms and Conditions**

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663 or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment (if any), and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count

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to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4     Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or

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other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, Defendant's Initials IB

state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel. The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a judge with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court

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may ask defendant questions about the offense to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel, defendant's answers may later be used against defendant in a prosecution for perjury or false statement.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

The Endangered Species Act makes it a crime, under 16 U.S.C. § 1538, except as provided in sections 1535(g)(2) and 1539, to take any endangered species of fish or wildlife listed pursuant to section 1533. It is unlawful for any person subject to the jurisdiction of the United States to "(B) take any such species within the United States or in the territorial sea of the United States;" and "(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C)." 16 U.S.C. § 1538. "The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). The Florida Panther (*Felis concolor coryi*) is currently listed as endangered and was listed as endangered on the date charged in the Information. 50 C.F.R. § 17.11(h).

On or about October 8, 2009, defendant Todd Alan Benfield was bow hunting along Woodland Grade in the Golden Gate Estates area of Collier County, in Defendant's Initials TB

the Middle District of Florida. On that day the defendant used a tree stand to hunt for deer. From his tree stand, the defendant shot and killed a Florida Panther with his compound bow and a 3 blade broadhead tipped arrow. The defendant knowingly shot and killed the Florida Panther, and did not possess a state or federal permit authorizing him to hunt, take, shoot, wound, kill, or collect a Florida Panther. The following day, the defendant and an associate moved the Florida Panther within the Woodland Grade area in an attempt to conceal the Panther. On October 10, 2009, the defendant removed his tree stand from the area in an effort to conceal the fact that he had killed the Florida Panther. On October 10, 2009, an officer of the Florida Fish and Wildlife Conservation Commission located the dead Florida Panther in a section of thick vegetation in the Woodland Grade area and determined that the Florida Panther had been dragged approximately 50 yards from a different location.

The U.S. Fish and Wildlife Service National Fish and Wildlife Forensics Laboratory conducted a genetics analysis of a tissue sample taken from the carcass and determined that it was a Florida Panther.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant

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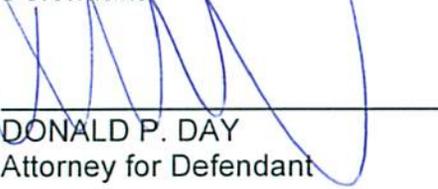
fully understands its terms.

DATED this 30th day of April, 2012.

ROBERT E. O'NEILL  
United States Attorney

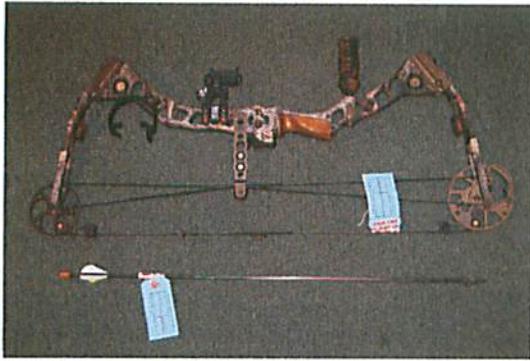
  
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TODD ALAN BENFIELD  
Defendant

By:   
\_\_\_\_\_  
JEFFREY F. MICHELLAND  
Assistant United States Attorney

  
\_\_\_\_\_  
DONALD P. DAY  
Attorney for Defendant

By:   
\_\_\_\_\_  
YOLANDE G. VIACAVAL  
Assistant United States Attorney

By:   
\_\_\_\_\_  
NICOLE H. WAID  
Assistant United States Attorney  
Chief, Fort Myers Division



On or about October 8, 2009, I, Todd Alan Benfield, knowingly and unlawfully shot and killed a Florida Panther (*Felis concolor coryi*) with my bow and arrow while deer hunting in the Woodland Grade in the Golden Gate Estates area of Collier County, Florida. On the following day I returned to the Woodland Grade area and searched for the dead Florida Panther. I found the dead Florida Panther and moved the Florida Panther carcass in an effort to conceal the Florida Panther. On October 12, 2009, I was interviewed by a federal Special Agent from the United States Fish and Wildlife Service and an Investigator from the Florida Fish and Wildlife Conservation Commission. During this interview, I lied about having anything to do with the killing of the Florida Panther. Federal agents with the United States Fish and Wildlife Service, assisted by Florida Fish and Wildlife Conservation Commission officers and Collier County Crime Scene investigators served federal search warrants on my residence and on my vehicle where they collected evidence of the crime. On November 30, 2009, a federal search warrant was served on my person for my DNA.

After a lengthy federal investigation, I was arrested for killing a Florida Panther and pleaded guilty and accepted responsibility for my actions. I have been sentenced to serve a term of probation of three years with thirty days of intermittent prison time, pay a fine of \$5,000, make a community service payment of \$5,000, contribute 200 hours of community service, lose my hunting privileges in Florida or any other state for three years, complete a hunter education certification class, forfeit my interests in my bow, arrow, tree stand and submit this public apology for public awareness.

I shot the Florida Panther because I thought the Florida Panther was competing and interfering with my hunting. I was **wrong** to have shot and killed a Florida Panther. The Florida Panther is an endangered species, of which great efforts and resources are spent to bring it back from the brink of extinction. Killing the Florida Panther was not a solution and I am very sorry for what I did. Killing a Florida Panther is punishable by a maximum term of imprisonment of one year, without parole, a fine of not more than \$100,000, or both.

I apologize to my local and national community and friends for my illegal activity and the negative publicity that it may have brought to hunting. Please remember that local, state and federal wildlife officials are aggressive and on the lookout for these types of criminal violations. Learn from my mistake. Don't repeat them.

[Signature of defendant]

The Florida Panther (*Felis concolor coryi*) is protected under the Endangered Species Act of 1973, Title 16, United States Code, Section 1538(a)(1)(B) and Section 1540(b)(1), and Title 50, Code of Federal Regulations, Section 17.11(h).