

disposition of all matters involving issues of general transportation importance. See 49 CFR 1011.2(a)(6). Accordingly, the Board is revoking the delegation to the Director with respect to the issuance of this notice of exemption. The Board has determined that this lease and operation notice of exemption should be issued, and does so here.

East Penn Railroad, L.L.C. (ESPN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Norfolk Southern Railway Company (NSR) and to operate approximately 5.2 miles of rail line in York, Penn.<sup>1</sup> Pursuant to the lease agreement, ESPN will lease: (1) The York Industrial Track between milepost YR 7.50 and YR 12.31 (4.81 miles in length); and (2) the Wye Track between milepost YR 12.31 and milepost 12.70 (0.39 miles in length), which connects the York Industrial Track to NSR's line.<sup>2</sup>

As required under 49 CFR 1150.43(h), ESPN has disclosed that the lease agreement between it and NSR contains an interchange commitment provision that enables ESPN to reduce its lease payments by receiving a credit for each car interchanged with NSR. ESPN states that NSR initially proposed a fixed rental payment with no option to reduce the rent, but ESPN requested a lease credit option to give it an opportunity to earn a lower rental payment, which would enable it to invest in improvements on the leased lines and thereby increase traffic levels. According to ESPN, the interchange point with NSR is York.

ESPN certifies that the projected annual revenues resulting from the proposed transaction will not result in ESPN becoming a Class II or Class I rail carrier and will not exceed \$5 million annually.

The transaction is expected to be consummated on or after July 31, 2011, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 22, 2011 (at least 7 days before the exemption becomes effective).

<sup>1</sup> ESPN's has filed a lease agreement and an interchange agreement under seal pursuant to 49 CFR 1150.43(h)(1)(ii).

<sup>2</sup> ESPN states that it will also be leasing from NSR certain real property located under the Wye Track and a service road extending from Windsor Street.

An original and 10 copies of all pleadings, referring to Docket No. FD 35533 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Ball Janik LLP, Suite 225, 655 Fifteenth Street, NW., Washington, DC 20005.

Board decisions and notices are available at our Web site at "<http://www.stb.dot.gov>."

*It is ordered:*

1. The delegation of authority to the Director of the Office of Proceedings, under 49 CFR 1011.7(a)(2)(x)(A), to determine whether to issue a notice of exemption in this proceeding is revoked.

2. This decision is effective on the date of service.

Decided: July 12, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Commissioner Mulvey dissented with a separate expression.

Commissioner Mulvey, dissenting:

I disagree with the Board's decision to allow this transaction to be processed under the class exemption procedures. I would like to have more information about the likely impact of the proposed interchange commitment before deciding whether to permit the transaction to go forward. In support of the interchange commitment provision, ESPN asserts only that it requested a "lease credit" option from NSR so that ESPN would better be able to invest in line improvements. This generic refrain, which has been used in a number of recent Board proceedings, sheds no light on whether a provision discouraging interchange with other carriers is inconsistent with the public interest in this case.

Jeffrey Herzig,  
Clearance Clerk.

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## DEPARTMENT OF VETERANS AFFAIRS

### Announcement of Competition Under the America COMPETES Reauthorization Act of 2011

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** To encourage widespread use of Blue Button personal health records (PHRs) outside Federal health care programs to benefit Veterans who receive care from non-VA providers, the Secretary of Veterans Affairs (VA) announces a prize competition under Section 105 of the America COMPETES Reauthorization Act of 2011, Public Law 111-358 (2011).

**DATES:** Competition begins July 18, 2011, and ends when a winner is announced or on October 18, 2011, whichever occurs first, unless the term of the contest is extended as provided in this Notice.

**FOR INFORMATION CONTACT:** James M. Speros at the Office of the Secretary, Department of Veterans Affairs at (202) 461-7214. (**Note:** This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In collaboration with other Federal agencies and non-governmental entities the Department of Veterans Affairs (VA) developed and has implemented an online PHR functionality known as Blue Button<sup>SM</sup>. VA's Blue Button<sup>SM</sup> PHR allows Veterans who are registered users of VA's My HealtheVet internet portal to download extracts of their own medical information to their home computers. Blue Button<sup>SM</sup> PHR downloads can be printed or saved on computers and portable storage devices. Veterans can then choose to share this data with other health care providers, caregivers, or people they trust.

The Department of Defense has implemented a Blue Button<sup>SM</sup> PHR for beneficiaries of its Tricare program and patients in the Military Health System; the Centers for Medicare and Medicaid Services has implemented a Blue Button<sup>SM</sup> PHR that allows Medicare beneficiaries to download data about claims for Medicare-covered services. Other health benefit plans, health insurers and health service providers offer Blue Button<sup>SM</sup> PHRs to their patients and customers.

Blue Button<sup>SM</sup> PHRs provide a simple, convenient, and secure means for storing personal health data in an internet-based service (including the download and upload of this information). Blue Button<sup>SM</sup> PHRs are currently used by more than 350,000 people—including 300,000 Veterans who receive care through the VA health system. VA believes Blue Button<sup>SM</sup> PHRs have now been sufficiently tested and proven useful to be made available for use throughout the United States by Veterans who receive their care from non-VA facilities and providers and by the public generally.

Blue Button<sup>SM</sup> PHRs keep the kind of information that patients need when they "fill in the clipboard" when visiting a physician or other licensed health care provider. Blue Button<sup>SM</sup> PHRs may also include clinical information from a sponsoring physician's clinical electronic health records. Some PHRs are compilations of data that patients receive from multiple

physicians, other care providers, health plans, or hospitals.

VA's health care system currently provides care to approximately eight million Veterans; some of these Veterans and the remainder of the 28 million Veterans in the United States receive some or all of their care from providers outside the VA health care system. VA believes all Veterans—not just those who receive all their care from VA—would benefit from and should have access to a Blue Button<sup>SM</sup> PHR which is interoperable with the VA Blue Button<sup>SM</sup> PHR. Making a Blue Button<sup>SM</sup> PHR available to all Veterans advances VA's mission of improving the health care and health status of Veterans.

VA anticipates that Blue Button<sup>SM</sup> PHRs will both empower patients and be useful both within and outside the Federal government. Users can include governmental and non-governmental health plans, health systems, hospitals, physicians, and other clinical providers. Blue Button<sup>SM</sup> PHRs can help professionals and hospitals provide Veterans and other patients with an electronic copy of specified health information, including clinical summaries of office visits and discharge instructions. Blue Button<sup>SM</sup> PHRs can also support electronic exchange of key clinical information between care providers when authorized by patients.

In addition to enhancing provider and health plan relationships with patients, the use of Blue Button<sup>SM</sup> PHRs may help licensed health care providers and organizations to achieve the meaningful use of electronic health records, as set forth in 42 CFR 496.6(d)(12), (14) and (15) (professionals), and 42 CFR 496(f)(11), (12) and (13) (hospitals).

### Competition Details

*Subject of the competition.* The objective of this competition is the widespread installation and actual use of a simple internet-based application which allows physicians and other licensed clinical professionals (LCPs) to sponsor and offer to their patients, including Veterans, a Blue Button<sup>SM</sup> personal electronic health record (PHR).

*Amount of the prize.* The prize to be awarded to the winner of this competition is \$50,000.

### Competition Rules

(1) *Basis on which the winner will be selected.* The winner of this competition will be the first entrant that can document that:

(a) It has created an internet-based application which allows LCPs to sponsor and offer to their patients,

including Veterans, a Blue Button<sup>SM</sup> PHR, and

(b) The Blue Button<sup>SM</sup> PHR application has actually been installed on public-facing internet sites by 25,000 LCPs within the United States and is actually available for use by all patients of those LCPs, including Veterans.

(i) To qualify as an installation sponsored by an LCP, the Blue Button<sup>SM</sup> PHR application must be installed on the LCP's internet site or the Internet site of the organization with which the LCP is affiliated, must be freely accessible to all patients of the LCP, including Veterans, and must be operable at the time of judging.

(ii) If the Blue Button<sup>SM</sup> PHR application is installed on the internet site of an organization with which the LCP is one of multiple LCP practitioners, then the total number of LCPs affiliated with the organization will be counted toward the required number of installations if it is freely accessible and usable by all patients who receive services from the organization. *Important:* Before a prize is awarded to them, participants will be required to submit a written approval and confirmation of installation from any LCP organization through which 100 or more practitioners will be offering the Blue Button<sup>SM</sup> PHR. The written approval and confirmation must be signed by the chief executive officer or equivalent of the LCP organization.

(c) The Blue Button<sup>SM</sup> PHR application meets the following criteria:

(i) It provides patients with a simple, convenient and secure means for entering and storing their personal health data and retrieving that data via download.

(ii) It supports downloads in, at a minimum, in ASCII and .pdf formats. The ASCII download format will be identical to and interoperable with the VA ASCII-based Blue Button<sup>SM</sup> text file and can read and write to the VA format. This format can be found at <http://www.va.gov/bluebutton>.

(iii) LCPs and LCP organizations can easily install the application and make it available to patients as an internet-based service.

(iv) The Blue Button<sup>SM</sup> and related Service Marks are used exclusively to identify the application and all of its components and functionalities.

(1) To install the application, the sponsoring LCP or LCP organization (1) Agrees to VA Blue Button<sup>SM</sup> end user license terms and to transmittal to VA of information necessary to identify the LCP or LCP organization as an end-user licensee. The application must support automated transmission of such identifying information to VA.

(2) See "Intellectual Property," below, for additional information about the Blue Button<sup>SM</sup> Service Marks.

(v) The application can and does verify the identity of a recipient of any health information and the authority of the recipient to receive any data in the PHR, and, specifically, shall comply with the HIPAA Security Rule, *i.e.*, 45 CFR 164.312(a) (access control), 45 CFR 164.312(c)(1) (data integrity), and 45 CFR 164.312(e)(1) (transmission security).

(d) The Blue Button<sup>SM</sup> PHR application may also, but is not required to:

(i) Include additional data fields based on the nature or types of clinical services provided by the sponsoring LCP or LCP organization, or

(ii) Offer additional functions, such as allowing LCPs or LCP organizations to export clinical information to a patient's PHR; allowing patients to electronically transmit PHR data to their LCP or LCP organization; and allowing LCPs or LCP organizations, when authorized by a patient, to electronically transfer the patient's PHR data via NHIN Direct to another LCP or health institution.

(2) *Alternate basis for selecting winner.*

(a) If the competition judge decides that no single entrant has met all required criteria for winning the contest, VA may determine that two or more, and up to 10, participants who have in the aggregate installed the Blue Button<sup>SM</sup> PHR application on the internet sites of 25,000 LCPs, either individually or through LCP organizations, should be declared winners and share the prize.

(b) In the absence of an individual winner, VA will rank entries from highest to lowest based on the number of verified LCP installations, and if 25,000 LCP installations, either individually or through LCP organizations, can be achieved by aggregating two or more, up to a maximum of 10 of the entries, starting from the top-ranked entry, the entrants will be eligible to share in the prize, if,

(i) *All Participants submit an entry on or before October 18, 2011 or the end of the contest if extended by formal announcement;*

(ii) Entries meet all requirements of this contest except only the requirement for 25,000 installations by a single entrant.

(c) If VA determines that multiple entries should be declared winners and share the prize, the prize amount will be prorated among the winning entries based on the number of verified installations, and in no event will the

total amount of all prizes awarded exceed \$50,000.

(3) *Definitions.* For purposes of this competition:

(a) A "LCP" is an individual licensed to provide health care and health services, without direction or supervision and who qualifies for and has received a National Provider Identifier (NPI) from the Centers for Medicare and Medicaid Services. Examples of LCPs include physicians, psychologists, dentists, and, when delivery of health care or services without supervision is authorized by the individual's license, nurse practitioners, physician's assistants, certified nurse-midwives and licensed independent social workers.

(b) A LCP may be "affiliated" with an organization (LCP organization) with or through which the LCP actively engages in the practice of the health profession for which the LCP is licensed. Examples include multi-physician practice groups, partnerships or professional corporations in which the principals are actively engaged in the practice of medical or health care. Membership in or engagement in professional or trade associations are not "affiliations" which qualify for this competition.

(4) *Contest period.*

(a) This contest will begin on July 18, 2011.

(b) This contest will end on the earlier of:

(i) The date VA announces a winning entry has been submitted, or

(c) October 18, 2011, unless VA extends the period of this contest by notice published in the **Federal Register** on or before October 18, 2011.

(d) If no winning entry is submitted on or before October 18, 2011 or during any extension of the period of this contest, the prize will not be awarded.

(5) *To participate in this competition, contestants must:*

(a) Obtain from VA a license to use the Blue Button<sup>SM</sup> and related Service Marks (Marks) in connection with this competition and otherwise. This license must be obtained prior to any use of the Blue Button<sup>SM</sup> and related Marks.

(i) VA will issue a non-exclusive royalty-free license to use the Blue Button<sup>SM</sup> and related Marks to any participant or end user who requests a license via [www.va.gov/bluebutton/apps/license](http://www.va.gov/bluebutton/apps/license), provides the required identifying information and agrees to VA's license terms.

(ii) *Important:* Participants who use the Blue Button<sup>SM</sup> and related Marks, whether in connection with this competition or otherwise prior to obtaining a license from VA, or who use the Marks other than as authorized

under license terms, are disqualified from this competition and not eligible to win any prize.

(iii) See "Intellectual Property," below, for additional information about the Blue Button<sup>SM</sup> Service Marks.

(b) Submit an entry via <http://challenge.gov/VAi2/198-blue-button-for-all-americans> which includes each of the following in the electronic formats specified:

(i) A narrative describing the participant's PHR application, its functionality and its installation at the required number of LCP- or LCP organization-sponsored Internet sites. The narrative will state the date and time when the participant obtained a license to use the Blue Button<sup>SM</sup> and related Marks and the serial number of the Blue Button<sup>SM</sup> use license issued by VA. The narrative will be in a format completely compatible with Microsoft Word 2007, not exceeding five 8½ x 11" pages in length using Arial or Calibri 11 point font and one-inch margins.

(ii) A link to a Web site from which VA can download the application, in source or object code at the option of the participant. By submitting an entry in this competition, participant expressly authorizes VA, its employees and agents to download, install and use the application for purposes of determining whether the submitted application meets the requirements of this competition.

(iii) A listing of all LCPs and LCP organizations who or which have installed the participant's application identified by the Blue Button<sup>SM</sup> Marks, and made it freely available for use by the LCP's patients, including Veterans.

(1) The listing will be in a format completely compatible with Microsoft Excel 2007 and contain the information set forth in the template found at <http://challenge.gov/VAi2/198-blue-button-for-all-americans>. This information will be used to verify that the required number of LCPs or LCP organizations have installed the participant's application, and may be used to support licensing of VA's Blue Button<sup>SM</sup> Marks to each end user.

(iv) Information necessary to contact the participant in the event the participant is an apparent winner or there are questions about the information submitted, including name, street address, e-mail address and telephone number.

(6) *Eligibility to participate in the competition.* To be eligible to win a prize in this competition, an individual or entity:

(a) In the case of an individual, must be a citizen or permanent resident of the United States; and if an entity, must be

incorporated in and maintain a primary place of business in the United States.

(b) Must have complied with all requirements of this Notice and all requirements established by Section 105 of the America COMPETES Act of 2011, Public Law 111-358.

(c) May not be a Federal entity or Federal employee acting within the scope of his or her employment.

(d) Must agree to assume any and all risks and waive any claims against the Federal government and its related entities, except in case of willful misconduct, for any injury, death, damage, or loss of property revenue or profits, whether direct, indirect, or consequential, arising from their participation in this competition, whether the injury, death, damage or loss arises through negligence or otherwise. *Provided, however,* that participants will not be required to waive claims against VA arising out of the unauthorized use of or disclosure by the agency of the intellectual property, trade secrets or confidential information of the participant.

(i) Participants shall be responsible for obtaining their own insurance to cover claims by any third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with or participation in the competition.

(7) *Procedures for obtaining additional information.*

(a) During the period of this competition, VA will operate and maintain a moderated blog at <http://challenge.gov/VAi2/198-blue-button-for-all-americans> to which participants may submit questions and receive official guidance from VA.

(b) VA may choose not to respond to any question or comment or to delete questions or comments which it determines are not relevant to the competition.

(c) All participants are bound by official guidance on the blog if posted prior to submission of a participant's entry.

(8) *Judge and Judging Procedures.*

(a) The judge of this competition will be the Director of the VA Innovation Initiative, acting in his or her official capacity. If the judge is disqualified or unable to fulfill his or her duties, VA reserves the right to substitute another official as judge. Notice of such substitution will be published in the **Federal Register**. Specific tasks related to the judging process may be delegated to other VA employees.

(b) VA may use any technical means it determines suitable to test the functionality and usability of the

entrant's Blue Button<sup>SM</sup> PHR application.

(c) VA may use any analytical means it determines suitable to determine whether the entrant's Blue Button<sup>SM</sup> PHR application has been installed by, and is freely available to patients of, the required number of LCPs or LCP organizations. The methods VA may use include but are not limited to assessment of a statistical sample of internet site addresses submitted by an entrant, the results of which may be generalized to the entire population. As provided in Section 3(b)(ii), above, internet sites must be operable at the time of judging.

(d) Determination of whether a participant is the "first" to document it has met all of the criteria for selection as a winner of this competition will be based on the date and time of VA's receipt of the submission of the entries. If two apparently winning entries are submitted at exactly the same date and time, the entry of the entrant which first obtained a license to use the Blue Button<sup>SM</sup> Marks will be designated the "first" entry.

(e) VA will use the information submitted in the entry to contact an apparent winner. If VA is unsuccessful in contacting the apparent winner after a minimum of 10 attempts over the course of a 10-day period, it may disqualify the participant and either (1) Award the prize to another participant or (2) terminate this competition without awarding any prize.

(f) Prior to final designation as the winner of this competition, the apparent winner will be required to submit documentation:

(i) If an individual, that the person is a citizen or permanent resident of the United States; and if an entity, that it is incorporated in and maintains a place of business in the United States;

(ii) Of written approval and confirmation of installation signed by the chief executive officer or equivalent of any LCP organization through which 100 or more practitioners are offering the Blue Button<sup>SM</sup> PHR; and

(iii) Of financial account information sufficient to support electronic transfer of the prize amount consistent with VA fiscal policy and the issuance of an IRS Form 1099. The information submitted will be used for these purposes only.

(g) Decisions of the judge are final.

(9) *Intellectual property.*

(a) The winner of the competition will, in consideration of the prize to be awarded, grant to VA a perpetual non-exclusive, royalty-free license to use any and all intellectual property pertaining to the winning entry (Winning IP) for any governmental purpose, including

the right to permit such use by any other agency or agencies of the Federal government. All other rights to the Winning IP will be retained by the winner of the competition.

(b) VA may, in its sole and exclusive discretion, choose to negotiate with any non-winning entrant for a license to use any intellectual property developed by a participant for this competition.

(c) "Blue Button," the Blue Button logo and the slogan "Download My Data" are Service Marks (Marks) of the Department of Veterans Affairs, an agency of the United States Government (reg. app. pending), which reserves all rights pertaining to its Marks. Any unlicensed use of the Blue Button<sup>SM</sup> Marks or use inconsistent with the terms of license issued by or on behalf of VA constitutes infringement of VA's intellectual property and subjects the infringer to all penalties provided by law.

(i) "Use," as used in Sections 6 and 10(c) above, means use in commerce of any reproduction, counterfeit, copy, or colorable imitation of the Blue Button<sup>SM</sup> Marks in connection with the sale, offering for sale, distribution, or advertising of any goods or services related to the electronic storage or transmittal of health or health-related data. Use also means application of any reproduction, counterfeit, copy, or colorable imitation of the Blue Button<sup>SM</sup> Marks to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising any goods or services related to the electronic storage or transmittal of health or health-related data.

(d) Additional information about the Blue Button<sup>SM</sup> PHR functionality is available at <http://www.va.gov/bluebutton/>, <http://www.myhealth.va.gov/>, and <http://www.whitehouse.gov/open/innovations/BlueButton>.

Dated: July 13, 2011.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

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**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Rehabilitation Research and Development Service Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Rehabilitation Research and Development Service

Scientific Merit Review Board will be held August 9-11 and 16-18, 2011, at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 5 p.m. each day. The following subcommittees of the Board will meet to evaluate merit review applications:

August 9—Rehabilitation Engineering and Prosthetics/Orthotics; Regenerative Medicine.

August 9-10—Aging & Neurodegenerative Disease; Psychological Health and Social Reintegration.

August 9-11—Brain Injury; Musculoskeletal/Orthopedic Rehabilitation.

August 16—Rehabilitation Engineering and Prosthetics/Orthotics.

August 16-17—Psychological Health and Social Reintegration; Sensory Systems/Communication; Spinal Cord Injury; and Career Development Award Program.

August 18—Rehabilitation Research and Development Centers of Excellence.

The purpose of the Board is to review rehabilitation research and development applications and advises the Director, Rehabilitation Research and Development Service, and the Chief Research and Development Officer on the scientific and technical merit, the mission relevance, and the protection of human and animal subjects.

A general session of each subcommittee meeting will be open to the public for approximately one hour at the start of each meeting to cover administrative matters and to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the discussion, examination, reference to, and oral review of the research applications and critiques.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing the meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the general session should contact Tiffany Asqueri, Designated Federal Officer, Rehabilitation Research and Development Service, at Department of